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Role of Multinationals Companies in Upstream Dispute Resolution

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INTRODUCTION

The science of international relations has been defined as the study of the possible interactions that nation-states engage in the international environment. However, the modern era and the advent of an ever-increasing globalization has brought about a shift in the relationships of these actors and even more in the actors themselves. An increasingly important role is been played by Non- Government Organizations (NGOs), non-state actors whose characteristics vary greatly, from humanitarian organizations to multinational companies, all being able to engage into discussion with state parties and shape the landscape of the international relations.

In particular, multinational companies are entities that in current times have economic resources able to rival those of states, operating in different countries and operating under different sets of both state and international law. These concepts apply particularly to the field of multinational oil companies, whose necessity and capacity to dialogue with both national and hosting authorities have made them important players in the world of international relations.

The diplomacy between states and third parties capable of influencing the international community fall within the concept of the Track II diplomacy, which exactly describes those kinds of relations. Track Two diplomacy however, even if it describes the relations between all state and non-state parties, mostly focuses on the relations between states and humanitarian organizations. The focus of these thesis instead will be over multinational companies, with the goal to describe the forms in which these news actors interact and to provide a framework that seeks to integrate these new forms of diplomacy with the more traditional ones.

As previously said, the focus will be over multinational oil companies, with two different case studies that show how the national Italian oil companies Eni operates in different environment and situations. In particular the first case study regards the company and the sanctions over Venezuela, focusing on the relations between the company, its own state and relevant international organizations.

The other case study regards the actions of the company in Nigeria, focusing on relations between the company, the hosting state and other third-party stakeholders, and on how the mechanism of grievance works.

1 – STATES FIRMS AND DIPLOMACY

1.1 Traditional diplomacy

Diplomacy can be defined as the way countries engage into and manage international relations, typically by the means of a representative abroad. The need to become involved in relations on a super national level predates the birth of nation-state itself: since ancient Greece, and possibly even before, states recognised their need to interact with other states, to share their ideas to deliver their words. There was a necessity for people to be able to interact with other states, their ideas to be spoken and their words to be delivered, and so we witnessed the birth of the one man capable of fulfilling these missions, the diplomat. In the beginning he was a simple messenger, with the task to carry out and deliver papers with the words of those he was serving, soon enough it became clear how great the importance of such a figure was. The first approach to a nation's costumes and culture would be given by him, and so the importance of presentation and appearance was understood. Quickly the role of ambassador become an increasingly valuable position, to which should be given the appropriate honours and regards. One figure capable of representing the country in front of other states, with the capacity to raise questions and give concessions.

So diplomacy, as the practice of conducting negotiations between states, has been a characteristic of human civilization since its beginnings. The need to find alternative means of dispute resolution, other than the use of brute force, was recognized as an imperative even by the earliest states we have notice of in history books.

The concept of diplomacy would later evolve into its more present form around the middle ages: the birth of the modern concept of nation-states inevitably led to the creation of permanent envoys and embassies, as the need to dialogue, seek treaties and alliances was pivotal in their survival. The role of ambassador was born: an individual, at the time strictly of noble origins, issued with the task to represent its country of origin in a foreign country. Ambassadors were ranked by primary title of the ruler they would be representing, and in those early years of modern diplomacy its tasks mostly consisted of throwing lavish parties and enjoying the court life.

The evolution from an occasional Diplomacy, motivated from the needs to solve specific issues, to a permanent Diplomacy started in Italy in XV century to respond to the new interest of Italian states.

The recognition of the role of diplomacy and the first structural framework in which it operated would however come quite later, in XVII century, happening with the event that is widely recognised as the birth of the concept of nation states: the peace of Westphalia. The two treaties that marked the end of one of the bloodiest Europeans conflicts, the thirty years war, and sanctioned the dawn of the modern era of international relations and diplomacy.

The traditional concept of diplomacy based on Westphalian sovereignty principle born in XVII Century: "every state no matter how large or small, has an equal right to sovereignty and each state has no right to interfere on other states"[1] brought to a common picture of diplomacy as an instrument used by institutional state representatives to solve in a pacific way potential disputes between states

Central issue in international relationships was considered war between territorial states, and the main problem therefore was to maintain order in the relations between these states. This traditional view of international relations was focused on behaviour of states towards other states.

Diplomacy was considered the art of negotiating, on behalf of state, international political affairs. In other sense all the procedures and instruments used by a state to maintain normal relations with other international subjects to mediate opposite interests and favourite reciprocity collaboration to satisfy common needs. The subject entitled to do that was the diplomatic who is a person having the right knowledge and able to reach state interests in a pacific way and, even if not always, diplomacy is devolved to conciliate international disputes and adjust different interests. The diplomat is the peaceful way to balance and adjust state interests and when is not possible he is out of scope.

With the advent of the French revolution, the role of the ambassador would evolve and change profoundly: diplomatic ranks were abandoned, and the role changed from one of mere formal representation to the one of a shrewd politician capable of holding relations with the head of states under any circumstances.

The next great change in the world of diplomacy would come as the outcome of the two world wars. The atrocities happened and the advent of atomic bomb cemented the concept that the only alternative to avoid destruction was trough diplomacy, international relations and international organizations.

[1] Benjamin de Carvalho, Halvard Leira, and John M.Hobson, "The Big Bangs of IR:The Miths That Your Teachers Still Tell You about 1648 and 1919".

The birth of the United Nation in 1945 for the first time changed the paradigm expressed by the peace of Westphalia, depriving nation states of some of their authority, by their own decision, to implement a certain degree of control and regulations from an authority above even theirs. The United Nations only started a trend of devolution of powers from nation states to super states actors, with new international organizations being formed year after year, and soon becoming the referring authority in their field of competence.

The World Trade Organization, the Word Bank, the European Union are just some of the many international organizations that now have the power to represent their state parties in the field of international relations.

The model founded on bilateral diplomacy, intended as the one-way relation between two states and themselves alone proved to be no longer capable of resolving the issues of a now globally interconnected world. The old ways were left in favor of the new concept of multilateral diplomacy, with state organizing themselves into international organizations issued with specific tasks to carry out in relation to their role and objective. While bilateral diplomacy still holds an important role in the makings of partnerships and friendly relations between specific countries, issues on a global level are decided upon in unison by a wider range of states. The most prominent example comes from the security council of the United Nation, a body within the most important of international organizations which contains the winners of the Second World War (Britain, France, Russia, China and the United States) and that holds executive power in the international sphere.

The influence of the phenomena that arose in the post war period was not limited however to only the concept of multilateral diplomacy. The unparalleled economic growths of the post war era, alongside rampant globalization and a never so interconnected economic market has brought significant new players in the international word, that unlike the past, is no longer a place of monopoly by nation-states.

The principle of non-interference and the Westphalian system that reached its peak in the 19th and 20th centuries, has been challenged by a different vision of role of diplomacy and subjects considered legitimate to pursuit objectives different form the state interest. The common idea of diplomacy having "negotiations between officials from foreign ministries, secretly discussing conflicts related to questions of sovereignty, the balance of power and international order"[2] is definitively changed and cannot be considered anymore the only vision of diplomacy.

[2] Henry Kissinger, Diplomacy (New York: Simon & Schuster, 2004).

1.2 Structural change in the nature of diplomacy

The economic boom that characterized the post war period propelled a rampant growth of globalization in an already highly interconnected world and we witnessed the birth of the non–state players, new entities able to play a relevant role in the international political environment.

The non-states players can be divided in two different categories: multinational enterprises which revenues could rival those of the most developed states themselves and Non-Governmental organizations, or NGOs, as well of organized groups capable of representing their issues and operating all across the globe.

Multinational Corporations and Non-Profit NGOs become relevant player in the post war era within the field of international relations. While they do differ from traditional players like nation-states and equivalent entities (such as the Holy See or the S.M.O.M), both in their powers and their role, they do possess characteristics that make them able to be relevant in the international sphere and capable of conducting diplomacy, negotiating and producing treaties with states themselves.

NGOs are by definition non-profit enterprises that seek to promote a mission in different places all over the world, mostly of humanitarian ambition. Among the most prominent we can name the International Red Cross Associations and its affiliates, Medic sans Frontiers, and various others. These kinds of organizations are engaged in diplomatic activities both with official international organizations and hosting states but rely for the most part on the soft power they are able to exert in order to achieve their goals, lacking any other tools to rely upon.

A much more interesting phenomena, for the objective of this thesis, are instead large multinational companies that, with the ability to alter economic payoffs both for hosting states and in the international scenario, are nowadays actors that can rival states themselves on the capacity they have to influence decisions. While in some forms multinational companies predates the advent of globalization and the world market economy, it is only in the post war period that we witnessed a surge in the numbers and economic power of this entities. By comparing the revenues of the top 20 multinational companies in the world with the GDP of the top 20 most developed countries by the global development index, we can notice how the revenues of these companies are way higher than the entire GDP of the most advanced countries in the world. It seems logical that the amount of power these entities can exercise is at least on par of those of nation states, especially when dealing with less developed economies, where a single deal can push forward or set back a nation for decades.

The complexity of the current political world system and the presence of economic entities with economical magnitude similar or higher than a state brings to a different idea of diplomacy. Governments need currently to deal and manage potential disputes not only with other governments but also with multinationals or enterprises and vice versa firms need to bargain not only with other firms but also often with governments. The competition between states for world market share has incredibly increased and often different governments compete for convincing foreign companies to locate their operations in their territories or for convincing national companies not to transfer their activities abroad. Those types of bargains determine often a partnership exchange between governments and firms that might have a long or short duration but in any case is based on sharing benefits and opportunities to reach the most convenient market share for both parties. These multinationals go and engage in trade deals, relationships and dialogue with the hosting states, and as much as in traditional diplomacy they deal and bargain in order to obtain settlements that can satisfy all of the parties involved. The result of that structural change is that the nature of the relationships between states has changed and traditional foreign policy has become often less important than industrial policy and macroeconomic management.

Due to this structural change nature of diplomacy has been modified because main actors are changed, not only states but also firms are becoming main subjects of the international relationships and transnational relations.

The main factors that contributed to this structural change are some important political or economic events as the dissolution of ex-Soviet Union, the liberation of Central Union, the structural payments deficit of the United States, the incredible growth of the East Asian countries, the change from several military or dictatorial powers to democracy and finally the opening of borders from many countries in the world. In particular three main factors have speed up the internationalization of production and the relocations of several production activities in different countries: revolution technology, liberalization of finance and lower costs of transports and communications.

The technology improvement has increased the production capacity of many production activities, many companies realized to be able to produce more products in less time and less costs and at the same time to diversify the type of production so it was crucial to find new markets to sell their products. In addition to that the product life time has shortened. As a consequence the cost of research and development has increased and many Companies were forced to find not only new markets where to sell more and new products but also were forced to find production locations where the cost was lower and suddenly the own state was not enough to meet those new requirements.

In the majority of cases the internationalization of the activity was done for cost reasons but it was also important the capacity of the hosting country to create the good conditions to operate. In this process developing countries were heavily involved in a strong competition against each other. Globalization and the modern era have, in fact, changed the relationship between developing countries and the rest of the world. Long passed are the days of the "Third Block World", where developing economies saw themselves as partners in the struggle to progress and allies in changing the status quo with respect of the wealth division of the world. Globalizations has deeply improved the living conditions of citizens of third world country: the opening of the world market has made them able to compete in the world economy, where due to extensive workforce and lower costs can rival much more well-established economies. However, it has also showed how those who once were considered allies are now rivals in a race toward the new era of industrializations: multinational companies can move billions with trade deals and are obliviously going to choose the place in which operate that offers the best conditions.

The other important factor that contributed to the internationalization of production is the liberalization of international finance started with the introduction of Eurocurrency in 1960 and continuing with the financial deregulation started by the United States in the mid-1970s and 1980s[3]. There is an opposite relationship between barriers and capital mobility, mobility of capital goes up when the barriers go down and the obstacle of collecting money abroad or transferring money to set up new operations in foreign countries became less and less complex and that helped a lot to the internationalization of production in the world.

Finally the third factor that facilitated this process is the fact that cost of transport and communication became progressively lower and that enabled multinationals to realize their plans abroad with less risk and in an easiest way.

One of the consequence of these structural changes is the fundamental change in the nature of diplomacy. In this changed scenario the idea that "the central issue in international society is war between territorial states and the prime problematic therefore is the maintenance of order in the relations between these states[4] sounds obsolete.

The importance of firms as major actors brings to the necessity of managing relationships not only between different states but between states and firms and between different firms and it is becoming

[3] S. Strange, International monetary relations, vol. 2, International Economic Relations of the western world 1959-71 (Oxford University Press for Royal Institute of International Affairs, 1976).

[4] Hedley Bull's - The anarchical society: a study of order in world politics (London: Macmillan, 1977).

common the concept of three-sided nature of diplomacy. In addition to the traditional one there is state-firm diplomacy and a firm-firm diplomacy.

Regarding the concept of state-firm diplomacy, many Companies, in order to move to different markets to optimize the costs and maximize the profits, need to have the permission of the governments. A multinational, even if just wonts just to sell products or services in a foreign market, needs to set up a proper relationship with the local government and clear boundaries that define the way of operating. On the other hand states compete with other states to be chosen by transnational firms to operate in their country and benefit of the added value of receiving new investments in their territory and not in other countries. They are interested to benefit from the arsenal of economic weapons as technology, access to global resources and access to major markets owned by the companies investing in that country.

This is the basis of the bargain, states benefit from the presence of multinationals in their country because they help them to win in the competition for the market share. States are often now less interested strengthening power over more countries but they are more competing for creating wealth in their territory. In the current days without considering maybe the oilfields and water resources there is less interest in controlling additional territories. Market share can be won with a little territory.

Regarding the firm-firm diplomacy, the bargain is between different firms interested in investing in a foreign country. One company having an important investment project abroad might benefit from a temporary or permanent alliance with another company that contributes in doing something that it is needed and that could be helpful in the realization of the project investment. There are recently several examples of competitors that, under a pressure of a radical structural change decided to become allies. Firms can fight to obtain the privilege of operating in a convenient market or can cope together to realize a certain investment in a profitable market.

Managing those types of relationships is particularly difficult and can be mitigated by good quality of contracts signed where for example is well defined who takes key decisions how to manage potential risks and how to share benefits. Managing potential conflicts or disputes raising from the bad interpretation of some clauses or from actions not in line with what agreed often require a diplomat action which brings to a different side of diplomacy.

As conclusion both state-firm diplomacy and a Firm-Firm diplomacy bring to the fact that diplomacy has two additional dimensions apart the conventional one which is related to the relationship between governments. The idea that the main risk in the international society is war between different states and

main purpose is avoid that it happens is not valid anymore because transnational industries with their power and consequent effects can be even more dangerous to the international society.

The three aspects state-state, state-firm and firm-firm diplomacy are often linked and interdependent and it is important to consider them from one unique point of view. The three sides of diplomacy are more flexible and more able to guaranty a peaceful solution of potential conflicts between different actors and more adapt to cope with changes in global environment.

1.3 Diplomacy as economic consultancy

The new vision of diplomacy with different actors involved is becoming more common and we assist not only to the traditional diplomacy managed by official representatives to protect state's interests but also to more and more professionals that provide their consultancy following an international best practice framework to clients and are paid for that with a fee that creates profit or that simply covers the cost of service.

These new professionals contributed to create a new way to conduct diplomacy activity because they claim not only to states but also to non-territorial entities based on rules and values that are transnational as human rights or firm interests.

Those brokers provide diplomacy as economic consultancy and are becoming more and more important in managing international relationships. In doing that they introduced a new concept of diplomacy based on what can be called "epistemic arbitrage" which is based on different knowledge coming from different professional skills. Usually those diplomatic brokers have informal knowledge about how to conduct a negotiation, general information about economic principles and pragmatic approach on how to manage operations and tasks.

The combination of those different knowledge creates a style that induces deference in others leveraging powerful symbols linked to humanitarian norms and professional service firm norms. Those new professional figures are people "who generate symbolic and economic gains by exploiting and combining forms of knowledge from different professional arenas"[5]. Based on Harrison White view: "professionalism is a style recognized in deference relations into provision of service valued for

[5] Seabroke, "Epistemic Arbitrage".

existence, not by test. So it is the syntax of deference rather than the content of its lexicon that singles out professionalism"[6]. "International work practices matter because if the practices of diplomacy is delegated to parties who are not located in ministries but in economic consultancies, then there are also potential effects on how professionals in ministries behave, including changing notions of what skill sets are required, and what qualifies a competent performance to be effective as a modern diplomat"[7]. Those new consultants have been introduced in the ranking of many international organization as International Monetary Fund and the fact that so traditional institutions have started to consider consultancy as a valuable way of working has an impact on traditional diplomacy that cannot ignore that.

The traditional diplomats have been described by Iver B. Neumann as a "mix of bureaucrats, heroes and mediators, and certainly these styles can be found in formal diplomacy. When considering changes in configurations of social relations beyond the state, we need to add actors whose claims to authority are non-territorial and who contribute to the range of actors actively engaged in diplomatic work" "[8].

"James Muldoon, among others, has pointed to the "role of corporate elites in providing a form of diplomacy, and this is to be expected in areas of high cost/high profits and associated with issues such as energy security"[9].

As consequence of that also the traditional diplomacy has started slightly changing their behaviours and practices in order to be more in line with the new ecosystem. Managing diplomacy as a broker and "epistemic arbiter", leveraging different types of knowledge and skill within different information networks and changing style when needed to finally become persuasive and induce deference in the others, seem to be more effective in the new scenario comparing the results obtained by traditional diplomacy. The effect of exponential growth of multinationals, transnational and non-governmental organizations has an impact not only on the way diplomacy is conducted but also on the number of those new professional figures that are increasing more and more to close the gap between traditional diplomats that are focused on managing potential issues between territorial states and those new entrepreneurs that act in defence of different transnational interests.

[6] Harrison C. WHITE, Identity of Control: How Social Formations Emerge, Princeton University Press 2008.
[7] Emanuel Adler and Vincent Pouliot, "International Practices", "International Theory" 2011.
[8] Iven B. Neumann, "To be a Diplomat" International Studies Perspectives, 2005.
[9] James P. Muldoon, "The Diplomacy of business", 2005.

