



**NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
INTERNATIONAL LAW PROGRAM**

**CRITICAL LEGAL ANALYSIS OF PRODUCTION SHARING AGREEMENTS WITH LOCAL
AUTHORITIES OF IRAQ: A QUESTION OF CONSTITUTIONALITY**

SRWSHT SHIRWAN IBRAHIM AGHA

MASTER'S THESIS

NICOSIA

2018

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**PREPARED BY
SRWSHT SHIRWAN IBRAHIM AGHA
20168898**

MASTER'S THESIS

**SUPERVISOR
ASSIST. PROF. DR. NAZIM ZIYADOV**

**NICOSIA
2018**

DECLARATION

I am as a Master student in International Law Program LL.M, hereby declare that this dissertation entitled "CRITICAL LEGAL ANALYSIS OF PRODUCTION SHARING AGREEMENTS WITH LOCAL AUTHORITIES OF IRAQ: A QUESTION OF CONSTITUTIONALITY" has been prepared by myself under the guidance and supervision of Assistant Prof. Dr. Nazim Ziyadov in partial fulfillment of the Near East University, Graduate School of Social Sciences regulations and does not to the best of my knowledge breach any Law of Copyrights and has been tested for plagiarism and a copy of the result can be found in the Thesis.

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SRWSHT AGHA

DEDICATION

Every challenging work needs self efforts as well as guidance of elders especially those who were very close to our heart.

My humble effort I dedicate to my sweet and loving parents

Shirwan Agha & Shapol Agha

Whose affection, love, encouragement and prays of day and night make me able to get such success and honor

I dedicate to my beloved sisters

Shava, Sayah and Shae

Thanks for your endless love, care, support and spirit

Also I dedicate to my Sweetest Niece

Aros, Nay and Savel

Who are always cheering my life, I am proud of having you

ACKNOWLEDGEMENTS

First and foremost, praises and thanks to the God, the Almighty, for His showers of blessings throughout my research work to complete the research successfully.

I would like to express my deep and sincere gratitude to my research supervisor, Dr. Nazim Ziyadov, for giving me the opportunity to do research and providing invaluable guidance throughout this research. He has taught me the methodology to carry out the research and to present the research works as clearly as possible. It was a great privilege and honor to work and study under his guidance.

I much value Mr. Nabi Berkut for all what he has done for me from the first day of studying till my last days at University. I would also like to thank him for his friendship, empathy, and a great sense of humor.

I am extremely grateful to my parents for their love, prayers, caring and sacrifices for educating and preparing me for my future, Thank you both for giving me strength to reach for the stars and chase my dreams. Also, I express my thanks to my sisters for their support and valuable prayers to complete this research work successfully.

I would also like to thank Snor Muhammed and KazharArgoshi they were not only friends, the second family. That I have been supported by them all time I appreciate all that you did for me.

Finally, my thanks go to all the people who have supported me to complete the research work directly or indirectly.

SRWSHT AGHA

ABSTRACT

CRITICAL LEGAL ANALYSIS OF PRODUCTION SHARING AGREEMENTS WITH LOCAL AUTHORITIES OF IRAQ: A QUESTION OF CONSTITUTIONALITY

Oil and Gas contracts that have been or are conducted within the borders of Iraq and more specifically within the KRI (located in North East of Iraq) is an important body of contracts within the Iraqi legal system. There are extensive amount of debate and research on this subject and the existence of an array of parties involved (whether domestically or internationally) adds up to the complexity of this matter. The most related categories of Iraqi constitutional law to the recent hydrocarbon contracts in KRG are articles 110,114 and 115 which address the power distribution in general manner and articles 111 and 112 that are most specified laws regarding governing Iraqi oil and gas. The PSA (Production Sharing Agreement) within KRG and their legal features as well as their legitimacy within the constitutional aspect, is the main aspect that this study tends to investigation of the various aspects of this topic is deemed necessary. Whether the PSAs signed between KRG and IOCs are legitimate or not under constitutional laws of Iraq? What are the remedial and legal consequences of signed PSAs?How can the common occurring disputes around the subject be identified?