For example a new group of Independent Diplomats has been built by Carne Ross because they realized that there is a "democratic gap" in how traditional diplomacy is conducted and there are some interests not adequately supported by traditional diplomats.

Purpose of those new actors is to fill this gap. The way they do that is based on three types of knowledge: diplomatic-tacit, economic-systematic and programming managerial. Actually more than knowledges they are skills because they are not based on fixed norms or notions but more on attitude. There are some analogies of those skills with other types of consultancies: diplomatic-tacit with legal profession, economic-systematic with the economics professions and programming managerial with management consultancy.

In all those activities what is more important is the organizational attitude more than the knowledge itself and as result of that the methods used result more effective than traditional ones in solving disputes between different actors and different topics because they can be more easily adapted to different situations. Using a method instead abstract notions gives a lot flexibility to the diplomat and makes him more attractive for new subjects requiring their services.

In particular diplomatic-tacit knowledge is the attitude on how to interpret secret information, how to retrieve precedents from low and use them to mediate with foreign ministries, IOs and NGOs.

Another important aspect of tacit knowledge is how to read others and provide selected information based on the interpretation of what the other needs to reach in terms of strategic objectives. Finally it is also part of that skill the style and the self-presentation which means having right habits in public and in private life. This type of knowledge is much more linked to art than science, with interpretation more than application of technical rules.

When diplomatic-tacit skill seems to be more an art, economic-systematic can be considered more as a science because it is strongly linked with practices of benchmarking adopting common templates for minimizing information asymmetries and by focusing in the more efficient use of information and resources. This is, of course, closely related to market –based logics of resources allocation and profit generation, including the notion that information is not only important to selectively share, but that information is also worth something that can be priced within a market[10].

[10] Leonard Seabrooke, "Economists and Diplomacy: Professions and the Practice of Economic Policy" International Journal, 2011.

Finally programming managerial is linked to both economic-systematic and diplomatic-tacit but having an element of distinction which is the focus on how to leverage relationships in a networks to reach strategic goals. In doing that it is also important how ethics influences the way of conducting operations and obligations to clients as for example the confidentiality agreement in place.

Differently from diplomatic tacit, where the ethic is more based on international laws relevant for human rights, programming-managerial knowledge is more linked to corporate principle of responsibility versus shareholders and clients. Those people can be considered more brokers than mediators because their working strategy is based on a market logic, they are people who, using their recognized discretion, are able to retrieve information and keep them as secretes and sell them for a price. That is recognized in the community and gives them a significant value because they are able to use their managerial experiences in managing information.

There are several examples of those new forms of diplomacy as economic consultancy but I would like to concentrate on two examples particularly significant such as Independent Diplomat and STATT because they represent two opposite way of diplomacy consultancy, not only regarding how the brokers act in the respective framework but also regarding how the fee charged to client is built and how they combine the three different types of knowledge diplomatic-tacit, programming managerial and economic-systematic.

1.3.1 Independent Diplomat

Independent Diplomat (ID) can be considered as a humanitarian NGO focused on addressing the democratic deficit between nations that are rich and the ones that are not or group of people not represented by a nation. This organization is unique because, differently from the traditional diplomacy involved in maintaining the status quo of sovereign states, it is mainly involved in balancing power asymmetries promoting peculiar types of norms as human rights, anticorruption and transparency.

This organization, combining in particular diplomatic-tacit and programming managerial knowledge, sells its service to clients looking for solving those democratic deficit. ID is formally registered as a no profit organization in New York and it is qualified as a “diplomatic advisory group” because his founder Carne Ross wants to emphasize the concept, that differently from the common NGO’s, they do not work for a charity organization but for fees even if the fees paid are usually limited to cover the cost of work.

Nevertheless it is important to charge a fee because, based on the founder taught, the clients trust a service only it is valuable and there is cost for that.

One of the main activity is helping governments to be recognized by IOs and European Union. An example is the work done for Kosovo that declared independency in 2008 and was recognized independent in 2010 according to International Law. Other examples of clients are Republic of South Sudan for managing its engagement with the UN Security Council or US Tamil Political Action Council that was assisted by ID for ensuring accountability for the war crimes committed both Sri Lanka and the Tamil Tigers during the civil war in Sri Lanka, addressing the human rights abuses and supporting reconciliation between the Tamils and the Sri Lanka government.

The method adopted by ID is a consultancy model based on a staff of managers knowledgeable in different areas and able to successfully managing relationships. In doing their job they maintain an information management system by updating regularly all team members on the activity done on each specific business case and that information system is helpful for their clients for managing disputes where they are involved.

ID adopts some general rules in the way of acting and selecting or accepting their clients:

- all clients have to be in line with the ethical ID principle based on commitment to democracy, transparency, corruption free government, respect of human rights and compliance with international law
- ID's main purpose is helping their customers to prevent and solve conflicts
- they are facilitator in solving disputes being political neutral and serving interest of a country as a whole without being involved in any specific political alignment.

It is also important the style adopted in providing this type of service starting from what they wear, the way they speak calmly about important issue of great political sensitivity, the location and style of their office. All those elements are important and together with a clever use of different forms of knowledge and identities contribute to the successful reaching of their goals and to do something that NGO's are not able to do. The ability to utilize different identities coming together from diplomacy and consultancy is an important component of ID'S profile and success.

1.3.2 STATT Consulting

Statt represents a different form of diplomacy similar to economic consultancy, it is based in Hong Kong and provides strategic advice, public relations and operational support to different governments as Afghanistan, Australia, Canada, Denmark, Thailand and NGOs as ActionAid and IOs AS World Bank.

The definition of STATT on his Web Site is the following: "STATT is a network of practitioners dedicated to mitigate transnational threats and expanding transnational opportunities. We bring together those driving globalization and those who are vulnerable to it. Our approach emphasises the need to secure strong evidence and community engagement to guide innovative response that combine transnational forces with local knowledge and needs. We work for communities, countries and companies seeking targeted service that shape transnational connections and leverage their benefits"[11]. The permanent staff is formed by around 60 people but they leverage the support of local NGO's in order to have a closer relationship with the local community. In particular 5 programs are operated by STATT: Prescience (climate change), Neutrino (migration), Resonance (aid effectiveness), White Hat (security risk), and Collateral (illicit finance). To reach the respectively goals they use a mix of different forms of knowledge diplomatic-tacit, programming-managerial and economic-systematic.

STATT bases his success in anticipating government's demand, they analyse in advance all possible potential governments requirements in terms of information necessary to solve diplomatic issues. They spend most of the time in analysing information to identify problems and based on what they have identified as a potential issue they sign a contract with the government or NGO that require their assistance to solve it. STATT is particularly able to provide a service especially when they are asked for checking some government policies in difficult countries or markets with high political sensitivity and in those situations the combination of confidentiality and tacit information become extremely important diplomatic skills.

One example is when in 2011 STATT has been involved by UK NGO ActionAid to conduct a survey on woman conditions in Afghanistan or when they have been asked to "assess the impact of Australian's government policy announcement on the suspension of processing asylum claims"[12].

In conclusion both examples ID and STATT put in evidence how important is becoming the development of this new form of diplomacy when those brokers are engaged on behalf of their clients (governments, ONGs, IO'S, Firms) to play an important role in mediating different interests and doing a political work. The fact that the international environment requires more and more those outsourced diplomatic service proves that the rigidity of the traditional international system is an obstacle in finding and using information in a more flexible way, keeping secrets and use them in a proper way and this

[11] www.statt.net.

[12] Australian Customs and Border Protection Service, "Strategic Assessment of Counter people Smuggling Communications Activities", November 2011.

new form of diplomacy as economic consultancy is more efficient and adapt to manage the new diplomatic challenges of the current world.

2 – SHORT OVERVIEW OF UPSTREAM CURRENT SCENARIO

2.1 Energy environment overview

As described in the previous chapter, due to the increasing importance of economic activity and the growth of private sectors, claims can be distinguished by territorial versus non-territorial representation and the diplomatic activity necessary to solve potential issues and disputes between those transnationals and non-governmental entities can be conducted not necessarily by the official diplomats representing the government but by different subjects who combine different forms of professional knowledge.

New corporate elites provide a form of diplomacy and this is particularly evident and common in sectors having high costs and profits as for example the energy market. In particular "the strategic nature of power supplies and finite fossil fuel resources puts energy front-end-centre in today's geopolitics and international diplomacy"[13].

Control of huge petroleum resources at low costs represented one of fundamentals element in the consolidation and assertion of America hegemony in XX century. The export from America society to Europe of productivism, the idea to drown conflict in economic wealth was possible also because petroleum market was easily accessible at low cost. Many economic miracles in Europe and Middle East were possible thank to that cheap and accessible petroleum.

Control on production resources and distribution channels and purchase of this important row material has been structured during previous century through the synergy between governments and big oil companies. Since 1914, when UK founded the relation between public and private in the petroleum sector, it became common the idea that the relationship between those two entities government power and big capital was strategic for reaching the economic success in this crucial sector.

The globalization exploded in 21st Century and energy sector followed this process. There is in the world a complex system of transnational energy connections and development partnership and energy is playing an increasing important role in international diplomacy. Energy security is by definition a transnational matter especially for those countries that need to import power to satisfy domestic demand.

[13] Power Technology - Power plays: the role of energy in modern geopolitics 26 April 2018 (Last Updated February 6th, 2020)

Just to mention some examples Japan relies on Middle Eastern oil imports, or Russia has a dominant role in providing gas in many European markets.

This principle was officially sanctioned in 2006, at a summit of the former G8 countries – the US, France, Russia, Canada, Germany, Japan, Italy and the UK – at St Petersburg under Russia's presidency. During the summit it was recognised by work leaders the globalised energy supply chain, and the need for international cooperation to develop it.

"We consider it important to facilitate exchange of power, including trans-border and transit arrangements," the countries said in a joint statement. "It is especially important that companies from energy producing and consuming countries can invest in and acquire upstream and downstream assets internationally in a mutually beneficial way and respecting competition rules to improve the global efficiency of energy production and consumption."

Electricity lines and gas pipelines across borders in a globalized energy landscape require an international cooperation and when that is not reached tension between different countries can have important consequences to their internal economy.

Energy infrastructures partnership and access to international technology are really important for countries to develop industry, to boost energy security and maintain warmer bilateral relations.

For those reasons energy resources are strategic and can be used as diplomatic leverage or to create opposition on the world stage.

One example is how energy is important in managing potential tensions between Russia and the west. The Russian Gazprom supplies almost 40% of Europe gas through pipelines passing several countries that rely and depend on that product. Russia can leverage that strategic supply in case of disputes with European countries and decide to stope that in response of disputes as it happened in 2006 and again in 2009 with Ukraine.

Also with Europe the relations look not always stable as a consequence of tensions in Ukraine and, more recently, after the poisoning of former Russian intelligence officer Sergei Skripal and his daughter Yulia in early March 2018. Again the energy supply potential cut became for Europe a possible scenario and not only a spectre. In particular the tension between UK and Russian government had an impact on energy price and as consequence of that Europe started trying to diversify the supply of gas looking at countries as Quatar and US forcing Gazprom prices. In response of that Russia diplomatically redirected

their interests towards the Middle East and Asia. In 2019 Siberia pipeline was implemented to deliver Russian gas to China and Russian President Vladimir Putin has launched an important diplomatic activity in the Middle East.

Earlier than that, in late 2017, Putin announced a $30bn energy partnership with the National Iranian Oil Company underling the message of having an important alternative partner to Europe.

Donald Trump, reinforcing his opposition versus previous Obama's foreign policy versus Iran and closing every kind of investments in that country, facilitated new Russian political approach versus Iran and Middle East.

On the other hand US administration worked in the opposite side trying to replace Russian dominance in Eastern Europe, reinforcing relations with important allies in the process. In 2017 US supplied 700,000t of Pennsylvania thermal coal to Ukrainian state-owned electric utility Centrenergo resulting in a win-win for both sides on economic and diplomatic fronts.

For Ukraine, the supply of energy from US was a valid alternative from Russian and a strong partner in the face of Russian aggression. On the other side for US it was important to enlarge the market and reduce Russia's energy influence in the region.

That process allowed Ukraine to diversify its energy sources and reaching the agreement with a key strategic partner able to support them in fighting with Russia pressures. The intention of US to offer an alternative to Russian energy continued in 2017 when US signed another deal with Poland to supply American liquefied natural gas (LNG) via British utility Centrica to PKN Orlen the Polish national energy company.

Those are only examples that can give an idea about how energy can become strategic in the diplomatic relationships between different countries and how important the role that oil companies can play in influencing the political and economic international scenario.

In addition to this, oil companies have to face with the current scenario and change their strategy, to embed climate change and sustainability goals and building a path to long-term carbon neutrality.

As reported in the World Energy Outlook 2020[14], the Covid-19 pandemic has caused more disruption in the energy sector than any other event in recent history, leaving impacts that will be felt in the years to come.

In the current scenario, Covid-19 is gradually brought under control in 2021 and the global economy should return to pre-crisis levels in the same year. This scenario reflects all the intentions and political objectives announced this year but unfortunately so far are not supported by detailed measures for their realization.

Lower prices and demand resulting from the pandemic have cut the value of future oil and gas production by about a quarter. Many oil and gas producers, particularly those in the Middle East and Africa such as Iraq and Nigeria, are facing severe fiscal pressures due to their high reliance on hydrocarbon revenues. As a consequence of this, fundamental efforts to diversify and reform the economies of some major oil and gas exporters seem inevitable.

Investments in oil and gas supply fell by a third compared to 2019, and the extent and timing of any recovery in spending are unclear. So is the industry's ability to deal with it in a timely manner: this could cause new price cycles and risks to energy security. Low-cost, low-carbon resources and diversification are becoming the strategic key words for many producing economies and for oil and gas companies. The decline in production from existing fields creates the need for new projects upstream, even more in rapid energy transitions. However, investors view oil and gas projects with greater skepticism due to uncertainty about financial performance and the compatibility of corporate strategies with environmental objectives. Some of the financial worries could grow up if prices rise and projects start offering better returns, but questions about the sector's contribution to emissions reduction will not disappear.

A radical shift in investment in clean energy, could also offer a way to stimulate economic recovery, create jobs and reduce emissions. At this stage, this approach has not generated accordingly proposed plans, except in the European Union, the UK, Canada, Korea, New Zealand and a few of other countries.

The ambitious path outlined in the Sustainable Development Scenario is based on countries and companies meeting their announced net zero emissions targets on time and in full. These are mainly targets for 2050, although there are individual countries that have set earlier targets and, more recently, China has announced a date for 2060 for carbon neutrality. Achieving these goals is important not only

[14] Published by IEA – International Energy Agency, October 2020.

for the countries and companies involved, but also for accelerating progresses elsewhere in technology costs and developing regulations and markets for low-carbon products and services.

Achieving net zero globally by 2050 would require a series of dramatic additional actions over the next decade, both in terms of actions within the energy sector and those required elsewhere. For any path to net zero, companies need clear long-term strategies backed by investment commitments and a measurable impact. The financial sector will need to facilitate a dramatic increase in clean technologies, assist the transitions of fossil fuel companies and energy-intensive businesses, and bring cheap capital to the countries and communities that need it most.

2.2 Different types of disputes in upstream framework

In the complex oil and gas industry, where an enormous capital investment is necessary and when very often the economy of an entire country is impacted, potential disputes at different level are quite common and have an almost infinitive variety of forms. They can be vertical, when companies operating in different industry segment are involved, or horizontal when disputes raise between companies operating in the same field. In addition to that considering that very often those multinationals operate in foreign countries when the operations are allowed by the government through concessions and productions sharing agreements potential disputes with the host state are also common.

Oil and gas disputes can be also categorized based on the part of the value chain (upstream, midstream, downstream) they occur or based on when they happen during the project life-cycle (e.g. in the upstream section that could be during the exploration phase, the appraisal, the development, the production or finally during the decommissioning).

Considering the types of subjects involved, the main types of disputes that can be identified in this area can be traced back into three categories: disputes between host states and investors; disputes between different investors; and disputes between third parties and investors (usually via the operator).

Those three categories are different in terms of type of dispute but all of them are linked to the multiparty nature of these agreements. Due to the huge amount of capital needed to invest in this sector there are often different investors creating join ventures operating in a foreign country. On the host state side of the business some countries have a state enterprise dedicated to domestic hydrocarbon exploitation and that acts as separate different actor from the state, it is also possible that it becomes part of the investing

consortium (e.g., ONGC in India), or that may become face of the host state (e.g., Uzbekneftigas in Uzbekistan) and may be the government's agent in administering the contract. If there is no state enterprise, usually the host state agreement is administered by the Energy Ministry eventually assisted by further subdivisions. For example investors in India, who execute their production sharing contracts (PSCs) with the government of India, needs to cope with the Ministry of Oil and Natural Gas, but also with the Directorate General of Hydrocarbons.

Base case is that there is a host state agreement (usually a production sharing contract or licence) between the investors and the state, an inter-investor agreement (commonly the joint operating agreement (JOA), and a multitude of contracts between the operator and third parties (e.g., rig hire agreement, insurance policies, tubing purchase contracts).

2.2.1 Disputes between investors and host states

Typically the contracts necessary for enabling upstream activities (Production sharing agreement: PSC) are long-term contracts (usually running for 20 or 25 years) and it is quite common that during the long contract life some disputes might arise.

Considering the importance of the business impacted and the types of actors involved that are multinationals and states the potential disputes have to be managed in a way to not destroy the working relationship.

In addition to that, considering the political and diplomatic dimension of such relationship, the resolution of those disputes becomes quite complex as complex are the contracts behind the relationship considering all respective commitments defined in the contract.

"When the decision is made to sue, regard has to be had as to the correct entity to claim against. Careful note needs to be taken as to who is actually legally responsible – the PSC may be administered by a state-owned company, or the ministry of oil and gas, but is it actually in the name of the country or the government of the country"[15].

[15] Global Arbitration Review - Upstream Oil and Gas Disputes: Mark Beeley and Sarah Stockley Orrick, Herrington & Sutcliffe (UK): example Indian PSCs are typically executed by the Prime Minister in the name of the government of India, and administered through the Ministry of Oil and Natural Gas, acting through the Directorate General of Hydrocarbons.

Complicated questions may then arise as to whether the counterparty to the PSC is actually responsible for the wrongful conduct in question. If international law applies, then theories of attribution come to the fore[16]. "Despite a few notable oilfield service disputes having recently trespassed into the courts, international arbitration remains the dispute mechanism of choice for upstream oil and gas contracts. This is certainly the case if the project is not located in a predictable and familiar jurisdiction. Arbitration provides a fairly and reliable mechanism to avoid disputes being heard in the courts of host states; allows some confidentiality that may help in protecting long-term relationship and provides a wealth of enforcement options compared with a court judgement"[17].

Sometimes host states try to convince the counterparties that the contract should be under the jurisdiction of the domestic laws, but investors are often concerned that the legal framework is not developed enough to guaranty enough their interests. Both parties need to find a way to reach a compromise. There are really a lot of categories of disputes between host state and Companies but the more frequent cases include: i) disputes regarding the definition of recoverable costs before profit is allocated, ii) the distribution of petroleum profit, iii) the definition of national tax rates, iv) the allocation of the geological risks, v) claims by investors regarding stable provisions, vi) issues raising as consequence of audit done by the host government administration to the joint venture accounts or to procurement procedures and finally, not strict to the contract but in any case not less significant, vii)claims for pollution and environmental damages.

Claims under the investment contract are not the only claims because it is also possible to have claims between investors and host states regarding investment treaty contracts – when the claims may either be for actions for not being in compliance with the 'umbrella clause' (a commitment to honour contractual commitments), the guarantees of equitable and fair treatment, or fair and full compensation for expropriation.

Another possible cause of dispute is the changed tax scenario that may determine new taxes impacting the economical results for the investors or also changing in the legal framework bringing as extreme consequence to outright expropriation.

[16] Global Arbitration Review - Upstream Oil and Gas Disputes : Mark Beeley and Sarah Stockley Orrik, Herrington & Sutcliff (UK) 8 Jan 2019": see, for examples, Articles 4-6 of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001).

[17] As reported by the drafting committee, the Association of International Petroleum Negotiators 'emphasized international arbitration as primary method of dispute resolution' when crafting the 2017 Second Model Dispute Resolution Agreement.

2.2.2 Disputes between investors

Disputes between investors can be related to JOA or a shareholders' agreement. In particular one of the most important examples is disputes between the operators and the non-operators.

It is quite obvious that possible tensions might raise between operating party responsible of carrying the operations and non-operators investing money in the project, so interested in the results, but having limited control on the operations.

Some causes of such disputes can be overrunning drilling campaigns, the purchase of inventory not necessary, discrepancies in the costs of administration and all of them can be used as excuse for non-operators not to pay their shares. In case of such disputes the standard form agreements do not provide clear answer, operators usually refer to indemnity clauses that save them in case of 'gross negligence' and 'physical' loss, and argue that the only solution is to remove them as operator. Non-operators argue that the indemnity clause cannot be considered an excuse for the operator's failure to work.

Another common example is a dispute due to defaults in meeting payment obligations.

In case a party to a JOA does not pay timely and full most JOAs provide draconian remedies – often leading to a party forfeiting its interest without compensation. However, this is a high-risk strategy: if interim relief is not granted, a defaulting party incurs in temporary loss of its interest pending a full arbitration. Most JOAs are designed to force parties to 'pay now, dispute later', to safeguard the commercial imperative to allow operations to proceed.

An important clause usually present in the JOA is that when a party desires to sell its percentage interest (or part thereof) then the other parties have a right of first refusal, or a right to pre-define any third party offer (i.e. buying the percentage interest on the same terms as those being offered by the transferring party to the third party). Also consent provisions can be present in JOA contracts meaning that any transferring party needs to require the consent of its co-ventures before being able to sell its interest to a third party. Those clauses are valid in case of simple operations but might be the origin of several disputes between the co-ventures in case of complex operations especially in case of pre-emption right especially when the provision is not clear on what happens if the disposal is not of the underlying asset but an upstream sale of shares.

Other problem might arise in case one of the partner of the Join Venture wonts to sell part of bundle of assets. In this case it is challenging to define a price for the single asset when there is a quotation only

for the entire asset or when there is not a right of first refusal. All those kind of issues often end in disputes with the other co-venture. Quite often those kind of disputes involving pre-emption rights when managed in courts and tribunals are temporary solved with an interim relief from courts trying to freeze the sale until the project is completed.

2.2.3 Disputes with third parties

Finally the third scenario in upstream operations, after the disputes with the core parties, refers to disputes with third parties that could be the service providers to the joint venture.

By way of example, disputes may arrive with the third party specialist companies[18] or even for example with catering suppliers providing food to employees in remote locations. The disputes coming from third parties can be determined by real issues arising during the operations (e.g. equipment failure on a drilling rig) but more often, especially during recent years, they are caused by bad financial situations incurred with the recurring oil price volatility and the partners not have any more enough money to sustain the incurring costs.

There are also disputes with other joint ventures involved in similar operations. In case for example the cost–splitting agreements require the respect of a certain timetable and there are some parties not able to respect it or are not able to provide the equipment required at a certain moment.

The most serious type of disputes in this scenario are frequent when to unitisation agreements are involved, in particular when there are damages done in one block of operations and are caused by one of the subjects involved or when one of the partners drains reserves of another partner in another block[19].

In case those disputes have to be managed in an international environment as it often happens that has a terrible impact on the operations that might be stopped and licenses terminated. In addition to that, considering the amount of money involved in these kind of investments, the number of different subjects that need to cope together to conclude the project, the different legal framework not always stable and definitive, corruption and bribery can be the trigger element for several disputes between parties.

[18] See, for example, Transocean Drilling UK Ltd v. Providence Resources PLC (2016).

[19] For a related example see Reliance Industries v. India (2018), as reported by Global Arbitration Review at https://globalarbitrationreview.com/article/1172530/india-loses-billion-dollar-case-over-gas-migration. Also, ExxonMobil v. Rosneft (2018) as reported by Global Arbitration Review at https://globalarbitrationreview.com/article/1172659/exxon-and-rosneft-in-billion-dollar-dispute-over-oil-migration.

Finally another common example is dispute related to use of data because for example one of the party uses the data with a different scope comparing what was agreed in the contract (e.g. they use the date to evaluate the value of a possible purchase of part of the investment or to evaluate the geological potentiality of a close block).

For all the reasons described above, disputes in upstream environment remain very common and usually are not solved in a short time and in an easy way. Usually Oil Companies operate in a complex commercial matrix and in countries where there is not a clear and predictable legal framework and all those aspects might contribute to the impossibility of any immediate and easy solution.

For that reasons there are not best practices for resolving oil and gas disputes, some disputes would require a certain procedure and a certain forum when others would require a completely different approach. Disputes can be resolved by the same parties involved or with the help of third party, as for example a mediator or finally by third party decision maker as for example a court or arbitrator. Usually the international arbitrations is the more common mechanism of dispute resolution and it is a valid alternative to solve issues without the judgement of courts of host states and helps in maintaining good long term relationships but very often it is not the first option.

In order to minimize the disruption caused by a dispute it is very common that parties define in advance as much as possible how to manage the potential disputes. Very often the parties define a multi-steps process for managing a dispute having each step a progressive strict rules to be ended. Is the process in one step fails, it is necessary moving to the following step where the requirements are more severe.

The timing is usually defined in advance and each step requires a formal notification. For example it could be written in the contract that if a dispute cannot be solved in a friendly way within 30 days, from the date when the notice was provided, has to be transferred to the senior management and it could be decided to remove people directly involved. Having parties not directly involved with a broader view on the full project usually facilitates a possible solution.

In case any solution is reached next step is to involve a mediator and if it is not solved within 90 days parties may submit the dispute to an external forum that could be a court or an arbitral tribunal.

There are also type of disputes that require the intervention of a thirst party expert. Due to the complexity of the matter object of the dispute it is often recognized that the court or arbitration are not able to provide suitable solutions. For example disputes regarding the definition of the boundaries of a discovery or the calculation of the oil price in case of buy-backs , or the value of an asset to be sold or calculations of

certain costs to be recovered require the support of an expert having the right knowledge to do the necessary analysis and come to reasonable conclusions.

Finally, whatever are the type of disputes and whatever are the solution identified to solve it experts, courts, arbitrators, counsels, what is really crucial for a quick and effective resolutions in the oil gas industry is the best practices adopted by the parties in terms of behaviours. The parties need to act in good faith and try as much as possible not wasting time and not delaying the operations. They need to put every effort to conclude the dispute in a short time and in a cost effective way having in mind the value and the complexity of the dispute.

Very often different legislations have to be considered and eventually a third party as for example host state, a rival bidder or a joint venture partner is also involved. Having a clear joined dispute resolution regime that list all possible disputes that might happen, how they can be solved and what is the maximum timing allowed to end them would help a lot but unfortunately it is quite an exception.

Considering that in many cases that does not happen it becomes quite clear how it is important for the multinationals involved to be able to leverage their own capacity to look for possible solutions using all the instruments that might be helpful for this purpose and that are often borrowed by the diplomacy

2.3 Use of diplomacy to manage or prevent disputes

When a Petroleum Company decides to invest in a foreign country it is important to know all components of the hosting state, all powers from whom they can receive support for implementing their activities and to dialogue with the proper entities. Many often the country where to realize the investment project presents a war criticism or at least a difficult political situation and so becomes crucial to know and understand the environment where operate and know who the relevant and right entities to cope with are.

In addition to organizational structures of a company operating in a foreign country or foreign market what has a relevant role for the success of the investment is the diplomatic channel and the political relationship between the own country and the host country.

Every kind of investment project involving such complex relationships with the host state would require the intervention and support of international diplomacy. Only with that support and following a common

road map, companies would be able to operate in countries with different culture or political regime with less risks and more opportunities to avoid disputes with the host state or other entities involved.

Very often the bigger deficiency is the lack of institutional references that put the company in an uncomfortable situation after having invested a huge amount of money in that country.

Another important aspect in doing that is the knowledge and the respect of the different religions. Usually in many countries where petroleum companies operate the Islamic religion is quite common and knowing what it means and what is the impact on the business would help in avoiding issues.

Sometimes some events happening in the hosting country that apparently do not have any direct link with the specific business might also have some consequences on that. When for example there is a terroristic attack and the institutional entities of the state to which the oil company belongs react only if the own country is directly impacted, it could create a bad feeling also versus the company operating there.

As consequence of all elements described above, before starting an investment and also during all the project life it is crucial for the investing company to ensure that following steps are satisfied:

- monitoring and analyzing the evolution of international geopolitical scenarios, contributing to the identification and examination of phenomena that could potentially impact the countries of interest and company's activities;
- guarantee the elaboration and updating of country profiles, and strategies for relations with institutions and international bodies, as well as in the definition of content useful for the development and management of relations with them;
- present the company's interests to the relevant institutions and international bodies with respect to activities, projects and agreements within the scope of what is planned, following the implementation procedures;
- ensure the analysis of international legislative measures and the monitoring of sanctions.

Many companies realized that create internal functions dedicated to this kind of activities able to understand the new environment and to build proper relationships with the right entities was crucial to avoid all the above potential issues.

Often professional diplomat consultants are embedded in this functions or, in alternative, the company can make use of their internal consultancy services.

In this document, two specific Eni business cases will be focused in order to better understand how companies could practically manage this kind of risks.

The first one is related to international sanctions that could affect investments and operations in oil and gas environment and what are the skills and instruments used by oil companies to manage them.

Indeed, the rapid changes in the international political framework make it necessary for states and international organizations to make more frequent use of coercive measures targeted towards managing crisis situations through the adoption of regulatory provisions that introduce prohibitions and other restrictive measures into economic, financial and commercial transactions for certain parties or countries. Often these sanctioning programs target economic sectors related to energy, countries which export raw materials or national companies with which market operators interact during the ordinary course of business.

The regulation in question introduces very serious punitive and retaliatory measures for companies that do not comply with it, exposing them to risks that are potentially very high both in terms of direct and indirect economic losses as well as in terms of image and reputation.

In this situation, due to the complexity and continuous evolution of the external reference regulations, Eni considered appropriate to create a new policy (MSG – Management System Guidelines) dedicated specifically to this issue. In accordance with what has been done for other compliance areas considered of priority for its business, the new MSG represents for Eni the basis for a new compliance program dedicated to economic and financial sanctions and represents a clearly recognizable reference point for all internal structures that work in contexts and perform activities that are exposed to the risk of non-compliance in terms of economic and financial sanctions.

Another important instrument utilized by oil companies is to manage in a structured way claims raising from different parties where they operate: it is the so called “grievance” procedure and it will be described how that is applied by Eni with a reference to a specific business case.

The grievance mechanism is the set of activities to be carried out when Eni receives, in writing or verbally, concerns or grievances in relation to its activities. The mechanism guarantees a proactive and structured approach enabling the company to receive, recognize, investigate, respond and resolve complaints and grievances from individuals/groups of individuals and organizations in a timely manner.

The mechanism is an integral part of Eni's overall strategy of relating with its stakeholders as it promotes positive relationships between the company and its stakeholders through dialogue and participation and serves as a warning bell in the management of risks and assessment of Eni's business performance in a specific area of operations. All grievances and concerns must be handled with the same level of integrity and respect.

The grievance mechanism, implemented efficiently, supports Eni in:

- defining an effective stakeholder engagement strategy capable of remedying concerns raised or impacts caused by activities;
- maintaining the social license to operate, demonstrating due consideration of a community's concerns;
- promptly identifying the possible impact that activities may have on the local communities involved - in environmental, social and health terms - in order to prevent, where possible, any risks associated with them;
- ensuring that Eni fulfils its responsibilities in relation to human rights and the promotion of mutual prosperity.

If, during the activities described below, relationships with Public Officials (including Public Administration bodies) or Major/Key Private Entities are entered into, these relationships must comply with the provisions contained in the Anti-Corruption MSG and in the applicable anti-corruption regulatory instrument.

3. ENI BUSINESS CASES

3.1 Eni in brief

3.1.1 The activities

Eni is a global energy company that is changing direction to become a leader in the production and sale of decarbonized products. Eni is present throughout the entire value chain: from the exploration, development and extraction of oil and natural gas, to the generation of electricity, refining and Versalis chemical plants, up to the marketing of gas, electricity and products on the final market. The vertical integration between the business units makes it possible to grasp operational synergies and cost efficiencies. Eni operates in 66 countries with 32,000 employees, 871million boe/d of Hydrocarbon production and 73.07billion m^3 of gas sold worldwide[20].

Eni also operates in the renewable energy business and in the development of circular economy initiatives.

3.1.2 The mission

As an integrated energy company, Eni aims to help, directly or indirectly, to achieve the Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda, supporting a socially equitable energy transition. To face the challenge of combating climate change Eni promotes access to energy resources in an efficient and sustainable way, for all.

The new mission, approved by the Board of Directors in September 2019, represents Eni's commitment to an energy transition that is also socially fair. The mission organically integrates the 17 Sustainable Development objectives of the United Nations 2030 Agenda[21] to which Eni intends to contribute, seizing new business opportunities.

[20] Eni Annual Report 2019.

[21] The 2030 Agenda for Sustainable Development, presented in September 2015, identifies the 17 Sustainable Development Goals (SDGs) which represent the common targets of sustainable development on the current complex social problems. These goals are an important reference for the international community and Eni in managing activities in those Countries in which it operates.

Responsibility, integrity, transparency and the equal dignity of each person remain the basis of how Eni acts. The reinforcement of partnerships with all of the stakeholders is the key element in creating long-term value.

3.1.3 The strategy

The Strategy announced in February 2020 is the natural evolution on the medium and long-term of the path that had been undertaken and represents a turning point for Eni. Climate change and sustainability are a top priority, and the businesses that are able to capture these new opportunities, especially in the energy sector, will be the winners in the long term.

Eni has been working designing a new business model that integrates the principles of sustainability in each of our activities. Eni wants to be true to his mission, helping deliver on the SDGs, while at the same time maintaining a financially strong business.

According to this, there are three priority areas of this evolution for the coming years: the path to long-term carbon neutrality, the model for operational excellence and the importance of alliances for the promotion of local development.

Carbon neutrality in the long term

Eni has embarked on a decarbonisation path to respond to the crucial challenge of the energy sector: providing energy to the growing world population by creating value and reducing the carbon footprint in line with the objectives of the Paris Agreement. Eni wants to play a leadership role in the energy transition process: the strategy adopted to achieve this goal includes, in addition to the reduction of direct GHG emissions, the development of the renewable business and new circular businesses, the commitment to research and technological innovation and a resilient portfolio of hydrocarbons in which gas will play an important role, by virtue of the lower carbon intensity and the possibility of integration with renewable sources in the production of electricity.

Eni confirmed and further extended the intermediate decarbonisation objectives: net zero carbon footprint for emissions from exploration and production activities (Upstream) by 2030, to be extended by 2040 for all of Eni activities. The Plan also defines operational strategies and objectives for 2050: 80% reduction in net emissions referable to the entire life cycle of energy products sold, which include Scope 1, 2 and 3 emissions, - beyond the 70% threshold indicated by the International Energy Agency

(IEA) in the Sustainable Development Scenario (SDS) compatible with the objectives of the Paris Agreement - and 55% of the emission intensity compared to 2018.

The circular transformation of Eni has been started-up in the downstream businesses, with the first conversion in the world of a traditional refinery in biorefinery, the transformation of waste in energy products, leveraging on proprietary technologies such as the Waste To Fuel and on the realization in the chemical business of new processes and products transforming waste plastics in second raw material. Consolidated skills, technologies, innovation and research geographical differentiation of assets are the levers to strengthen a changing based on the synergies among stakeholders, the industrial symbiosis and the cultural change.

Model for excellence in Operations

The model for operational excellence emphasizes the continuous commitment to the enhancement of people, safeguarding their health and safety, and protecting the environment. People are the enabling factor of Eni's strategy to ensure the achievement of environmental and social objectives, aiming at long-term carbon neutrality and minimizing operational risks. Operational excellence also means conducting the business with the utmost attention to integrity, that is respecting and promoting human rights and always operating with transparency and honesty. These elements allow the company to seize the opportunities related to the evolution of the energy market and technological progress, to grow organically through efficient and resilient operations and to maintain solid financial discipline.