The extensive debate and research on this phenomenon enable the researcher to dig into the pool of information through a descriptive approach. The Iraqi constitution describes clearly different types of power distribution and their respective principles of authorization. The constitution differentiates between the full and exclusive mandate of federal government, those shared power by federal and the regional governments and the assigned mandate for those governorates with lack of organization and regional governing system. Iraqi constitution provides articles concerning on governance of oil and gas and its respective regional development. Despite the fact that there are uncomplicated statements enlightening some matters, some vague part of these provisions makes the clear interpretations almost impossible. Hence, this study suggests more negotiations with fewer deviations and single-minded perspectives for a joint convection that leads to profits for all parties and more particularly, the nation of Iraq. The management of extracted oil from present fields is assigned to federal authorities. There are debates over the range of management and the definition of present oil fields.

Keywords: Product Sharing Agreement, Gas and Oil, Iraq, Kurdistan Region of Iraq, Constitution law

ÖZ

IRAK'IN YEREL YETKİLERİ İLE ÜRETİM PAYLAŞIM SÖZLEŞMELERİNİN ELEŞTİREL YASAL ANALİZİ: ANAYASA SORUMLULUĞU

Irak sınırları için ve özellikle Irak'ın kuzey Doğusunda bulunan Irak Kürdistan Bölgesi sınırları dahilinde bulunan petrol ve gaz sözleşmeleri, Irak sistemindeki önemli sözleşmelerden sayılmaktadır. Bu konu ile ilgili kapsamlı bir tartışma ve araştırmanın yanında, karmaşıklığa neden olan bir dizi ulusal ve uluslararası tarafın varlığı söz konusudur. Irak anayasa hukukunun KBY'deki son hidrokarbon sözleşmelerine ilişkin bölümleri, genel olarak güç dağılımına ve Irak petrol ve doğal gazını yönetmeye ilişkin yasalar olan 111 ve 112 maddelere hitap eden 110.141 ve 115 maddeleridir. Bu çalışma, KBY içerisindeki ÜPS (Ürün Paylaşım Sözleşmeleri) ÜPS'nin yasal özellikleri ile anayasadaki meşruiyetlerini araştırmayı hedeflemektedir. Bu fenomene dayanan kapsamlı tartışma ve araştırma, araştırmacının betimsel bir yaklaşımla bilgiye ulaşmasını mümkün kılmaktadır. Irak anayasası açık bir şekilde güç dağılımı ve kendi yetkilendirme ilkelerini açıklamaktadır. Anayasa, federal hükümetin tam ve münhasır yetkisi, federal ve bölgesel yönetimlerce paylaşılan güçler ile bu organların örgütlenmesi ve bölgesel yönetim sisteminin bulunmayışı arasında ayırım yapmaktadır. Irak anayasası petrol ve doğal gaz yönetimi ile ilgili bölgesel kalkınma hakkında maddeler içermektedir. Bazı meseleleri aydınlatan açıklanmamış ifadeler olmasının rağmen, bu hükümlerdeki bazı belirsiz kısımların net yorumları neredeyse imkansız kılınmaktadır. Bu nedenle, bu çalışma tüm tarafların ve özellikle de Irak milletinin yararına olan ortak bir konveksiyon için daha az sapma ve tek görüşlü bakış açılarıyla daha açık müzakerelere işaret etmektedir. Mevcut alanlardan çıkarılan petrolün yönetimi federal otoritelere tahsis edilmektedir. Yönetim yelpazesi ve mevcut petrol alanlarının tanımı konusunda tartışmalar mevcuttur.

Anahtar Kelimeler: Ürün Paylaşım Sözleşmeleri, Gaz ve Petrol, Irak Kürdistan Bölgesi, Anayasa Hukuku

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ABBREVIATIONS

IOC – International Oil Companies

KRG– Kurdistan Regional Government

KRI – Kurdistan Region of Iraq

PSA – Product Sharing Agreements

RoR– Rate-of-Return

IPC – Iraq Petroleum Company

INOC – Iraq National Oil Company

FOGC – Federal Oil and Gas Council

IIAPCO– Independent Indonesian American Petroleum Association

1. CHAPTER INTRODUCTION

1.1. CHAPTER OVERVIEW

This chapter intends to introduce the topic at hand while giving a brief overview of the research outline and the finding of study as well as a brief overview of the literature on the matter.