Alliances for promoting local development

Promoting access to electricity and at the same time promoting initiatives in favor of communities - from the diversification of local economies to projects for the protection of the territory, education, access to water and hygiene, health - represent Eni's distinctive approach to host countries, known since the time of Enrico Mattei as “Dual Flag”.

This is possible thanks to the definition of specific Local Development Programs (LDP) that go in the direction traced by the United Nations 2030 Agenda and by the Nationally Determined Contributions (NDCs), signed by each country as part of the Paris Agreement. Eni has chosen to extend the range of action of development initiatives, going beyond the boundaries of its operating areas through alliances with authoritative partners engaged in the territory and recognized internationally. The synergistic action and the sharing of know-how that derive from it are aimed at improving the living conditions of people in the countries of presence and at contributing more and more to the SDGs defined by the 2030 Agenda.

The development of domestic markets, supported thanks to significant investments in infrastructure, also activates a value chain through the creation of new job opportunities and the transfer of skills and know-how to local partners and employees, as well as to the communities of the countries of presence. Eni's contribution to development is in fact integrated into all business activities, starting with knowledge of the operating context: by anticipating and understanding any environmental and social impacts, it is able to define an action strategy that leads to the creation of value for the company and for the host country.

Integrated sustainability in the business

From the moment of the acquisition of the licenses, passing through the exploration to the development of business projects, from production to decommissioning, tools and methodologies have been adopted, consistent with the main international standards, ensuring greater efficiency and systematic decision-making approach. in order to contribute to the development of the host countries. The analysis of the socio-economic context, which accompanies the business planning phases in an increasingly in-depth manner, allows Eni to know local needs and therefore define the priority areas of intervention. These priorities translate into objectives in the four-year strategic plan, aimed at contributing directly or indirectly to the achievement of the SDGs.

3.1.4 The Regulatory system

Eni's Regulatory System governs the business processes, compliance models and corporate governance system of the Company. It develops through the business processes that cross Eni's organizational and corporate structure and identifies the Process Owner as the figure responsible for the process in question and for assessing the adequacy of its design as well as monitoring its actual implementation. At the same time it represents the instrument that Eni uses for management and coordination activities over its subsidiaries, while ensuring that these subsidiaries' management autonomy is observed. It is also characterized by the integration of the compliance principles within the company processes (Integrated Compliance),

Eni's Regulatory System is based on a consistent framework of reference that recognizes the essential elements in the Charter, Code of Ethics, Corporate Governance Code, in the principles of Model 231, in the Sarbanes Oxley Act principles and in the CoSO Report.

The system's architecture has a hierarchy of four levels:

- 1st level: Policies;

- 2nd level: Management System Guidelines (MSG);
- 3rd level: Procedures;
- 4th level Operating Instructions.

3.2 Economics and financial sanctions

3.2.1 Regulatory context and area of application

Sanctions are instruments of "coercive diplomacy" that include measures of a political and economic nature targeted towards making a change in behaviors or limiting the opportunities for action by the parties subject to sanctions in order to counteract infractions of international law, human rights, the state of law or democratic principles, for example.

The economic and financial sanctions consist in restrictive measures related to economic, financial and commercial transactions with certain parties or countries, included in provisions adopted by the competent authorities.

Restrictive measures can be directed against third party governments as well as non-state entities and physical or legal persons (such as terrorist groups or individual terrorists). They can include embargoes on arms, specific or general commercial restrictions (import or export prohibitions), financial restrictions (monetary transactions and operations relative to financial market instruments - e.g. the purchase of certain companies; supply of credit for a period exceeding certain thresholds), visa and travel bans or other measures that are considered suitable in the specific cases.

Starting from 1945, the United Nations Charter recognises enforcement policy as a necessary tool to prevent and eliminate threats to peace, suppress acts of all aggression and other potential violations against the peace. The UN's report "A more secure world: Our shared responsibility" identifies such threats to peace and security as poverty, environmental degradation, conflicts within and between states, the proliferation and use of nuclear, chemical and biological weapons, international terrorism, sexual violence, and transnational organized crime[22]. These threats come from both states and non-state actors[23].

[22] Panel, 2004
[23] Simma et al., 2002.

Enforcement policy is considered in UN Charter as "an essential part of collective security system". The UN Charter defines a clear framework for the use of enforcement policy. The UN Charter's Article No. 41 provides measures for full or partial break of economic relations. The UN Security Council qualifies this type of measures as economic sanctions. United Nations is viewed economic sanctions as an important tool to keep security and peace and provide collective reaction to violations of peace and international order.

Since Iraq-Kuwait conflict in 1990, there has been a significant increase in number of employed economic sanctions. The economic sanctions have been imposed by the UN's Security Council on Iran, Syria, Libya, Somalia, Rwanda, Sierra Leone, the former Yugoslavia (including Kosovo), Haiti, Eritrea and Ethiopia, Liberia, Congo, and Russia. There have been different reasons for the increase in the number of economic sanctions.

First, the focus of imposing sanctions has been changed as well and nowadays it is covering such issues as protection of human rights, the fight against terrorism, the proliferation and use of nuclear and the support of peace agreements. In this context, sanctions are employed to win some policy concessions. Second, as shown in case of Iraq- Kuwait conflict, the initiation of military operations has become an expensive tool, and these military operations do not always end with positive results. Therefore, non-military approach has become an alternative to the use of military force. Third, the change of nature of the threats to peace and security had a significant impact on the changing concept of enforcement policy. Finally, the globalisation of international economic relationship provides massive integration of markets, services, and capital between both developed and developing countries. In this context, the economic sanctions might have significant impact on national economy of target state, thus, making economic sanctions as a powerful tool for influencing the target state. This situation is especially important for developing countries.

Sanctions remain an important tool of international policy and diplomacy, however, existing trends in the international legal regulation of the sanctions call for the need for further study of sanction regimes, as well as the development of measures to improve their regulatory framework, and application practices[24]. In terms of ethical issues of sanction[25], several serious problems are arising during the implementation of economic sanctions regimes. The most significant one is "accompanying damage" to the civilian population of the country, which is not officially declared as a target of economic sanctions

[24] As stated by Marinov, 2005.
[25] Kern, 2009.

and material damage caused by the sanctions regime to third states because of a break in economic ties with the target state against which sanctions are employed. The UN Millennium Declaration calls for minimising the negative effects of economic sanctions on innocent populations through regular review of sanctions regimes and eliminating the negative effects of sanctions on third parties as well as parties imposing sanctions. Furthermore, sanctions can create corruption and criminalisation regime, ignoring rule of law. Considering the difficulties in the practice of applying international economic sanctions, the UN Human Right Watch proposes to make sanctions a subtler tool, applying them more purposefully, improving the planning and implementation of sanctions regimes.

In terms of international regulatory framework concerning economic and financial sanctions, it includes, among others:

- UN resolutions;
- European Union regulations and decisions and any correlated provisions adopted by the member states[26];
- Laws, regulations, executive orders and other regulatory provisions adopted by the competent authorities in the USA.
- The European Union and the United States represent the main source of the sanctioning program currently relevant for Eni.

EU sanctions

In the case of sanctions issued by the EU, an important role is played by the member states, as they are responsible for implementing and applying the measures. The competent authorities in the member states must in fact evaluate if there has been a violation of the legislation and adopt any resulting punitive measures. EU sanctions apply in general:

- inside the EU territory;
- to EU citizens, wherever they are located;

[26] This includes the legislative and regulatory instruments adopted concerning economic and financial sanctions by the competent authorities of the United Kingdom for the implementation of the Regulations and Decisions of the European Union, as well as those that will be adopted in the future by the same authorities following the United Kingdom's exit from the European Union.

- to companies and organizations established according to the law of a member state, including subsidiaries of European companies in third party countries;
- on board airplanes or ships under the jurisdiction of member states.

US sanctions

The government of the United States, and mainly through the Department of the Treasury[27] and the State Department, applies a wide range of sanctioning measures, which include: i) global sanction programs against certain countries (Cuba, Iran, Syria, North Korea and Crimea); ii) targeted sanctions, (so-called "sectoral") against specific sectors of a country (in this case the sanctions against Russia, where the restrictive measures impact the financial, defence or energy sectors in a targeted manner); iii) sanctions that affect certain physical and/or legal persons[28]5.

The US sanctions can be generally divided into so-called "primary" sanctions and "secondary" sanctions.

The "primary" sanctions are applicable to physical and legal US persons and in the case of US Nexus, whereas the "secondary" sanctions are applicable to non-US citizens. The following are considered physical and legal US persons:

- citizens of the United States;
- foreign citizens with permanent residence in the USA;
- all physical persons that are located only temporarily in the United States;
- organised legal persons according to the laws of the United States or any jurisdiction of the United States (including the offices and foreign branches of these entities).

The "primary" sanctions apply also to persons who are not US citizens in the case of applicability of the so-called US Nexus. Essentially, this applies any time a US citizen is involved, also only indirectly and due to secondary activities; in operations prohibited by the primary sanctions.

[27] In particular through the Office of Foreign Assets Control ("OFAC").
[28] For example, drug traffickers, sellers of weapons, subversive individuals, etc.

The Bureau of Industry and Security of the Department of Commerce (so-called "BIS") and, in some cases, the Department of the Treasury itself, also control the transfer of goods and technologies of US origin (export, re-export, in country transfer) or that have a certain percentage of content of US origin (with respect to the value). The transfer of these goods to some countries (e.g. Cuba; Iran; North Korea; Syria) or to some parties (included in a specific Entity List) require the prior authorization by the above Departments. The restrictions can also depend on the use that a certain company will make of the goods. These restrictions apply also to non-US parties.

As far oil companies concerned, sanctions-related oil supply constraints have affected oil production and trade. Oil market characteristics—generally inelastic supply and demand in the short term—could contribute to market conditions that could result in volatile price movements (both up and down) when supply and demand are imbalanced by as little as 1% to 2% for a brief or sustained period. To date, persistently high crude oil prices have been moderated by several factors, including increasing U.S. oil production and exports, trade flow adjustments, expectations of slowing demand growth rates, and sanctions design elements. However, oil trade sanctions have affected price differentials for certain crude oil types (e.g., light vs. heavy).

As anticipated in Chapter 2, Eni released a new policy (MSG – Management System Guidelines) in order to define a structural body of rules and internal control mechanisms targeted towards suitably mitigating the risk of company activities not complying with the provisions of applicable national and international sanctions programs and establish the roles and responsibilities of the individual involved in the activities at risk and in the correlated mitigation measures. The main phases of the process are described below.

3.2.2 Eni framework for preventing risk of economic and financial sanctions

Intelligence and identification of pending provisions

The phase for the preparation and issue of regulatory provisions that are relevant for the purposes of the economic and financial sanctions adopted by the competent authorities is carefully monitored by the relevant units of the Eni International Relations function, with the support of the Eni Sanctions Compliance unit, if appropriate.

The International Relations function is responsible for this activity, also taking the sanctions political risk into account. In particular, during this phase, the relevant unit of the International Relations function, together with the Sanctions Compliance unit:

- analyzes the contents and pending provisions that concern economic and financial sanctions, evaluating the possible implications for Eni with the support, if applicable, of the Business Areas that are potentially impacted and by the relevant units of the Legal Affairs function;
- defines Eni's position regarding the provisions during the preparation phase, based on the information and useful elements collected for this purpose from the Business Areas and, if applicable, identifies the possible institutional initiatives to implement with regard to the competent authorities, in order to represent and protect Eni's interests;
- carries out activities for contacting and establishing relationships with the competent authorities for the purpose of representing and protecting Eni's interests based on analyses carried out with reference to the pending provisions.

The results of the impact analysis carried out (if applicable) and any correlated institutional initiatives are communicated in a timely manner by the relevant unit of the International Relations function to the business and support functions involved and to the Economic and Financial Sanctions Committee.

Analysis and evaluation of the sanctioning programs

Following the issue of a new sanctioning provision or the change to an existing provision, the relevant unit of the Integrated Compliance function performs a legal analysis of the sanctioning provision in coordination, if necessary, with the relevant units of the Legal Affairs function and the International Relations function, and an activity is carried out that analyzes the risks connected to that provision.

The activities targeted towards the specific analysis of possible compliance risks is carried out with the contribution of the concerned Business Areas, which are requested to provide information regarding on-going or scheduled activities, projects or business initiatives of interest for the purposes of the sanctioning provisions in question.

In particular, in the case of a new regulation that is potentially relevant for Eni, the Sanctions Compliance unit acquires information from the Business Areas that is needed for evaluating if there are any company activities or potential initiatives that have risk profiles regarding the new regulations and provides support, in coordination with the other concerned functions, for the identification of ad hoc mitigation measures (such as the interruption or suspension of Eni's participation in projects at risk or the request for authorization from competent authorities, for example).

The results of the evaluations carried out by the Sanctions Compliance unit are described in a note containing a summary of the relevant information transmitted to the first hierarchical level(s) of the

concerned Business Area manager(s) and, for informational purposes, to the members of the Economic and Financial Sanctions Committee.

If aspects emerge from the analysis of the provision that make it necessary to start an institutional measure with respect to the competent authorities, the Sanctions Compliance unit will request the activation of the relevant unit of the International Relations function for that purpose.

Sanctions compliance risk management process

The interpretation of the rules of law and regulations concerning the economic and financial sanctions is the responsibility of the Sanctions Compliance unit, which identifies the activities at risk and the correlated control mechanisms in observance of the integrated compliance process, evaluates the compliance of the specific company activities with the relevant external regulation and supplies specialist support to all the concerned company structures.

The evaluations regarding the compliance of specific company activities with the relevant external regulation can be carried out in coordination with the concerned company functions with regard to the specific topics or with the units of the legal function that may have been established at subsidiaries, if considered suitable for reasons of efficiency and/or in consideration of the specialized knowledge required for particular business sectors.

When carrying out its activities, the Sanctions Compliance unit maps the applicable regulations and constantly analyzes any changes made to the regulatory framework of reference on a national, European and international level.

If a new initiative or existing initiative that was changed (for example due to changes in the ownership structure, extension of activities to other countries, etc.) falls among activities at risk of economic and financial sanctions, the business initiative manager activates the sanctions compliance risk management process as defined below, providing the Sanctions Compliance unit with the information regarding the data and estimates of the initiative itself in order to permit the said unit to carry out the activities necessary for the legal analysis.

Subsequently, once the Sanctions Compliance unit is activated, it provides the information to the business initiative manager regarding the methods of managing the activities.

The manager of a new initiative or an initiative that was already implemented and subsequently changed (hereafter the business initiative manager), which is part of the activities at risk of economic and financial sanctions, requests the specialized support of the Sanctions Compliance unit in accordance with the risk classification attributed to the specific initiative. The Sanctions Compliance unit carries out the evaluations for which it is responsible and identifies any risk factors to be monitored.

The Sanctions Compliance unit contributes towards defining Eni's strategic plan, for its areas of responsibility, in the case of new initiatives or changes to already existing initiatives, if they are activities at risk that are considered as having a high level of risk. For this purpose, the relevant units of the Business Areas inform the Sanctions Compliance unit of the initiatives they have proposed to be included in the strategic plan in order to account for the possible sanctions compliance risk profile that may be connected with them.

Once activated by the business initiative manager, the Sanctions Compliance unit confirms the relevance of the initiative with respect to the activities at risk and analyzes the initiative itself, evaluating, for example, the following elements:

- nature and scope of the initiative and type of sanctioning provision(s) that may be relevant;
- the involved counterparties (including the relative ownership structures in case of legal persons) and the existence of a possible US Nexus;
- the existence of previously stipulated binding contracts;
- countries concerned with the initiative;
- economic relevance of the initiative: revenues and costs (capex, opex) associated with the initiative.

Once the initiative has been evaluated, the Sanctions Compliance unit provides information regarding the compliance Risks connected to the individual initiative. Only for activities at a “high” risk, the Sanctions Compliance unit formalizes its recommendations (for example, in reference to the involvement of US counterparties in operations that could abstractly be subjected to primary US sanctions or the use of the US currency for monetary regulations) in a note shared with the business initiative manager and transmitted, for informational purposes, to the Economic and Financial Sanctions Committee. These recommendations are summarized in a note that describes the new initiative to be implemented for its authorization.

The Sanctions Compliance unit provides the Business Area with support, in coordination with the relevant units of the Legal Affairs function, for the negotiation of contractual agreements that are modulated based on the classification of activities at risk of economic and financial sanctions, the type of counterparty, the specific business initiative, etc.

The initiative manager, with the support of the Sanctions Compliance unit, ensures that the contractual clauses coherent with the risk assessment for the activities will be properly negotiated and agreed in the relative agreements/contracts.

The Sanctions Compliance unit contributes towards defining the contents of the applicable mandatory training, developed according to a risk-based approach provided in the training framework by the Integrated Compliance function.

Training contents, methods and frequency are defined based on the level of risk to which Eni personnel is exposed resulting from the risk of the reference activities, professional family and business line. In particular:

- special training is provided for activities at a "high" and "medium-high" risk in an e-learning and/or webinar format and highly specialized training in a classroom and/or streaming;
- special training is provided for activities at a "medium-low" and "low" risk in an e-learning and/or webinar format.

Self reporting and exemption authorization request

The occurrence of circumstances, in relation to specific business initiatives that may determine the suitability of requesting an authorization/waver from the competent authorities, may be detected by the business initiative manager, by the Sanctions Compliance unit or by the relevant units of the Legal Affairs function.

Once the suitability of requesting an authorization/waiver has been established, the Sanctions Compliance unit analyzes the initiative and evaluates, in coordination with the relevant unit of the International Relations function, if the informal requests for clarification should be made at the said authorities. Based on the results of the analysis and any requested clarifications, the Sanctions Compliance unit, together with the relevant unit of the International Relations function, formulates an

opinion concerning whether or not to proceed with a request for an authorization/waiver, which it transmits to the business initiative manager.

If the business initiative manager, in line with the received opinion, decides to proceed with making the request for an authorization/waiver, the manager will request the involvement of the International Relations function in this regard to take care of the authorization process at the competent authorities and the relative follow up together with the Sanctions Compliance unit. The relevant unit of the International Relations function communicates the results of the request for the authorization/waiver to the business initiative manager, to the manager of the Business Area of reference as well as to the Economic and Financial Sanctions Committee.

The potential violation of a sanctioning program can be recognized, while carrying out its activities, by the functions of the concerned business, by the Sanctions Compliance unit, by the relevant units of the Legal Affairs function and by the functions assigned to control and supervisory activities.

If a possible violation is detected, the Sanctions Compliance unit analyzes the violation, also through targeted internal check activities if appropriate. The Sanctions Compliance unit then shares the results with the Economic and Financial Sanctions Committee, which will evaluate whether or not to perform self-reporting, together with the manager of the Business Area of reference.

The relevant units of the Legal Affairs function, in coordination with the Sanctions Compliance unit and with the International Relations function, start the self-reporting process at the competent authorities and for the relative follow up.

3.3 Economic sanctions: the Venezuela case

3.3.1 US sanctions against Venezuela

Venezuela holds the largest proven oil reserves in the world, estimated at 303 billion barrels as of the end of 2018. As founding member of OPEC, Venezuela has produced oil commercially since 1914. U.S. oil companies began seeking agreements—also referred to as concessions—to explore for and produce oil in Venezuela as early as 1919. Venezuela was not a participant in the 1973 Organization of Arab Petroleum Exporting Countries embargo of oil shipments to the United States and other countries. However in 1976, consistent with developments in other oil-producing countries during the 1970s,

Venezuela nationalized its oil industry and created Petroleos de Venezuela S.A. (PdVSA). U.S. oil companies, such as Exxon, reduced investments in the country leading up to nationalization but continued to be active in Venezuela in a limited service-based role following nationalization.

In the 1990s, PdVSA embarked on a program referred to as the *apertura petrolera*—or oil opening. As part of this program, international oil companies—including U.S.-firms Chevron, Exxon, and Conoco—were allowed to either control certain oil field operations or establish majority-owned oil production joint ventures with PdVSA. Oil production in Venezuela increased to approximately 3.4 million bpd by 1998.

During his campaign, former Venezuelan President Hugo Chávez—elected in 1998—threatened to reverse the apertura program. Subsequently, President Chávez enacted the Hydrocarbons Law of 2001, which restructured Venezuela's petroleum sector by requiring PdVSA to have majority ownership of future oil developments and raising royalty payments on existing projects to the Venezuelan government. Throughout the Chávez presidency, oil companies operating in Venezuela were subject to periodic increases in royalty rates and taxes. These additional payment requirements reduced the financial attractiveness of investing in Venezuela's oil sector.

In 2007, the Chávez government enacted a law that required existing oil joint ventures to convert into new entities that would be majority-owned by PdVSA.87 Some companies (e.g., Chevron) complied with the new requirement. Other companies (e.g., Exxon and Conoco) ceased operations and sued PdVSA for damages resulting from unilateral changes to contractual agreements. Oil production in Venezuela trended a bit lower but was relatively stable from 2007 through 2013.

Following the death of Chávez in 2013, Nicolás Maduro was elected president of Venezuela. A series of antidemocratic actions and human rights violations by the Maduro government resulted in sanctions legislation and executive actions by the United States. In 2017, President Trump declared a national emergency in E.O. 13808 and the Administration imposed financial sanctions.

On 28 January 2019 the state oil company PdVSA was included in the SDN List on the basis of E.O. 13850 adopted by President Trump last November. The E.O. 13850 authorizes the Treasury Department, in consultation with the State Department, to adopt sanctions against the subjects operating in certain sectors, to be identified, of the Venezuelan economy. The Treasury Secretary Mnuchin has designated the energy sector and, consequently, PdVSA, among these sectors. It is forbidden for US persons to

carry out transactions with PdVSA, or companies owned by it for 50% or more, and its assets in the USA are frozen.

With the New Executive Order n° 13884 of August 2019 all property and interests in property of the Venezuelan government within the jurisdiction of the US were blocked and US persons were prohibited from engaging in any transactions with the government of Venezuela and persons in which the government of Venezuela directly or indirectly owns 50% or more of interest.

The new sanctions extend prohibitions to the entire government and all state-owned or -controlled entities. Moreover, any persons (including non-US persons) who «materially assists, or provided financial, material, or technological support for, or goods or services to or in support of, any person designated» will be added to the SDN List.

With the General License 8F of April 2020 – "Authorizing transactions PdVSA necessary for the limited maintenance of essential operations in Venezuela or the wind down of operations in Venezuela for certain entities" - the US has restricted the scope of General License. The GL 8F specifically allows:

- transactions and activities necessary to ensure the safety of personnel, or the integrity of operations and assets in Venezuela;
- participation in shareholder and board of directors' meetings;
- payments on third-party invoices for authorized transactions and activities; payment of local taxes and purchase of utility services in Venezuela; and payment of salaries for employees and contractors in Venezuela; and
- transactions and activities that are necessary to the wind down of operations, contracts, or other agreements in Venezuela involving PdVSA or its affiliates.

On the other hand, General License 8F does not authorize:

- the drilling, lifting, processing of, purchase or sale of, or transport or shipping of any Venezuelan-origin petroleum or petroleum products;
- the provision or receipt of insurance or reinsurance with respect to the transactions of any Venezuelan-origin petroleum or petroleum products;

- the design, construction, installation, repair, or improvement of any wells or other facilities or infrastructure in Venezuela or the purchasing or provision of any goods or services, except as required for safety;
- contracting for additional employees or services, except as required for the safety of personnel and facilities;
- the payment of any dividend, including in kind, to PdVSA, or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest;
- any transactions or dealings related to the exportation or re-exportation of diluents, directly or indirectly, to Venezuela;
- any loans to, accrual of additional debt by, or subsidization of PdVSA, or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, including in kind.

Following the 2017 imposition of PdVSA financial sanctions, Venezuela's monthly oil production declined by approximately 50%—between August 2017 and January 2019. Venezuelan oil production had been trending downward in prior years due to aging oil infrastructure and insufficient investment in, and maintenance of, oil production assets.

Sanctions imposed on PdVSA in 2017 made also it difficult for the company to access financial resources from debt markets and to receive cash distributions from PDV Holding—PdVSA's U.S.-based subsidiary that owns Citgo, an oil refining and marketing company. This limitation likely created some operational difficulties for PdVSA with respect to short-term credit that might be needed to pay for oil-related services and acquire oil production and maintenance equipment from U.S. suppliers. However, it is difficult to attribute specific production volume declines directly to these sanctions since production had been trending lower since 2014.

Oil production continued declining and reached approximately 1 million bpd in January 2019, when Treasury's PdVSA determination, designation, and GLs took effect. U.S. imports of Venezuelan crude oil declined 50% over a one-month period between January 2019 and February 2019, and consistent with the pressure applied under sanctions, have since been reduced to zero. Prohibiting petroleum trade between the two countries results in a constraint in the global oil logistics system that can potentially resolve itself as transportation modes, trade routes, and transactions adjust to the sanctions-related constraint. PdVSA has sought alternative buyers such as India and China, countries that historically have been two of the largest destinations for Venezuelan crude oil.

Ship-tracking information indicates that Venezuela's crude oil exports to India and China increased 49% and 34% respectively between January 2019 and February 2019. However, export volumes to these countries in February 2019 were in the range of export volumes that have been observed since 2017.

3.3.2 Eni's presence in Venezuela and impact of sanctions

Eni's activities in Venezuela concern the exploration and production (E&P) and the refining and marketing (R&M) sector. In the E&P business, Eni's development and production activities in Venezuela are carried out through Cardon IV - a joint venture (JV) with Repsol (equal 50% share) - Petrojunin and Petrosucre (both regulated under the "mixed enterprise" regime, together with the state oil company PdVSA).

The main projects are reported below.

- Perla (Cardon IV) - giant gas and condensate field, in production since July 2015. Current Eni's gas equity production is approximately 175 million cubic feet per day - corresponding to 30,000 barrels of oil equivalent per day (boe/d) – which is well below its potential.

- Junin 5 (Petrojunin) - giant heavy oil field; production started in March 2013 and reached the value of 12,000 barrels per day (bl/d) in 2016. Since July 2019, the field stop producing due to the absence of diluents and equipment necessary for heavy oil "lifting" operations.

- Corocoro (Petrosucre) - heavy oil field; production started in 2008 and reached a peak of 40,000 bl/d. Since October 2019, the field stop producing due to issues related to the inability to remove the crude present in the production storage vessel (FSU Nabarima).

As regards to exploration activities, Eni holds a 19.5% stake in the Petrolera Güiria block and a 40% stake in the Golfo de Paria Ovest and Punta Pescador blocks, in the eastern offshore of the Country.

In the R&M business, Eni has stakes in SuperMetanol CA, a methanol producing plant.

In order to fully comply with US sanctions, Eni halted all of its oil production in the country in the second half of 2019, and, since then, has continued to only produce gas from its Perla field. This is a key differentiator between Eni and US firms, considering, for instance, that Chevron has kept producing oil from its Venezuelan assets until June 2020.

It also highlights the different portfolio of Eni as compared to its US counterparts, with gas playing a more significant role in Eni's activities in the country. This different profile is reinforced by the different roles that oil and gas play in the Venezuelan energy mix: the former is predominantly geared towards exports, while the latter is mostly consumed domestically by Venezuelan households and serves as a key backup source of power generation.

Overall, Eni has outstanding receivables in Venezuela, considering both CAPEX investments still to be recovered and credits from the ongoing production from the Perla gas field (Eni equity production ca. 30,000 boe/d). Notably, Perla's production and operating costs are contributing to a constant increase of Eni's credits. To mitigate this financial exposure, since September 2019, Eni planned a credit recovery programme, in compliance with the previous US policy.

The programme consisted in Eni receiving crude from PdVSA in exchange for the payment in kind of a part of the crude value (no more than 50% of the crude cargo), via diesel or other compliant products. Eni completed eight of such transactions, with the last one scheduled by mid-August 2020. As the programme was considered in line with the US policy until last June, Eni also signed contracts with two vessels until April 2021, and preliminary agreed with PdVSA on the lifting of at least one cargo of crude per month.

3.3.3 US policy evolution and impact on Eni's activities

Eni's credit recovery programme is currently suspended after the completion of the 8th transaction, due to a change in US interpretation of sanctions policy. As part of its "maximum pressure" strategy, the US has progressively restricted the scope of General License with the GL 8F described above, which currently allows US companies to only maintain their assets and carry out maintenance operations necessary for safety, until 1 December 2020.

These measures did not initially apply to non-US companies, but the US government has recently communicated to Eni - and to companies from other 16 countries - its intention to extend these restrictions also to non-US entities. This implies that also non-US companies will be forbidden to carry out activities related to "drilling, lifting, sale and shipping" of Venezuelan crude oil, and will have to stop their credit recovery programs. The US authorities clarified that the new measures will not apply to gas production, yet they reaffirmed Trump Administration's commitment to prevent Venezuela from using oil as an exchange currency in international transactions and urged non-US firms to comply with the new policy "as soon as possible".

During a number of bilateral conversations between Eni and the US authorities, the latter recognized the significance of Eni's outstanding credits, particularly from its gas production from Perla, but they also stressed that the US will not allow for any credit recovery with transactions involving Venezuelan crude and oil products, and instead encouraged Eni to request PdVSA for payments in cash. However, given the unwillingness of the Venezuelan government to make cash payments, a ban on payments through crude or oil products makes it *de facto* impossible for Eni to compensate for its ongoing gas production.

In Eni's viewpoint, it is important to note that oil-paybacks are presently an essential means of functioning of the Venezuelan natural gas sector, as they are contractually foreseen as a legitimate form of payment.

Failing to maintain some degree of economic sustainability of its natural gas operations could severely prejudice Eni's presence in the country, with economic impacts for the company and also on its gas production. This could likely have humanitarian consequences for the Venezuelan people who benefit from Eni's gas production, which plays a significant role as a component of families' energy supplies.

3.3.4 After Biden election – a possible perspective

Analysts believe the Biden administration will take a more moderate stance on Venezuela and will support international mediation for the transition towards a new government.

On the other hand, Venezuelan President Nicolas Maduro said recently he was willing to "turn the page" with the US under President Joe Biden, calling for a "new path" after years of tension with Donald Trump's White House.

That said, following are described some possible approaches of the Biden Administration to the Venezuela matter:

No US sanctions reprieve for Chavistas in Venezuela: Biden wouldn't force regime change in Venezuela, but he fully supports opposition leader Juan Guaido and the push for a political transition. That may mean even tougher sanctions on Venezuela, but a Biden team would also ramp up diplomacy.

Venezuelan production remains around 0,5 mb/d: Biden may ease US sanctions on Venezuelan imports of petroleum products for humanitarian reasons, but he would not let up pressure on PdVSA oil production and exports Russian and Chinese support for the Maduro regime will help production recover

to around 0 5 mb/d and keep it from falling further, but Biden's continuation of PdVSA sanctions would keep it from rising.

Even if there's a political transition, a quick recovery beyond 1 mb/d is unlikely: lifting US sanctions on Venezuela would allow PdVSA to market crude and enable joint venture partners to resume production, but new investment is unlikely, making it very difficult for production to increase by more than 0,5 mb/d (to 1 mb/d in 6/12 months).

Venezuela complicates a detente with Cuba: Biden would like to reset relations with Havana and pick up where Obama left off, but Cuba's role in propping up Maduro will slow things down.

3.4 The Grievance Mechanism

Responsible business management must respond to the needs expressed by local communities, contributing to their well-being in the medium and long term. Eni considers the relationship with the people who live in the areas of presence an important element of listening. For this reason, Eni tracks all the requests made by stakeholders and analyzes them in an integrated form for each territory so as to identify the best actions to be implemented to achieve sustainable development in synergy with local communities. In this perspective, grievance management (complaints or complaints raised by an individual - or a group of individuals - relating to real or perceived impacts caused by the company's operational activities) also represents a fundamental element of attention.

Eni has defined its own Grievance Mechanism (GM)[29] to receive, recognize, classify, investigate, respond and resolve complaints and complaints in a timely, planned and respectful manner. Eni's GM, defined in 2014, refers to the international guidelines on the subject, published by IPIECA and has been active in all subsidiaries since 2016.

The manual from IPIECA provides a practical step-by-step guide to planning and implementing operational-level community grievance mechanisms (CGMs) and/or designing and managing corporate CGM frameworks. The United Nations Guiding Principles on Business and Human Rights (UNGPs)

[29] Eni MSG Responsible and sustainable enterprise – Annex C Grievance Mechanism.

promote the use, value and power of effective CGMs. The oil and gas sector recognizes the importance of effective CGMs and is responding positively to the UNGPs' recommendations.

This is because operational activities, even those achieving the highest standards, can have varied social and environmental impacts, and can raise interest, concerns and complaints. Many companies are already implementing CGMs, which provide channels for affected individuals or communities to raise questions or concerns with a company and to have them addressed in a prompt, fair and consistent manner.

They can complement, but do not replace, state-based judicial or non-judicial forms of remedy. Applied effectively, CGMs offer efficient, timely and low-cost forms of conflict resolution for all concerned parties. Used as integral elements of broader stakeholder and community engagement, they can enhance local relationships and can have a positive impact on operational plans, schedules and costs.

3.4.1 Principles of the grievance mechanism

In line with the internationally recognized principles of effectiveness[30], the Grievance Mechanism must be:

1) Legitimate	The mechanism must have the consent of and be recognized by the stakeholders for whose use it is intended, and therefore guarantee the impartiality of the process.
2) Accessible	The mechanism must be known, freely and easily accessible to all the stakeholders for whose use it is intended. Adequate assistance must be ensured in relation to the needs of the different categories of stakeholders so that none of them feel disadvantaged. The supporting information must be easily understood and drawn up in the language that is most suited to the context in which the tool is used. The mechanism must allow grievances/concerns to be lodged by both individuals and groups, including in anonymous form.
3) Predictable	The mechanism must ensure a clear and transparent procedure with regard to the time frame, actions, decisions and resolutions relating to the process of handling grievances/concerns.

[30] Effectiveness criteria for non-judicial grievance mechanisms contained in the "UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", 2011.

4) Equitable	Without prejudice to compliance with regulations, including internal regulations, on the management and disclosure of information, the people and parties who express a grievance/concern must be guaranteed access to the information strictly necessary to make their assessments on the grievance/concern in an informed way.
5) Transparent	Parties that submit a concern/grievance must be dealt with courteously and informed on the progress of their requests during the process so that, the respect shown to them and the commitment to resolving their concerns/grievances contributes to building their trust in the mechanism and meeting their expectations.
6) Rights-compatible	The mechanism must not hinder access to legal or administrative remedies. The actions and resolutions taken must be consistent with internationally recognized human rights.
7) A tool for continuous improvement	The monitoring and assessment of the mechanism must be the vehicle for identifying the lessons learned in order to implement continuous improvement actions that guarantee the tool's effectiveness in preventing the risks associated with the grievances/concerns.
8) Work through dialogue and engagement	It is recommended that the stakeholders concerned be consulted right from the beginning in defining the mechanism and, subsequently, the review of its effectiveness. During the assessment and resolution of the grievances/concerns lodged, Eni operates through dialogue with the complainants, involving and consulting them, showing them consideration and commitment to resolving their grievances/concerns.

3.4.2 Definition and implementation of the grievance mechanism in Eni

In order to correctly define and implement the grievance mechanism, the function responsible for sustainability carries out an analysis of the local context taking into account the following aspects:

- Social Context Analysis: measuring the impact of business activities on communities. The analysis helps to identify the main social groups concerned and the type of risks the company is exposed to based on an assessment of the nature and frequency of the expected grievances;

- Stakeholder Mapping: analysis of the context of relations within which Eni implements its strategy in order to achieve its business results. A clear analysis of priority stakeholders enables the risks to be identified and a better formulation of remedy or mitigation strategies;
- Activity Mapping: analysis of the project's or activity's area of influence. An understanding of the action area helps to define the mechanism's structure so that it is accessible for all the stakeholders concerned;
- Nature and frequency of grievances attributable to previous industrial activities if Eni is not the first operator in the area.