1.2. RELEVANCE OF THE TOPIC

Gas and oil industry is among the top and most vital industries in the world to the highly monetary means and profit-making as well as the energy means that is the main energy source for all activities of human life. It can be defined that almost all industries are dependent on the gas and oil industry and its functions as the major source of energy. In accordance to this, countries, which possess the main resources of gas and oil, are a point of interest for all nations and governments due to the importance of these resources. These countries are Saudi Arabia, Iran, and other Middle Eastern countries as they possess the main fields of gas and oil in the world. This creates vitality for these countries in regard to their natural resources and other countries and their industries depend on this region due to the high level of gas and oil that is being produced from the region and is exported on a global scale.

Accordingly, PSAs surrounding the subject of gas and oil consist of extreme importance as they can be beneficial for a nation as well as providing benefits and other advancements on a worldwide basis. The literature has extensive studies and articles on the matter of PSA in relation to gas and oil contracts. However, the complexity and sophistication of this subject calls for further research as well as further and cohesive considerations from not only scholars of the area but authorities all around the world for a flow of supply and demand cycle of gas and oil and the interrelated factors and contracts that can be both problematic and profit-making for all nations. Hence, the lack of sufficient information from the Middle Eastern countries and more specifically Iraqi PSAs in regard to gas and oil contracts has led the author of this paper to take this matter into consideration and thus, conduct a research upon this matter to create a better understanding on this subject. This becomes more vital for the case of Iraq and particularly KRI due to the conflicts and other political and economic issues that lay within the Iraqi border that is known from over a decade ago.

After extensive review on the literature of the topic and following the footsteps of experts in the field, the current research takes a doctrinal approach for the case at hand to create a better understanding on the matter by collectively examining and explaining the numerous variables

and articles that address the issue at hand on a descriptive approach that is seemingly appropriate for this type of research¹The researcher tends to merely look into the most recent studies that are conducted upon this subject and thus, providing a valid and accountable knowledge upon this matter for better understanding the extent of the vitality of this subject.

1.3. STUDY OBJECTIVES AND STRUCTURE

The importance of gas and oil and their vital usage during the so-called “modern” ages of humans cannot be neglected. The Middle East has been well-known for its vast and seemingly growing resources of natural gas and oil in the world. This extends the importance of this region farther into various aspects of law and trade systems. Notwithstanding other influential factors playing roles in the process of trade and communications within the area as well as global means and matters. This research seems to be adequate especially in regard to the KRI, which persists on the legislation and other aspects of gas and oil and their trade on an international scale. The region is sensitive and delicate at the moment due to the political and social complexities, which affluence the area in different and via an array of factors (whether domestic or international). Therefore, this topic requires further investigation on various aspects to clarify the means of contracts upon gas and oil trade in the KRI and subsequently Iraqi borders. A descriptive, yet comprehensive analysis and review of the existing literature and previous studies conducted on similar and relevant topics shows that this aspect requires a better understanding. This calls for additional concern when it comes to the Middle East and specifically within the rapidly changing and fast growing law structure of Iraq. In particular, KRI as a vital economic subject of Iraqi Federal State has a critical role.

The emergence of various studies upon the subject of product sharing agreements, gas and oil related agreements, and other secondary data of this research has led to a number of matters, from which this research submerges specific questions and objectives. Law structure of Iraq has been changing over the past years on a fast-pace. Several concerns and questions

¹Crawford J, `The Authority of the Kurdistan Regional Government over Oil and Gas Under the Constitution of Iraq, pp5, (2008),Tas D, `Petroleum Development in the Kurdistan Region of Iraq: A struggle over Competency` (2011), Kyla Tienhaara, Foreign Investment Contracts in the Oil & Gas Sector: A Survey of Environmentally Relevant Clauses, 11 Sustainable Dev. L. &Pol'y 15, 16 (2011),Zedalis R, Oiland Gas in the Disputed Kurdish Territories Jurisprudence, Regional Minorities and Natural Resources in a Federal System (Routledge, USA & Canada 2012), James M. Gaitis ed., JURIS , The Leading Practitioners' Guide to International Oil & Gas Arbitration,(2015), Moore, C. R. (2017). Oil and gas contracts utilizing R Factors and rates of return: Theory and practice. The Journal of World Energy Law & Business

emerge from this point that leads the structure of this research to a descriptive approach towards the topic at hand while noting the importance of other influential factors and variables that play major roles in this context (See chapter 3). The goal is to create a better understanding of the phenomenon within the aspects of International and Domestic Law of Iraq in regard to the PSA and other forms of international contracts that are majorly in coordination with gas and oil agreements. This study is in consensus with previous studies that have been conducted on this topic shown by a series of intense studies of the author's work.²