The context analysis is aimed at assessing the company's exposure to risks, the nature, frequency and relevance of the possible concerns and expected grievances. For example, concerns and/or grievances can be considered major if Eni's activities regard:

- projects/activities with a high risk of impact on human rights (for example, if Eni operates in a conflict area, in an area populated by minorities or in the event there is strong opposition to the project);
- areas with indigenous peoples. Groups of indigenous peoples could have negotiated with their respective national governments specific mechanisms for discussing and resolving issues and problems affecting the indigenous communities that may involve the same governments to varying degrees
- projects requiring displacement;
- areas or projects with legacy issues associated with both Eni activities and the activities of previous operators resulting, for example, in local communities' mistrust of industrial operators in general.

Based on the results of the analyses described above, the function responsible for sustainability proposes:

- methods that potential complainants can use to lodge concerns and/or grievances (methods for accessing the grievance mechanism);
- the function responsible for receiving grievances, after consulting the relevant human resources function.

It is important to identify multiple access points to the grievance mechanism to ensure that it can be used by as broad an audience as possible and give adequate notice to the parties concerned. Some types of possible access points/routes are:

- directly to the function responsible for receiving grievances (e.g. through a specially dedicated office of the company);
- dedicated e-mail address;

- by letter;
- through the company website;
- through a dedicated telephone number;
- through trusted third parties (NGOs, local associations, etc.).

For the definition of the grievance mechanism consultations with local communities might be set up, particularly if numerous concerns and/or grievances are expected. The grievance mechanism must, however, function in a way that is:

- consistent with the applicable local laws and with the principles described in section 3;
- adequate for the expected risk exposure in a given territory (expected number and type of grievances);
- adequate for the local context.

Lastly, the definition of the grievance mechanism must change over time when changes occur to the elements described above that make it no longer effective.

The main activities for handling the grievances lodged by complainants are described below.

After having received a concern or grievance, the function responsible for receiving grievances, registers it by filling in a special form. When the concern or grievance is lodged in person or by telephone, the function responsible for receiving grievances provides assistance in filling in the form or fills it in directly. In any case, the function responsible for receiving grievances must:

- ensure the confidentiality of the person who has expressed the concern and/or grievance;
- check that the concerns and/or grievances lodged contain all the information necessary to examine the question and resolve it.

Concerns or grievances may also be lodged anonymously.

Lastly, the function responsible for receiving grievances registers all the concerns and grievances received, including those received anonymously, in the register of concerns and grievances, categorizing them as “Open”.

The function responsible for receiving grievances must promptly notify the person who expressed a grievance that it has taken charge of it. The acknowledgement that the company has taken charge of the grievance must contain the information necessary for its identification for the remainder of its management, for example:

- the reference number of the grievance received;
- the date the grievance was lodged;
- the name of the complainant, if not anonymous;
- the name of the person who received the complaint.

The function responsible for receiving grievances, when acknowledging that it has taken charge of the complaint, must inform the complainant about the activities envisaged for handling the grievance and, where possible and appropriate, how long the latter can reasonably expect for the conclusion of the grievance management process.

If a specific concern or grievance can be considered a whistleblowing report or a complaint falling within the scope of the Commercial MSG, the function responsible for receiving grievances sends the original concern or grievance to the relevant unit of the Internal Audit function or the relevant sales function, respectively, along with any annexes, in compliance with the criteria of maximum confidentiality and in a manner that protects the reporting party and the identity and integrity of the persons reported, without prejudicing the effectiveness of the subsequent activities described by the relevant regulatory instruments. If in doubt, the concern or grievance must be sent using the procedures described above.

The function responsible for receiving grievances, after having registered the complaint and confirmed that it has taken charge of it as described above, carries out a preliminary analysis of the concerns and grievances received.

A response to grievances and concerns can be given only if the contents of the response have already been previously disclosed publicly in relation to the same topic of the grievance or concern in question.

In other cases, the function responsible for receiving grievances promptly informs the function responsible for sustainability which then:

- examines the grievance/concern received;
- involves, where present, the relevant legal unit that provides legal assistance for making the necessary investigations and proposing the possible response/solution (hereafter the "function responsible for verification");
- establishes the underlying causes of the grievance/concern;
- defines the following steps for handling grievances and concerns.

The function responsible for verification carries out the investigations necessary to ascertain the grounds of the grievance/concern and suggest the possible response or any possible corrective actions aimed, where possible, at eliminating the underlying causes of the grievance/concern or mitigating their impact. Where it considers it appropriate, it may involve the complainant and any other parties in order to have more in-depth knowledge of the subject of the grievance/concern and their position.

After having completed the examination, checks carried out and results, together with the proposed response and/or possible actions necessary to resolve the grievance/concern, are communicated to the function responsible for sustainability that defines whether the grievance/concern is a major or minor one.

Once the proposed resolution has been approved, the function responsible for sustainability will inform the function responsible for receiving grievances of the response so that it can then be notified to and discussed with the complainant. It is important that the company's proposed resolution is discussed based on a dialogue rather than simply announced, and that the outcome does not violate the complainant's rights. This is subject to any other activities that envisage specific checks and approval/authorization procedures governed by the regulatory instruments that may be applicable with regard to the specific actions that Eni intends to carry out, including any expenditure commitments.

At the same time as the final communication approved, the function responsible for receiving grievances will ask the complainant whether he/she intends to communicate his/her observations on or alternatives to the solution communicated. In this case, these observations and/or alternatives will be noted in the appropriate forms.

The function responsible for receiving grievances must always provide a response to the grievances/concerns received even if, at the end of the checks, it has come to the conclusion that they are not associated with Eni's activities. In these situations, the response must explain the circumstances and give reasons why Eni cannot be considered involved.

Once the proposed resolution has been notified to the complainant, the latter may agree or disagree with the proposal.

If the complainant agrees with the proposed resolution, the function responsible for receiving grievances/concerns asks the complainant, where culturally appropriate, to sign the proposed resolution,

containing the agreed actions/activities to be performed and, where possible, the time for their execution, for his/her acceptance. All the records, agreements and associated materials are documented and entered in the register of concerns and grievances in chronological order.

In the case of grievances or concerns lodged anonymously, the possibility of making the response public is also assessed.

If the complainant is not satisfied with the proposed solution, his/her reasons for disagreeing are noted and examinated.

Following the examination it could be considered involving third parties to resolve the grievance/concern. This involvement may consist of, but not be limited to:

- referring the matter to a review committee composed of representatives from Eni and from the local community in equal measure. In these cases, the number of members must ensure that the local community is well represented without however hindering the operation and efficiency of the review committee;
- suggesting recourse to an independent third party who assesses the complaint and proposes an impartial resolution that the parties will decide whether to accept or reject.

The third party members (including the single independent third party) above are identified in agreement between Eni and the third party complainant and must meet the requirements of good reputation and professionalism, also from an ethical and moral point of view, ensuring impartiality in the process of assessment and proposed resolution.

If it is decided to propose recourse to an independent third party, such as for example the National Contact Point, before undertaking any commitment, the anti-corruption compliance function must promptly be involved which, in consideration of the specific circumstances of the case, will provide indications on how to carry out any anti-corruption due diligence on the potential third party and the related anti-corruption obligations. In any case, checks must be carried out on the third party identified to ensure it is not on the reference lists or part of organizations on those reference lists. If listed, subsequent actions will be considered with the support of the specialist functions and in accordance with the applicable regulatory instruments regarding reference lists.

As a rule, the payment of sums of money or other benefits as remuneration for the activities performed by these third parties are not envisaged. However, if payment of a remuneration becomes necessary (even only as a reimbursement for incurred expenses), the function responsible for verification must:

- check that any agreed compensation in favor of third party members is reasonable and proportionate to the activities carried out and the country in which they are carried out;
- involve the relevant legal function and the anti-corruption compliance function in the formalization of the appointment.

If the third party falls within the definition of Public Official, the relationship with this party must comply with the provisions contained in the Anti-Corruption MSG and in the relevant anti-corruption regulatory instrument.

If Eni decides not to accept the proposals submitted by the complainant or his/her observations, the complainant will be notified of this decision.

Depending on whether a resolution is agreed with the complainant or not, the function responsible for receiving grievances/concerns categorizes the grievance in question as “Resolved” if the parties have agreed a proposed resolution or “Unresolved” if no agreement has been reached on a resolution.

Grievances/concerns are categorized as “Abandoned” when one of the following cases applies:

- efforts are made to trace the complainant but he/she could not be located within one month of lodging the grievance;
- the complainant communicates, either verbally or in writing, his/her intention not to continue.

The function responsible for sustainability ensures that the resolution of the grievances/concerns is correctly implemented, in line with what was authorized, and monitors the results. In particular, during the follow-up, the function responsible for sustainability promptly identifies cases that deviate from what was authorized and which require a new authorization. Experience from the follow-up can also be used to further refine the process for handling grievances/concerns. For this purpose, the function responsible for sustainability may request feedback from complainants on their level of satisfaction with the grievance handling process.

3.4.3 Monitoring and review of the grievance mechanism

The function responsible for sustainability monitors the grievance mechanism's degree of effectiveness by analyzing, at least once a year, the following performance indicators:

- Participation: number of concerns and grievances received;
- Resolution: % of grievances resolved;
- Occurrences: number of grievances by category (subject, geographical area, etc.) and trends.

It evaluates the opportunity to integrate these indicators with those it considers most appropriate for assessing the mechanism's effectiveness. The frequency with which these indicators are analyzed may vary depending on the intensity of the operational activities carried out by Eni in a given territory.

In order to maximize confidence in the grievance mechanism and, therefore, contribute to maintaining the social license to operate, the function responsible for sustainability assesses whether and how to make the results of these indicators accessible to the local community and submits a proposal for the approval of the subsidiary's Chief Executive Officer/Managing Director or site/district Manager.

3.5 An example of grievance mechanism in Nigeria

3.5.1 Eni in Nigeria

Eni's presence in Nigeria dates back to 1962, when Nigerian Agip Oil Co. Ltd (NAOC) was established. Today it operates on the territory in the Exploration & Production sector.

The activity in Nigeria is regulated by Production Sharing Agreement (PSA), by concession contracts and by a service contract in which Eni acts as a contractor on behalf of the state company. In October 2019, the production of gas and condensates from the discovery of Obiafu 41, carried out in the Niger River Delta, was started in just three weeks from the completion of the well. The time to market was made possible thanks to the new integrated model which envisages, on the one hand, that the various functions work in parallel already during the exploration phase and, on the other, that the synergies achievable with neighboring production plants are enhanced. The discovery contains a volume of

hydrocarbons in place equal to approximately 28 billion cubic meters of gas and 60 million barrels of condensate.

Much of this gas will be destined for the domestic market to enhance the availability of local electricity. At the end of the ramp-up phase of the well, production will reach a flow rate of approximately 3 million cubic meters of gas and three thousand barrels of condensate per day. The gas produced will be treated in the Ob-Ob plant, a hub operated by Eni, and then destined for the Okpai plant, also operated by Eni, the first independent and one of the most efficient power plants in the country. The completion of the activities will allow to reach approximately 1 GW of production.

In addition, Eni holds a 10.4% stake in Nigeria LNG Ltd which manages the Bonny natural gas liquefaction plant, in the eastern part of the Niger Delta. The plant has a production capacity of 22 million tons of LNG per year, corresponding to about 35 billion cubic meters of feed gas per year.

In the country Eni has always been active also with sustainability initiatives; among these in particular the Green River Project (GRP) which since its start-up in 1987 has aimed to improve the living conditions of the communities of the Niger Delta, to guarantee food security, to increase the availability of food, to employment and to improve access to social services. In addition, the project promotes the start-up of cooperatives and associations, disseminates information on the use of agricultural products, on proper nutrition, conservation and management of the soil. It spreads micro-credit systems to farmers and develops the potential of young people and women. It aims to develop sustainable entrepreneurship and promotes small and medium-sized enterprises in large commercial complexes, offers and implements adequate strategies for agricultural mechanization and processing of agricultural products, fosters effective partnerships with local and international development agencies, with research institutes and universities to improve the offer of services and achieve higher standards.

3.5.2 The Eni’s cooperation with non-judicial mechanism

In December 2017, an association called Egbema Voice of Freedom, in the Aggah community, filed a petition with the Italian National Contact Point (NCP) in the framework of the OECD Guidelines for Multinational Enterprises (hereinafter also the "Guidelines"). Complaints handled by NCPs (known as specific instances) are not legal cases and NCPs are not judicial bodies.

The request criticized Eni for the lack of adequate policies and safeguards to mitigate the damage caused by the floods that hit the community. In particular, Complainants denounced the negative impact of some locations 18 and 20 of the Mgbede oil fields, in Nigeria, that are operated by NAOC, since the early

1970s, when NAOC built a 40,000 ft2 earthen embankment at each of these three locations, to support wellheads, and it also constructed access roads to connect these locations. According to the Complainants, these constructions constituted a complete blockage to the natural streams that used to flow through the land where the locations were built, while no adequate drainage channel were in place. As a result, the streams backed up and flooded large swathes of Aggah's farmlands and residential areas each year, typically during the rainy season.

Specifically, the Complainants alleged that ENI acted in breach of the following recommendations of the Guidelines:

- Chapter II, General Policies (A1; A2; A11);
- Chapter IV, Human Rights, 1; 2; 3; 4; 6);
- Chapter VI, Environment (3; 5).

Eni was informed of the complaint and it presented its written reply on the 2nd February 2018. The Complainants on the 26th February 2018 and Eni on the 19th March 2018 presented their respective counter-replies.

Eni argued that there were no link between NAOC's operations and the poverty level in the community. On the contrary, NAOC had implemented numerous community development infrastructure projects and economic development programs in its host communities, including the Aggah community.

Therefore, while always maintaining its position, Eni chose to actively participate in all phases of the procedure by voluntarily adhering to the terms of the conciliation procedure which provided, among other things, for a joint visit to Eni's site in Nigeria.

During the procedure, Eni provided objective elements also with the support of photographic and video documentation to demonstrate that its operations and infrastructures have not had any aggravating impact on the flooding of the area. The floods affect a much larger area than that of the Aggah community, and is a phenomenon typical of the Niger Delta region. According to the Company the terrain of the area in question was low-lying, marshy, muddy and prone to all seasonal flooding, therefore, with or without NAOC's facilities, the Aggah community would have continually suffered over-floods.

As part of the specific instance's procedure, the NCP carrier out the initial assessment, to determine whether the issue raised in the specific instance merited further examination, namely whether the issue raised was bona fide and relevant to the implementation of the Guidelines on the basis of the criteria set forth in the Guidelines. By letter of 26th July 2018 the NCP communicated to the Parties that it had concluded that the issue raised merited further examination and that the Initial Assessment would not have been published since it considered that this approach could facilitated the achievement of an agreement. In the letter NCP offered its good offices to the Parties and submitted the Terms of Reference (ToR) of the conciliation procedure that all the Parties accepted.

The procedure had a positive outcome, the Parties agreed on the Terms of Settlement of the case proposed by the Conciliator and they signed them by the 8th July 2019. By letter of the 30th July 2019, the NCP consulted the Parties on how and to what extent the contents of the Terms of Settlement should be published and the Parties agreed that they should be published on the NCP website in their integral version. According to this, NCP published the text of the Terms of Settlement on its website.

Based on that agreement, NAOC and the Complainant EVF defined a Scope of Work agreed upon by the parties, to get the concurrence of the community. Since August 2019, the Parties held several meetings to identify works that could mitigate the negative impacts that the seasonal flooding causes to the local environment and the community well-being. On 9th September 2019, a joint inspection was carried out in the community area that is the subject of the conciliation to ascertain possible routes to channel flood water. The Parties finally agreed on a Work Plan that included the construction of culverts and drainages and engaged with an independent expert to design them and identify where to position them.

Notwithstanding the unprecedented situation given to COVID-19, further to the survey completed in February 2020, NAOC selected a competent local contractor, already engaged with an open contract for civil works, for the project execution in compliance with the Company's internal rules and procedures.

The project was presented in a meeting held on 23rd June 2020 among the Aggah community, EVF and NAOC. Further to the meeting, the Aggah community unanimously endorsed the project and invited NAOC contractor to mobilize to site and start the activities.

The contractor mobilized to site in July 2020 and is progressing with the construction of additional culverts. Some community members complained about the contractor selected for execution and claimed that other local firms should be contracted instead. These complaints were addressed according to NAOC

procedures. Although provided for in the Terms of Settlement, no Technical Expert was appointed, since it is not considered necessary to date.

In March 2020, the complainant ACA suggested that Eni and NAOC followed a more transparent and inclusive process during the execution, by involving also the community leadership, and not only EVF. The Company provided evidence of its regular engagement with EVF's designated representative, as well as an update on progress made to address the terms of the conciliation. Later on, the Company also obtained the approval from the community leadership on the activity to be performed.

Eni's commitment and participation in the conciliation procedure therefore contributed to the smooth functioning of the conciliation mechanism and the NCP congratulated the parties on the successful conclusion of the procedure.

Eni, both in its 2019 Sustainability Report and in its 2020 HR report "Eni for Human Rights", describes this case and its positive outcomes as an example of cooperation in a non-judicial mechanism and expressly commits to keep the NCP informed on the developments following the agreement.

4. CONCLUSION

In previous chapters I analyzed how traditional concept of diplomacy, as relations between states to balance opposite interests and facilitate reciprocal collaboration to satisfy common needs, due to several structural changes, has progressively modified his nature.

In particular new subjects, pursuing different interests, become important players in the international scenario as well as the states and that contributed to modify the nature of traditional diplomacy.

After the Second World War it became urgent to have some entities above the national governments to protect universal and mandatory principles as the respect of human rights. For the first time several Non-Governmental organizations, or NGOs, were created and immediately recognized as important subjects, well organized, capable of representing their issues and operating across the globe. NGOs are by definition non-profit enterprises that seek to promote a mission in different places all over the world, mostly of humanitarian ambition.

The other important players in the international framework are the multinational enterprises which revenues could rival those of the most developed states themselves.

The post war period propelled a rampant growth of globalization in an already highly interconnected world and that was enabled mainly by three factors: the technological revolution, the liberation of international finance and the cost reduction of international transports and communications.

This structural change allowed the increasing growth of multinationals companies that were able to play a relevant role in the international political environment.

The complexity of the current political world system and the presence of economic entities with economical magnitude similar or higher than a state brings to a different idea of diplomacy. Governments need currently to deal and manage potential disputes not only with other governments but also with multinationals or enterprises and vice versa firms need to bargain not only with other firms but also often with governments.

The importance of firms as major actors brings to the necessity of managing relationships not only between different states but between states and firms and between different firms and it is becoming common the concept of three-sided nature of diplomacy. In addition to the traditional one there is state-firm diplomacy and a firm-firm diplomacy negotiating and producing treaties with states themselves.

To conclude those two non-states players, multinational enterprises and NGOs became relevant transnational subjects in the post war era within the field of international relations. While they do differ from traditional players like nation-states in their powers and their role, they do possess characteristics that make them able to be relevant in the international sphere and capable of conducting diplomacy.

The traditional dimension of diplomacy as relationship between governments and the idea that the main risk in the international society is war between different states and main purpose is avoid that it happens is not valid anymore because NGOs and transnational industries with their power and consequent effects can be even more dangerous to the international society.

The three aspects state-state, state-firm and firm-firm diplomacy are often linked and interdependent and it is important to consider them from one unique point of view. The three sides of diplomacy are more flexible and more able to guaranty a peaceful solution of potential conflicts between different actors and more adapt to cope with changes in global environment.

The new vision of diplomacy with different actors involved brings to the born of new figures playing diplomacy. The diplomacy is managed not anymore only by official representatives to protect state's interests but also more and more by professionals that provide their consultancy following an international best practice framework to clients and are paid for that with a fee that creates profit or that simply covers the cost of service.

These new professionals contributed to create a new way to conduct diplomacy activity because they claim not only to states but also to non-territorial entities based on rules and values that are transnational as human rights or firm interests.

In doing that they introduced a new concept of diplomacy based on what can be called "epistemic arbitrage" which leverages different knowledge coming from different professional skills. Usually those diplomatic brokers have informal knowledge about how to conduct a negotiation, general information about economic principles and pragmatic approach on how to manage operations and tasks.

The new nature of diplomacy (state-state, state-NGOs and firms and firm-firm diplomacy) and the new professional figures able to do diplomacy in the new environment have a special impact on a specific sector of industry which is the gas and fuel energy sector. In particular multinational oil companies, due

to the type of investments, are particularly involved in this change. They often need to cope with foreign government to allow them to invest in their country and they need to cope with other firms.

Control on production resources and distribution channels and purchase of this important row material have been structured during previous century through the synergy between governments and big oil companies. The globalization exploded in 21st Century and energy sector followed this process. There is in the world a complex system of transnational energy connections and development partnership and energy is playing an increasing important role in international diplomacy. Energy security is by definition a transnational matter especially for those countries that need to import power to satisfy domestic demand.

Energy infrastructures partnership and access to international technology are really important for countries to develop industry, to boost energy security and maintain warmer bilateral relations.

For those reasons energy resources are strategic and can be used as diplomatic leverage or to create opposition on the world stage.

In the complex sector of oil and gas industry, where an enormous capital investment is necessary and when very often the economy of an entire country is impacted, potential disputes at different level are quite common and have an almost infinitive variety of forms. They can be vertical, when companies operating in different industry segment are involved, or horizontal when disputes raise between companies operating in the same field. In addition to that considering that very often those multinationals operate in foreign countries when the operations are allowed by the government through concessions and productions sharing agreements potential disputes with the host state are also common.

Oil and gas disputes can be also categorized based on the part of the value chain (upstream, midstream, downstream) they occur or based on when they happen during the project life-cycle (e.g. in the upstream section that could be during the exploration phase, the appraisal, the development or the production or finally during the decommissioning).

Considering the types of subjects involved, the main types of disputes that can be identified in this area can be traced back into three categories: disputes between host states and investors; disputes between different investors; and disputes between third parties and investors (usually via the operator).

The common way to solve those disputes is the arbitration and usually contracts established in advance a structured procedure to solve any potential disputes.

Very often different legislations have to be considered and eventually a third party as for example host state, a rival bidder or a joint venture partner is also involved. Having a clear joined dispute resolution regime that lists all possible disputes that might happen, how they can be solved and what is the maximum timing allowed to end them would help a lot but unfortunately it is quite an exception.

Considering that in many cases that does not happen it becomes quite clear how it is important for the multinationals involved to be able to leverage their own capacity to look for possible solutions using all the instruments that might be helpful for this purpose and that are often borrowed by the diplomacy.

When an oil company decides to invest in a foreign country it is important to know all components of the hosting state, all powers from whom they can receive support for implementing their activities and to dialogue with the proper entities. Many often the country where to realize the investment project presents a war criticism or at least a difficult political situation and so becomes crucial to know and understand the environment where operate and know who the relevant and right entities to cope with are.

For a company operating in a foreign country or foreign market what has a relevant role for the success of the investment is the diplomatic channel and the political relationship between the own country and the host country.

Every kind of investment project involving such complex relationships with the host state would require the intervention and support of international diplomacy and oil companies looking at the new diplomatic professional figures are often developing internally those skills in order to be able to autonomously manage the diplomatic relationships to prevent or solve all possible disputes that might explode in this strategic sector. Only with that support and following a common road map, companies would be able to operate in countries with different culture or political regime with less risks and more opportunities to avoid disputes with the host state or other entities involved.

In order to focus on how oil companies have to concretely face with these new ways of diplomacy, I have analyzed two concrete examples of processes implemented by the Italian oil company, Eni, to address specific issues such as international sanctions and grievance mechanism.

Sanctions are coercive measures adopted by states or international organizations to manage crisis situations through the adoption of regulatory provisions that introduce prohibitions and other restrictive measures into economic, financial and commercial transactions for certain parties or countries. Often those sanctions target energy sector because are against countries which export raw material where the

petroleum companies operate or national companies with which market operators interact during the ordinary course of business. The fear of a gas shortage or an oil embargo is enough to make alliances or start wars.

Specifically I have analyzed how Eni reacted to sanctions against Venezuela and I tried to underline how was important for Eni, in order not to be disproportionally penalized in the business conducted in Venezuela by the sanctions, to leverage the network of relationships created with the American administration still ongoing hoping that the new Biden's administration will be more favorable.

This is a typical example on how a multinational Company acts as a state in terms of diplomatic relationships with another state and uses what has been built internally in terms of knowledge and expertise to do that.

Regarding the grievance procedure this is another important instrument used by oil companies to manage in a structured way claims raised from different parties. In particular I have analyzed how Eni manages concerns or grievances, in writing or verbally, in relation to its activities in general terms and with reference to a specific business case happened in Nigeria.

The business case shows how this mechanism is an integral part of Eni's overall strategy of relating with the host country as it promotes positive relationships between the company and its stakeholders through dialogue and participation and serves as a warning bell in the management of risks and assessment of Eni's business performance in a specific area of operations. All grievances and concerns must be handled with the same level of integrity and respect.

In both cases we can see how the first Italian oil company, operating in several foreign countries in the world, has structured the internal organization in order to cope with all possible international issues that might occur in the its business. The two examples show how a private entities acts as a state in terms of relationships with other states or non-government-organizational entities.

It is also evident how the new concept of diplomacy based on what can be called "epistemic arbitrage" is directly used by a private company that has internally developed the type of knowledge coming from different professional skills.

The new challenge for oil companies today that requires an additional effort in effectively managing relationships with the states, transnational organizations and other economic entities involved is the need to progressive reduce fossil fuels in the energy framework. "The journey to replace fossil fuels with

green energy has been moving at glacial speed for decades but is now violently on the move and we can't keep doing things the way we have always done them, otherwise our planet is going to be toast" recently said Andrew Forrest , chairman of Fortescue Metals Group.

Looking into the past, the technology development of oil industry has always been gradually and steady. The success in winning the different challenges due to technologies changes was mainly due to availability of financial resources and profitability of investments but that is not enough anymore

The progressive worldwide awareness of environmental issues due to the climate change, the recent collapse in the price of crude oil and finally the Covid pandemic put petroleum sector in a completely different scenario much more challenging.

The energy framework offers today a radical change in the type of energy offered as electricity or hydrogen much more clean than fossil fuel and governments or transnational organizations as EU are moving toward that direction.

In particular European Union is leading this change of "green approach" moving towards a decarbonization of economy. The objective is to achieve carbon neutrality by 2050 in order to meet what established by Paris agreement, the international treaty on climate change, signed in 2015 by 189 countries, whose goal is to limit global warming to below two degrees above pre-industrial levels. Ursula von der Leyen's, as president of the European Commission, reinforced this commitment by increasing the EU's 2030 carbon emissions reduction target from 40 per cent to 55 per cent.

The "green deal" is the strategy of growth for Europe not only for environmental reasons but also for economic reasons because it is the only way to create form of growth and development and working opportunities sustainable in the long term. Electrification should be the core of this project. The European leaders have proposed a green plan for each industry sector including energy. Only projects in line with the climate objectives will receive funds. The vice president of EU Frans Timmermans, continues to insist that all funds to relaunch the economy have to be directed to companies able to reduce carbon emission and digital companies.

Countries are now rushing to boost clean energy and cut fossil fuels, and their economy is changing accordingly moving from oil and gas to different forms of green energies as for example electricity which is clean and cheap.

That of course has a big impact on energy sector and petroleum companies, in order to survive and having a role in the energy market, need be able to move towards renewable form of energies as liquid fuels with low emissions as an alternative to electric mobility and hydrogen mobility.

The major five European petroleum companies BP, Shell, Total, Eni, Equinor are allocating more and more funds on renewable forms and clean energy and cutting funds in the old core business of petroleum and gas. In particular Eni strategy announced in February 2020 is the natural evolution on the medium and long-term of the green path that had been undertaken and represents a turning point for Eni.

Climate change and sustainability are a top priority, and the businesses that are able to capture these new opportunities, especially in the energy sector, will be the winners in the long term.

Eni has been working with that goal in mind during the past six years already, designing a new business model that integrates the principles of sustainability in each activities, and codifying those principles in the new mission, which is inspired by 17 Sustainable Development Goals.

This radical change of approach needs, to be successful, an additional effort to build a solid a valid dialogue to actively pursue new opportunities for cooperation with the governments and European organizations. The need of having internal professional figures able to fulfilling those requirements becomes more crucial and require different actions: to dialogue with European organizations, with the governments of the countries where the investments are located and with competitors.

When the energy system changes the energy policies change as well and oil companies have to be ready to effort this challenge, they need to use its influence, financial resources and last but not least their diplomatic expertise to be successful in this roadmap.

Broadly speaking, there are significant challenges and opportunities that the oil companies respond to this new challenge as part of their Green Deal diplomacy.

SUMMARY

The traditional concept of diplomacy based on Westphalian sovereignty principle born in XVII Century: "every state no matter how large or small, has an equal right to sovereignty and each state has no right to interfere on other states" brings to a common picture of diplomacy as an instrument used by institutional state representatives to solve in a pacific way potential disputes between states.

The dominant school of thought is that the central issue in international relationships is war between territorial states, and the main problem therefore is maintain order in the relations between these states. The subject entitled to do that is the diplomatic who is a person having the right knowledge and able to reach state interests in a pacific way even if not always diplomacy is devolved to conciliate international disputes and adjust different interests .
He is the peaceful way to balance and adjust state interests and when is not possible he is out of scope.
Diplomacy started very early with ancient Greeks and Romans, since that periods messengers were sent to foreign territories to make alliances to reach commercial agreements or adjust litigations. The evolution from an occasional diplomacy motivated from the needs to solve specific issues to a permanent diplomacy started in Italy in XV century to respond to the new interest of Italian states but the modern concept of diplomacy was reached during the peaceful negotiation to conclude the religion thirty years war when diplomats were able to solve a crucial issue and the outcome was a complex of decisions that modified political and religious structure of the continent until French revolution.

With the advent of the French revolution, the role of the ambassador would evolve and change profoundly: diplomatic ranks were abandoned, and the role changed from one of mere formal representation to the one of a shrewd politician capable of holding relations with the head of states under any circumstances.

The next great change in the world of diplomacy would come as the outcome of the two world wars.

After that and the end of atrocities committed it become urgent the idea to have some entities above the national governments to protect universal and mandatory principles as the respect of human rights. For the first time several Non-Governmental organizations, or NGOs, were created and become immediately important subjects, well organized, capable of representing their issues and operating across the globe. NGOs are by definition non-profit enterprises that seek to promote a mission in different places all over the world, mostly of humanitarian ambition. While they do differ from traditional players like nation-states in their powers and their role, they do possess characteristics that make them able to be relevant

in the international sphere and capable of conducting diplomacy, negotiating and producing treaties with states themselves.

The other important players in the international framework are the multinational enterprises that, with the ability to alter economic payoffs both for hosting states and in the international scenario, are nowadays actors that can rival states themselves on the capacity they have to influence decisions. The post war period propelled a rampant growth of globalization in an already highly interconnected world and even if some multinational companies predates the advent of globalization and the world market economy, it is only with a massive globalization that they acquire a significant role in the worldwide scenario in terms of numbers and economic power.

The main factors that contributed to this structural change were some important political or economic events as the dissolution of ex-Soviet Union, the liberation of Central Union, the structural payments deficit of the United States, the incredible growth of the East Asian countries, the change from several military or dictatorial powers to democracy and finally the opening of borders from many countries in the world.

In terms of economic changes, three main factors have speed up the internationalization of production and the relocations of several production activities in different countries: revolution technology, liberalization of finance and lower costs of transports and communications.

The complexity of the current political world system and the presence of economic entities with economical magnitude similar or higher than a state brings to a different idea of diplomacy.

It is now necessary managing relationships not only between different states but between states and firms and between different firms and it is becoming common the concept of three-sided nature of diplomacy.

The traditional dimension of diplomacy as relationship between governments and the idea that the main risk in the international society is war between different states and main purpose is avoid that it happens is not valid anymore because NGOs and transnational industries with their power and consequent effects can be even more dangerous to the international society.

The three aspects state-state, state-firm and firm-firm diplomacy are often linked and interdependent and it is important to consider them from one unique point of view. The three sides of diplomacy are more flexible and more able to guaranty a peaceful solution of potential conflicts between different actors and more adapt to cope with changes in global environment.

The new vision of diplomacy with different actors involved brings to the born of new figures playing diplomacy. The diplomacy is managed not anymore only by official representatives to protect state's interests but also more and more by professionals that provide their consultancy following an international best practice framework to clients and are paid for that with a fee that creates profit or that simply covers the cost of service.

These new professionals contributed to create a new way to conduct diplomacy activity because they claim not only to states but also to non-territorial entities based on rules and values that are transnational as human rights or firm interests.

In doing that they introduced a new concept of diplomacy based on what can be called "epistemic arbitrage" which is based on different knowledge coming from different professional skills. Usually those diplomatic brokers have informal knowledge about how to conduct a negotiation, general information about economic principles and pragmatic approach on how to manage operations and tasks.

As consequence of that also the traditional diplomacy has started slightly changing their behaviours and practices in order to be more in line with the new ecosystem. Managing diplomacy as a broker and "epistemic arbiter", leveraging different types of knowledge and skill within different information networks and changing style when needed to finally become persuasive and induce deference in the others, seem to be more effective in the new scenario comparing the results obtained by traditional diplomacy. Those new professional figures that are increasing more and more close the gap between traditional diplomats that are focused on managing potential issues between territorial states and those new entrepreneurs that act in defence of different transnational interests.

One example is the new group of Independent Diplomats been built by Carne Ross because he realized that there is a "democratic gap" in how traditional diplomacy is conducted and there are some interests not adequately supported by traditional diplomats. In terms of type skill used by those new professional figures what is more important is the organizational attitude more than the knowledge itself and as result of that the methods used result more effective than traditional ones in solving disputes between different actors and different topics because they can be more easily adapted to different situations. Using a method instead abstract notions gives a lot flexibility to the diplomat and makes him more attractive for new subjects requiring their services.

In particular diplomatic-tacit knowledge is the attitude on how to interpret secret information how to retrieve precedents from low and use them to mediate with foreign ministries, IOs and NGOs.

Another important example is Statt which represents a different form of diplomacy similar to economic consultancy, it is based in Hong Kong and provides strategic advice, public relations and operational support to different governments as Afghanistan, Australia, Canada , Denmark Thailandia and NGOs as ActionAid and IOs AS World Bank.

The definition of STATT on his Web Site is the following: "STATT is a network of practitioners dedicated to mitigate transnational threats and expanding transnational opportunities. We bring together those driving globalization and those who are vulnerable to it. Our approach emphasises the need to secure strong evidence and community engagement to guide innovative response that combine transnational forces with local knowledge and needs. We work for communities, countries and companies seeking targeted service that shape transnational connections and leverage their benefits".

The new nature of diplomacy (state-state, state-NGOs and firm-firm diplomacy) and the new professional figures able to do diplomacy in the new environment have a special impact on a specific sector of industry which is the gas and fuel energy sector. In particular petroleum companies, due to the type of investments, are particularly involved in this change. They often need to cope with foreign government to allow them to invest in their country and they need to cope with other firms.

There is in the world a complex system of transnational energy connections and development partnership and energy is playing an increasing important role in international diplomacy. Energy security is by definition a transnational matter especially for those countries that need to import power to satisfy domestic demand.

Energy infrastructures partnership and access to international technology are really important for countries to develop industry, to boost energy security and maintain warmer bilateral relations.

For those reasons energy resources are strategic and can be used as diplomatic leverage or to create opposition on the world stage.

In the complex oil and gas industry, where an enormous capital investment is necessary and when very often the economy of an entire country is impacted, potential disputes at different level are quite common and have an almost infinitive variety of forms. They can be vertical, when companies operating in different industry segment are involved, or horizontal when disputes raise between companies operating in the same field. Considering the types of subjects involved, the main types of disputes that can be identified in this area can be traced back into three categories: disputes between host states and investors,

disputes between different investors and disputes between third parties and investors (usually via the operator).

Regarding the dispute between host states and oil companies, it is important to consider the fact that the contracts necessary for enabling upstream activities (Production sharing agreement: PSC) are long-term contracts (usually running for 20 or 25 years) and it is quite common that during the long contract life some disputes might arise.

The PSC may be administered by a state-owned company, or the ministry of oil and gas, but is it actually in the name of the country or the government of the country and the main issue in case of a dispute is first to identify the right counterpart. There are really a lot of categories of disputes between host state and companies but the more frequent cases include: i) disputes regarding the definition of recoverable costs before profit is allocated, ii) the distribution of petroleum profit, iii) the definition of national tax rates, iv) the allocation of the geological risks, v) claims by investors regarding stable provisions, vi) issues raising as consequence of audit done by the host government administration to the joint venture accounts or to procurement procedures and finally, not strict to the contract but in any case not less significant, vii)claims for pollution and environmental damages.