1.4. STUDY OUTLINE

This study consists of several chapters for identifying the topic and issues surrounding the subject of PSAs within Iraq and more particularly within the KRI. Chapter 1 of this study is the introduction and consists of objectives of the study as well as the relevance and importance of this topic. Chapter 2 of this dissertation is the research structure and methodology as well as pointing out the research objectives and questions/hypotheses of the study. Chapter 3 of the thesis is the literature review in a comprehensive manner that tends to clarify and identify the enormous amount of variables that are interrelated to the subject. Chapter 4 of this thesis looks into the legal and remedial debates upon the matter by cohesively investigating the constitutional law structure of Iraqi system and its articles surrounding the matter of gas and oil PSAs. Finally, Chapter 5 of this research summarizes the findings while presenting recommendations and possible solutions for the matter as well as having recommendations for future research upon the topic alongside presenting current study's limitations in a conclusive manner.

²Crawford J, 'The Authority of the Kurdistan Regional Government over Oil and Gas Under the Constitution of Iraq', pp5, (2008), Tas D, 'Petroleum Development in the Kurdistan Region of Iraq: A struggle over Competency' (2011), Kyla Tienhaara, Foreign Investment Contracts in the Oil & Gas Sector: A Survey of Environmentally Relevant Clauses, 11 Sustainable Dev. L. & Pol'y 15, 16 (2011), Zedalis R, Oil and Gas in the Disputed Kurdish Territories Jurisprudence, Regional Minorities and Natural Resources in a Federal System (Routledge, USA & Canada 2012), James M. Gaitis ed., JURIS, The Leading Practitioners' Guide to International Oil & Gas Arbitration, (2015), Moore, C. R. (2017). Oil and gas contracts utilizing R Factors and rates of return: Theory and practice. The Journal of World Energy Law & Business

2. CHAPTER RESEARCH OUTLINE

2.1. RESEARCH STRUCTURE

The importance of gas and oil and their vital usage during the so-called “modern” ages of humans cannot be neglected. Relatively, due to the international regulations and more specifically the domination of superpower countries such as the United States of America on these regulations as well as the demand of numerous industries alongside the global movements and necessity of using these resources, merely adds up to the intensity and vitality of this matter. The Middle East has been well-known for its vast and seemingly growing resources of natural gas and oil in the world. This extends the importance of this region farther into various aspects of law and trade systems. Notwithstanding, other influential factors playing roles in the process of trade and communications within the area as well as global means and matters.

Accordingly, Iraq, holding possession on an enormous amount of fossil fuels and natural resources is a key within this market and the surrounding regulations, especially in the region of Middle East. This is while noting the fast-paced changing environment of the body structure of Iraqi Laws and regulations, particularly about the matter of international trade, arbitration law, and PSAs. Thus, the researcher depicts the topic as a crucial one and henceforth, this research seems to be adequate especially in regard to the KRG, which persists on the legislation and other aspects of gas and oil and their trade on an international scale. The region is sensitive and delicate at the moment due to the political and social complexities, which affluence the area in different and via an array of factors (whether domestic or international). Therefore, this topic requires further investigation on various aspects to clarify the means of contracts upon gas and oil trade in the KRI and subsequently Iraqi borders.

In light of the above mentioned this study looks deeply into the pool of information in relation to PSA and highlights the relations to Iraqi body of law as well as connections to the gas and oil. In particular, this research thoroughly investigates the depth of this subject for the case of KRI located in Northern Iraq. A descriptive, yet comprehensive analysis and review of the existing literature and previous studies conducted on similar and relevant topics show that this aspect requires a better understanding. This calls for additional concern when it comes to the Middle East and specifically within the rapidly changing and fast growing law structure of Iraq. In particular, KRI as a vital economic subject of Iraq has a critical role. Hence, this paper gathers

an array of relevant information from various reliable sources to clarify and note the factors that are most influential and notwithstanding in this topic.

2.2. RESEARCH OBJECTIVES AND QUESTIONS

The emergence of various studies upon the subject of PSAs, gas, and oil-related agreements, and other secondary data of this research has led to a number of matters, from which this research submerges specific questions and objectives; law structure of Iraq has been changing over the past years on a fast-pace. This raises the question of whether these changes consist of adequate clauses and measures for agreements, international agreements, PSAs and, specifically for Iraqi parties. Oil and gas contracts and what is necessary for such agreements? And how is KRG improving in relation to the aforementioned matters?