Claims under the investment contract are not the only claims because it is also possible to have claims between investors and host states regarding investment treaty contracts – when the claims may either be for actions for not being in compliance with the 'umbrella clause' (a commitment to honour contractual commitments), the guarantees of equitable and fair treatment, or fair and full compensation for expropriation.

Another possible cause of dispute is the changed tax scenario that may determine new taxes impacting the economical results for the investors or also changing in the legal framework bringing as extreme consequence to outright expropriation.

Regarding disputes between investors, they can be related to JOA or a shareholders' agreement. In particular one of the most important examples is disputes between the operators and the non-operators.

It is quite obvious that possible tensions might raise between operating party responsible of carrying the operations and non-operators investing money in the project, so interested in the results, but having limited control on the operations.

Some causes of such disputes can be overrunning drilling campaigns, the purchase of inventory not necessary, discrepancies in the costs of administration and all of them can be used as excuse for non-operators not to pay their shares. In case of such disputes the standard form agreements do not provide clear answer, operators usually refer to indemnity clauses that save them in case of 'gross negligence' and 'physical' loss, and argue that the only solution is to remove them as operator. Non-operators argue that the indemnity clause cannot be considered an excuse for the operator's failure to work.

Another common example is a dispute due to defaults in meeting payment obligations.

Finally the third scenario in upstream operations, after the disputes with the core parties, refers to disputes with third parties that could be the service providers to the joint venture.

By way of example, disputes may arrive with the third party specialist companies or even for example with catering suppliers providing food to employees in remote locations. The disputes coming from third parties can be determined by real issues arising during the operations (e.g. equipment failure on a drilling rig) but more often, especially during recent years, they are caused by bad financial situations incurred with the recurring oil price volatility and the partners not have any more enough money to sustain the incurring costs.

There are also disputes with other joint ventures involved in similar operations. In case for example the cost–splitting agreements require the respect of a certain timetable and there are some parties not able to respect it or are not able to provide the equipment required at a certain moment.

The most serious type of disputes in this scenario are frequent when to unitisation agreements are involved, in particular when there are damages done in one block of operations and are caused by one of the subjects involved or when one of the partners drains reserves of another partner in another block.

In case those disputes have to be managed in an international environment as it often happens that has a terrible impact on the operations that might be stopped and licenses terminated. In addition to that, considering the amount of money involved in these kind of investments, the number of different subjects that need to cope together to conclude the project, the different legal framework not always stable and definitive, corruption and bribery can be the trigger element for several disputes between parties.

For all the reasons described above, disputes in upstream environment remain very common and usually are not solved in a short time and in an easy way.

For that reasons there are not best practices for resolving oil and gas disputes, some disputes would require a certain procedure and a certain forum when others would require a completely different approach. Disputes can be resolved by the same parties involved or with the help of third party, as for example a mediator or finally by third party decision maker as for example a court or arbitrator. Usually the international arbitrations is the more common mechanism of dispute resolution and it is a valid alternative to solve issues without the judgement of courts of host states and helps in maintaining good long term relationships but very often it is not the first option.

Having a clear joined dispute resolution regime that list all possible disputes that might happen, how they can be solved and what is the maximum timing allowed to end them would help a lot but unfortunately it is quite an exception.

Considering that in many cases that does not happen it becomes quite clear how it is important for the multinationals involved to be able to leverage their own capacity to look for possible solutions using all instruments that might be helpful for this purpose and that are often borrowed by the diplomacy.

When an oil company decides to invest in a foreign country it is important to know all components of the hosting state, all powers from whom they can receive support for implementing their activities and to dialogue with the proper entities. Many often the country where to realize the investment project presents a war criticism or at least a difficult political situation and so becomes crucial to know and understand the environment where operate and know who the relevant and right entities to cope with are.

In addition to organizational structures of a company operating in a foreign country or foreign market what has a relevant role for the success of the investment is the diplomatic channel and the political relationship between the own country and the host country.

Every kind of investment project involving such complex relationships with the host state would require the intervention and support of international diplomacy and oil companies looking at the new diplomatic professional figures are often developing internally those skills in order to be able to autonomously manage the diplomatic relationships to put in action to prevent or solve all possible disputes that might explode in the strategic sector. Only with that support and following a common road map, companies would be able to operate in countries with different culture or political regime with less risks and more opportunities to avoid disputes with the host state or other entities involved.

In order to focus on how oil companies have to concretely face with these new ways of diplomacy I have analyzed two concrete examples of processes implemented by the Italian oil company, Eni, to address specific issues such as international sanctions and grievance mechanism.

Eni is an oil company present throughout the entire value chain: from the exploration, development and extraction of oil and natural gas, to the generation of electricity, refining and Versalis chemical plants, up to the marketing of gas, electricity and products on the final market. Eni also operates in the renewable energy business and in the development of circular economy initiatives.

As regard to sanctions, they are coercive measures adopted by states or international organizations to manage crisis situations through the adoption of regulatory provisions that introduce prohibitions and other restrictive measures into economic, financial and commercial transactions for certain parties or countries.

Regarding the general measures put in place to manage international sanctions, Eni considered appropriate to create a new policy (MSG – Management System Guidelines) dedicated specifically to this issue. In accordance with what has been done for other compliance areas considered of priority for its business, the new MSG represents for Eni the basis for a new compliance program dedicated to economic and financial sanctions and a clearly recognizable reference point for all internal structures that work in contexts and perform activities that are exposed to the risk of non-compliance in terms of economic and financial sanctions. The most relevant sanctions for Eni are sanctions issued by European Union and the United States.

In the case of sanctions issued by the EU, an important role is played by the member states, as they are responsible for implementing and applying the measures. The competent authorities in the member states must in fact evaluate if there has been a violation of the legislation and adopt any resulting punitive measures.

Regarding the US sanctions, they are mainly issued through the Department of the Treasury and the State Department and applies a wide range of sanctioning measures, which include: i) global sanction programs against certain countries (Cuba, Iran, Syria, North Korea and Crimea); ii) targeted sanctions, (so-called “sectoral”) against specific sectors of a country (in this case the sanctions against Russia, where the restrictive measures impact the financial, defence or energy sectors in a targeted manner); iii) sanctions that affect certain physical and/or legal persons.

The US sanctions can be generally divided into so-called “primary” sanctions and “secondary” sanctions. The “primary” sanctions are applicable to physical and legal US persons and in the case of US Nexus, whereas the “secondary” sanctions are applicable to non-US citizens.

The specific business case analyzed is the impact of US sanctions against Venezuela on Eni activities in this country.

On 28 January 2019 the state oil company Petróleos de Venezuela SA (PdVSA) was included in the SDN List on the basis of E.O. 13850 adopted by President Trump last November. The EO 13850 authorizes the Treasury Department, in consultation with the State Department, to adopt sanctions against the subjects operating in certain sectors, to be identified, of the Venezuelan economy. The Treasury Secretary Mnuchin has designated the energy sector and, consequently, PdVSA, among these sectors. It is forbidden for US persons to carry out transactions with PdVSA, or companies owned by it for 50% or more, and its assets in the USA are frozen.

With the New Executive Order n° 13884 of August 2019 all property and interests in property of the Venezuelan government within the jurisdiction of the US were blocked and US persons were prohibited from engaging in any transactions with the government of Venezuela and persons in which the government of Venezuela directly or indirectly owns 50% or more of interest.

The sanctions extend prohibitions to the entire government and all state-owned or -controlled entities. Moreover, any persons (including non-US persons) who «materially assists, or provided financial, material, or technological support for, or goods or services to or in support of, any person designated» will be added to the SDN List.

With the General License 8F of April 2020 – “Authorizing transactions PdVSA necessary for the limited maintenance of essential operations in Venezuela or the wind down of operations in Venezuela for certain entities” - the US has restricted the scope of General License.

Eni’s activities in Venezuela concern the exploration and production (E&P) and the refining and marketing (R&M) sector. In the E&P business, Eni’s development and production activities in Venezuela are carried out through Cardon IV - a joint venture (JV) with Repsol (equal 50% share) - Petrojunin and Petrosucre (both regulated under the “mixed enterprise” regime, together with the state oil company PdVSA).

In order to fully comply with US sanctions, Eni halted all of its oil production in the country in the second half of 2019, and, since then, has continued to only produce gas from its Perla field. This is a key differentiator between Eni and US firms, considering, for instance, that Chevron has kept producing oil from its Venezuelan assets until June 2020. Overall, Eni has outstanding receivables in Venezuela, considering both investments still to be recovered and credits from the ongoing production from the Perla gas field (Eni equity production is ca. 30,000 boe/d).

To mitigate this financial exposure, since September 2019, Eni planned a credit recovery programme, in compliance with the previous US policy. The programme consisted in Eni receiving crude from PdVSA in exchange for the payment in kind of a part of the crude value (no more than 50% of the crude cargo), via diesel or other compliant products. Eni completed eight of such transactions, with the last one scheduled by mid-August 2020. As the programme was considered in line with the US policy until last June, Eni also signed contracts with two vessels until April 2021, and preliminary agreed with PdVSA on the lifting of at least one cargo of crude per month.

Eni's credit recovery programme is currently suspended after the completion of the 8th transaction, due to a change in US interpretation of sanctions policy.

These measures did not initially apply to non-US companies, but the US government has recently communicated to Eni - and to companies from other 16 countries - its intention to extend these restrictions also to non-US entities.

During a number of bilateral conversations between Eni and the US authorities, the latter recognized the significance of Eni's outstanding credits, particularly from its gas production from Perla, but they also stressed that the US will not allow for any credit recovery with transactions involving Venezuelan crude and oil products, and instead encouraged Eni to request PdVSA for payments in cash. However, given the unwillingness of the Venezuelan government to make cash payments, a ban on payments through crude or oil products makes it de facto impossible for Eni to compensate for its ongoing gas production.

In Eni's viewpoint, it is important to note that oil-paybacks are presently an essential means of functioning of the Venezuelan natural gas sector, as they are contractually foreseen as a legitimate form of payment.

Failing to maintain some degree of economic sustainability of its natural gas operations could severely prejudice Eni's presence in the country, with economic impacts for the company and also on its gas

production. This could likely have humanitarian consequences for the Venezuelan people who benefit from Eni's gas production, which plays a significant role as a component of families' energy supplies.

Analysts believe the Biden administration will take a more moderate stance on Venezuela and will support international mediation for the transition towards a new government.

On the other hand, Venezuelan President Nicolas Maduro said recently he was willing to "turn the page" with the US under President Joe Biden, calling for a "new path" after years of tension with Donald Trump's White House.

Currently Eni is waiting to know if the new representatives of Biden administration are willing to start a dialogue that hopefully could bring to a more satisfactory solution for all of the parties involved.

This is a typical example on how a multinational company acts as a state in terms of diplomatic relationships with another state and uses what has been internally in terms of knowledge and expertise to do that.

The other business case analyzed refers to the grievance procedure that is another important instrument used by oil companies to manage in a structured way claims raised from different parties. In particular I have analyzed how Eni manages concerns or grievances, in writing or verbally, in relation to its activities in general terms and with reference to a specific business case happened in Nigeria.

The business case shows how this mechanism is an integral part of Eni's overall strategy of relating with its stakeholders as it promotes positive relationships between the company and its stakeholders through dialogue and participation and serves as a warning bell in the management of risks and assessment of Eni's business performance in a specific area of operations.

Eni has defined its own procedure, the MSG Responsible and sustainable enterprise – Annex C Grievance Mechanism (GM), to receive, recognize, classify, investigate, respond and resolve complaints and complaints in a timely, planned and respectful manner.

Eni's GM, defined in 2014, refers to the international guidelines on the subject, published by IPIECA, and has been implemented in all subsidiaries since 2016.

In line with the internationally recognized principles of effectiveness, the procedure address the following principles of a grievance mechanism:

- Legitimate;
- Accessible;
- Predictable;
- Equitable;
- Transparent;
- Rights-compatible;
- A tool for continuous improvement;
- Work through dialogue and engagement.

The specific business case refers to a grievance received in Nigeria. Eni's presence in Nigeria dates back to 1962, when Nigerian Agip Oil Co. Ltd (NAOC) was established. Today it operates in the Exploration & Production sector.

The activity in Nigeria is regulated by Production Sharing Agreement (PSA), by concession contracts and by a service contract in which Eni acts as a contractor on behalf of the state company.

In the country Eni has always been active also with sustainability initiatives; among these in particular the Green River Project (GRP) which since its start-up in 1987 has aimed to improve the living conditions of the communities of the Niger Delta, to guarantee food security, to increase the availability of food, to employment and to improve access to social services.

The grievance example that was focused is an instance submitted by Chima Williams & Associates (CWA) and Advocates for Community Alternatives (ACA), on behalf of Egbema Voice of Freedom, in the Aggah community, versus Eni S.p.A. and Eni International BV.

The Complainants denounced the negative impact of some locations 18 and 20 of the Mgbede oil fields, in Nigeria, that are operated by NAOC, since the early 1970s, when NAOC built a 40,000 ft2 earthen embankment at each of these three locations, to support wellheads, and it also constructed access roads to connect these locations.

According to the Complainants, these constructions constituted a complete blockage to the natural streams that used to flow through the land where the locations were built, while no adequate drainage channel were in place. As a result, the streams backed up and flooded large swathes of Aggah’s farmlands and residential areas each year, typically during the rainy season.

The specific instance was submitted to the Italian National Contact Point (on the 15th December 2017, in the framework of the OECD Guidelines for Multinational Enterprises.

Eni argued that there were no link between NAOC's operations and the poverty level in the community. On the contrary, NAOC had implemented numerous community development infrastructure projects and economic development programs in its host communities, including the Aggah community.

Therefore, while always maintaining its position, Eni chose to actively participate in all phases of the procedure by voluntarily adhering to the terms of the conciliation procedure which provided, among other things, for a joint visit to Eni's site in Nigeria.

During the procedure, Eni provided objective elements also with the support of photographic and video documentation to demonstrate that its operations and infrastructures have not had any aggravating impact on the flooding of the area. The floods affect a much larger area than that of the Aggah community, and is a phenomenon typical of the Niger Delta region. According to the Company the terrain of the area in question was low-lying, marshy, muddy and prone to all seasonal flooding, therefore, with or without NAOC's facilities, the Aggah community would have continually suffered over-floods.

The procedure had a positive outcome, the Parties agreed on the Terms of Settlement of the case proposed by the Conciliator and they signed them by the 8th July 2019 and on a Work Plan that included the construction of culverts and drainages and engaged with an independent expert to design them and identify where to position them.

Eni's commitment and participation in the conciliation procedure therefore contributed to the smooth functioning of the conciliation mechanism and the NCP congratulated the parties on the successful conclusion of the procedure.

Eni, both in its 2019 Sustainability Report and in its 2020 HR report "Eni for Human Rights", describes this case and its positive outcomes as an example of cooperation in a non-judicial mechanism and expressly commits to keep the NCP informed on the developments following the agreement.

In both the two described cases we had seen how the first Italian oil company, operating in several foreign countries in the world, has structured its internal organization in order to manage the issues that might occur in the energy business.

It is also evident how the new concept of diplomacy as "epistemic arbitrage" is directly used by a private company that has internally developed specific type of skills and different knowledge: how to conduct a negotiation with pragmatic approach on how to manage operations and tasks when in case of issues with states and non-governments organizations.

The other important factor that requires today an additional effort in effectively managing relationships with the states, transnational organizations and other economic entities involved is the need to progressive reduce fossil fuels in the energy framework.

Looking into the past, the technology development of petroleum industry has always been gradually and steady. The success in winning the different challenges due to technologies changes was mainly due to availability of financial resources and profitability of investments but that is not enough anymore

The progressive worldwide awareness of environmental issues due to the climate change, the recent collapse in the price of crude oil and, finally, the Covid pandemic put petroleum sector in a completely different scenario much more challenging.

The energy framework offers today a radical change in the type of energy offered as electricity or hydrogen much more clean than fossil fuel and governments or transnational organizations as EU are moving toward that direction.

In particular, European Union is leading this change of "green approach" moving towards a decarboniztaion of economy. The objective is to achieve carbon neutrality by 2050 in order to meet what established by Paris agreement, the international treaty on climate change, whose goal is to limit global warming to below two degrees above pre-industrial levels. Ursula von der Leyen's, as president of the European Commission, reinforced this commitment by increasing the EU's 2030 carbon emissions reduction target from 40 per cent to 55 per cent.

The "green deal" is the strategy of growth for Europe not only for environmental reasons but also for economic reasons because it is the only way to create form of growth and development and working opportunities sustainable in the long term. Electrification should be the core of this project. The European leaders have proposed a green plan for each industry sector including energy. Only projects in line with the climate objectives will receive funds. The vice president of EU Frans Timmermans, continues to insist that all funds to relaunch the economy have to be directed to companies sable to reduce carbon emission and digital companies.

That of course has a big impact on energy sector and oil companies, in order to survive and having a role in the energy market, need be able to move towards renewable form of energies as an alternative to electric mobility and hydrogen mobility.

The major five European petroleum companies, including Eni are allocating more and more funds on renewable forms and clean energy and cutting funds in the old core business of petroleum and gas. Eni in particularly, as an integrated energy company, aims to help, directly or indirectly, to achieve the Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda, supporting a socially equitable energy transition. The new mission was approved by the Board of Directors in September 2019 and represents Eni's commitment to an energy transaction that is also socially fair. This radical change of approach needs, to be successful, an additional effort to build a solid a valid dialogue to actively pursue new opportunities for cooperation with the governments and European organizations. The need of having internal professional figures able to fulfilling those requirements becomes more crucial and require different actions: to dialogue with European organizations, with the governments of the countries where the investments are located and with competitors.

The petroleum companies need to use its influence, financial resources and last but not least diplomatic expertise, using all the internal resources having the right skill and preparation, to leverage neighbors and partners in this shared endeavor.

Broadly speaking, there are significant challenges and opportunities that the Petroleum Companies respond to this new challenge as part of their Green Deal diplomacy.

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