The goal is to create a better understanding of the phenomenon within the aspects of International and Domestic Law of Iraq in regard to the PSA and other forms of international contracts that are majorly in coordination with gas and oil agreements. In addition, this research endeavors to show the importance of KRI as an important economical subject of Iraqi federal government on this matter. Therefore, an extensive and thorough investigation of the various aspects of this topic is deemed necessary. This research is done to address the following questions:

1. Whether the PSAs signed between KRG and IOCs are legitimate or not under constitutional laws of Iraq?
2. What are the remedial and legal consequences of signed PSAs?
3. How can the common occurring disputes around the subject be identified?

Next section of this study will tend to open the disputes upon the matter of legitimacy. Hence, answering the research questions within the aspect of legal terms and issues are presented in the following chapter of this thesis. Several views and articles are drawn from the existing literature to shine light upon this complex, sophisticated and yet vital matter that concerns not only scholars of the field, but authorities, and all other parties involved including the nation of Iraq and particularly within the KRI located in North East part of Iraqi borders.

3. CHAPTER REGULATION OF OIL AND GAS SECTOR

3.1. OIL HISTORY IN IRAQ

Oil was discovered in Iraq at the beginning of the twentieth century and the process of exploration, as well as production, started via both nationalization and privatization. At the very beginning, an association attributed to global oil companies titled in 1911, the Turkish Petroleum Company (TPC) (later becoming the Iraq Petroleum Company (IPC)) was established and solidification of foreign involvement (British and German) in the extraction of Middle Eastern oil.³

Over the course of last century, the national interests of Middle Eastern governments were deviated towards the interests of foreign IOCs. This linkage has led the IOCs and their involvement to grow in the region of Persian Gulf.⁴ The struggle between Iraq and Western IOCs has been constant since 1950s and this long string in the history is deeply rooted as the domination of West on Iraqi national oil sources was restricted in the 70s through the nationalization movement.⁵ British control of Iraq came to an end with a 1958 coup.⁶ The government issued demands on the IPC, and in December 1961, passed the law on Iraq's first national petroleum law: Public Law 80.⁷ Public Law 80 called for the expropriation of all oil field concessions held by the IPC, except those oil fields that were currently in production.⁸ Due to Public Law 80, INOC (Iraq National Oil Company) was established⁹. During the 1960s the government passed laws in this regard for consolidation of control upon Iraqi oil resources.¹⁰ Several issuances were made (e.g. Public Law 97, and 123) and based on them, the full authority over INOC were titled to the government of Iraq. This movement was carried on to the next decade. In the 1970s and the war has led the production of oil to a significant decrease¹¹. More recently, the sanctions conducted by the UN in the 1990s increased the

³ Blanchard, Christopher. "Iraq: Oil and Gas Legislation, Revenue Sharing, and U.S. Policy," *Congressional Research Service Report for Congress*, October: pp.12, (2007) .. Muttitt, Greg. "Production Sharing Agreements - Mortgaging Iraq's Oil Wealth," *ArabStudies Quarterly*, June(2006).

⁴Valérie Marcel, *Oil Titans: National Oil Companies in the Middle East*, Chatham House, pp.16, (2006).

⁵ *ibid*

⁶ Joe Stork, *Middle East Oil and the Energy Crisis*, Monthly Review Press, pp.105, (1975).

⁷Valérie Marcel, *Oil Titans: National Oil Companies in the Middle East*, Chatham House, pp.24-27, (2006).

⁸ *ibid*

⁹ Joe Stork, *Middle East Oil and the Energy Crisis*, Monthly Review Press, pp.105, (1975).

¹⁰ *ibid*

¹¹Waleed al-Nuwaiser, *The Oil Market in Post-war Iraq*, *Global Financial Sector Development*, British Institute of International & Comparative Law, pp.343, (2005).

production due to oil-for-food program of the UN. Although, the current level of production is less than that period¹².

The Iraqi Oil industry has faced hard times due to war, misgovernment, poor technology and lack of investment.¹³ U.S. government agencies along related international entities estimate the investment needed for modernization and reconstruction of oil infrastructure in Iraq could exceed 100 billion U.S. Dollars in long term.¹⁴

Oil and Gas Journal claims Iraq has the third-largest potential oil reserves with 115 billion oil barrels discovered mainly in the governorate of Al Basrah in south and governorate of Al Tamim in the north.¹⁵ On the other hand, there are undiscovered oil reserves in Iraq with the estimated amount varying from 45 to 214 billion barrels.¹⁶ Iraq is an oil-dependent country, in which more than 90 percent of Iraqi governmental revenue derives from oil exportation.¹⁷

For more than forty years, Iraq had been struggling with internal and external obstructions regarding oil production. External issues such as international sanctions and wars along with internal complications such as nationalizations and terrorist group of ISIS, These problems hindered the progress in Iraqi oil industry. These days, Iraq is attempting to penetrate and retake its global oil market share by increasing its production rate.¹⁸ At the moment, Iraq stands on the second position of oil producers within Organization of the Petroleum Exporting Countries (OPEC) with producing more than 3.5 million barrels per day in 2016 ¹⁹and more

¹²Iraq: Energy Data, Statistics And Analysis, Country Analysis Briefs, Energy Information Administration' (2006) <<http://www.eia.doe.gov/emeu/cabs/Iraq/pdf.pdf>> accessed 25 May 2018.

¹³ Blanchard, Christopher. "Iraq: Oil and Gas Legislation, Revenue Sharing, and U.S., 2007. Policy," *Congressional Research Service Report for Congress*, October: pp.18

¹⁴Behn, Daniel. "Sharing Iraq's Oil: Analyzing Production-Sharing Contracts Under the Final Draft Petroleum Law," Centre for Energy, Petroleum, and Mineral Law and Policy –Dundee University. Working paper, pp5 ,September 2007.

¹⁵Ogj.com. (2018). *Sustainable supply from Saudi Arabia, Iraq: Oil reserves or politics?*. [online] Available at: <https://www.ogj.com/articles/print/volume-102/issue-14/general-interest/sustainable-supply-from-saudi-arabia-iraq-oil-reserves-or-politics.html> [Accessed 10 Feb. 2018].

¹⁶ Blanchard, Christopher. "Iraq: Oil and Gas Legislation, Revenue Sharing, and U.S. Policy," *Congressional Research Service Report for Congress*, October: pp. 18,2007.

Newswire.ca. (2018). *IHS Launches First Detailed Report on Iraq's Oil Reserves and Production Potential Since Start of Iraq Conflict*. [online] Available at: <https://www.newswire.ca/news-releases/ihs-launches-first-detailed-report-on-iraqs-oil-reserves-and-production-potential-since-start-of-iraq-conflict-533674181.html> [Accessed 10 Feb. 2018].

¹⁷ Indexmundi.com. (2018). *Iraq Economy Profile 2018*. [online] Available at: https://www.indexmundi.com/iraq/economy_profile.html [Accessed 19 Feb. 2018].

¹⁸ Six, S. and L. Van Geuns. *The Iraqi Oil Surge in a New Energy Landscape*. Clingendael International Energy Programme. The Hague: The Netherlands, pp.4, 2014.

¹⁹ OPEC (Organization of Petroleum Exporting Countries). 2016. *Annual Statistical Bulletin*. Vienna: Public Relations and Information Department in OPEC

than 4.5 million in 2017.²⁰ Despite the fact that Iraq had an abundant amount of gas reserves, the obtained revenue from gas production is insignificant. Practically, 40 percent of produced gas can be stored and a great portion of it should be re-injected to oil fields in order to facilitate the crude oil extraction.²¹

3.2 HISTORY OF IRAQI OIL LAW:

Development in Iraqi oil industry calls for a solid and unambiguous law that yields obligations towards appropriate management. A legal fragment referred to as the *Iraq Hydrocarbon Law* was submitted to Iraqi Council of Representatives in 2007. In the light of this law, the *Draft of Iraq Oil and Gas Law* was approved, which led to the organization of Iraqi Ministry of Oil, since 2007. The other outcomes of the draft were the restructuring of Iraq National Oil Company and specifying policies regarding how revenue should be shared.²²

One of the most salient parts of the draft was the proposal of Federal Oil and Gas Council (FOGC) establishment. FOGC as the legally strongest entity towards Iraqi Oil has the power to decide about developing plans regarding Iraqi oil. The proposed FOGC also is authorized to scrutinize hydrocarbon legislation and policies and decree what is necessary and relevant. The Prime Minister or an authorized person by proxy would be the head of FOGC accompanied by executives and ministers of related sectors.²³

The Draft of Iraq Hydrocarbon Law also outlined instructions for Iraqi Ministry of Oil. According to Draft, Ministry of Oil is responsible for devising legislation and policies regarding Iraqi Oil in accordance with FOGC. Other assigned responsibilities are to verify the accuracy of operational documents of Iraqi oil and trace the governmental revenue out of hydrocarbon industry.²⁴

²⁰Mostafa, M. (2018). *Iraq's oil production up 36% in 2017: official*. [online] Iraq news, the latest Iraq news by Iraqi News. Available at: <https://www.iraqinews.com/business-iraqi-dinar/iraqs-oil-production-36-2017-official/> [Accessed 20 Feb. 2018].

²¹Zedalis, R. J. *The Legal Dimensions of Oil and Gas in Iraq*. Cambridge: Cambridge University Press, pp.60, 2009.

²² Blanchard, Christopher. 2007. "Iraq: Oil and Gas Legislation, Revenue Sharing, and U.S. Policy," *Congressional Research Service Report for Congress*, October: pp. 19
M. Pugh; N. Cooper; M. Turner (4 January 2016). *Whose Peace? Critical Perspectives on the Political Economy of Peacebuilding*. Palgrave Macmillan UK. pp. 59.

²³ Blanchard, Christopher. "Iraq: Oil and Gas Legislation, Revenue Sharing, and U.S. 2007 Policy," *Congressional Research Service Report for Congress*, October: pp. 16. , Behn, Daniel. "Sharing Iraq's Oil: Analyzing Production-Sharing Contracts under the Final Draft Petroleum Law," Centre for Energy, Petroleum, and Mineral Law and Policy –Dundee University. Working paper, pp 6, September.2007.

²⁴ Blanchard, Christopher. "Iraq: Oil and Gas Legislation, Revenue Sharing, and U.S. Policy," *Congressional Research Service Report for Congress*, October: pp. 12,. 2007., Behn, Daniel. "Sharing Iraq's Oil: Analyzing Production-Sharing Contracts Under the Final Draft Petroleum Law," Centre for Energy,

The proposed draft defines INOC as a governmental entity but with independent directors for managing the organization through selling the produced crude oil in the international market in a profitable manner. INOC is authorized to involve in the international oil industry and expand respective business all over Iraq via establishing and organizing subsidiaries. Despite the fact, all the process should be approved by the federal government. In other words, the law has been established and approved. However, this does not mean that the federal government will be less involved.

3.3. OIL-RELATED CONSEQUENCES:

Minister of natural resources in KRG claims every single person in Kurdistan region of Iraq desires independence from the federal government while the officials of KRG seek for economic independence at the moment.²⁵

KRI has earned its autonomy in 1972 with the support of United States with the collaboration of France and United Kingdom. They have fought with Iraqi government through their respective armed forces formed by Kurdistan Democratic Party and Patriotic Union of Kurdistan.²⁶

Manifestly, Central government of Iraq tries its best to retain the bond between federal government and the KRG. Iraqi government wants to restrict KRG's economic independence through Iraqi constitutional law, thus it has declared all the signed PSAs that their quantity exceeds 50, that all had been signed after the issuance of the Iraqi constitution in 2005, except three of which were signed in 2004, namely the contract with DNO of Norway in Erbil, the contract with Genel Energy of Turkey in TaqTaq and the other contract with DNO in Tauki, are unconstitutional²⁷. In addition, Iraqi officials warned international oil companies regarding signing contracts with KRG's officials, asserting any agreement devoid of federal participation would be the violation of Iraqi law as well as international standard.²⁸ In this volatile situation of Iraq, Iraqi government fears that KRG known as a separatist region obtain full authority over

Petroleum, and Mineral Law and Policy –Dundee University. Working paper, pp.6 ,September.2007.,Council of Ministers: Oil and Energy Committee. *Draft Iraq Oil and Gas Law*. Baghdad, Iraq.2007.

²⁵U.S. (2018). *Exclusive: How Kurdistan bypassed Baghdad and sold oil on global...* [online] Available at: <https://www.reuters.com/article/us-iraq-kurdistan-oil/exclusive-how-kurdistan-bypassed-baghdad-and-sold-oil-on-global-markets-idUSKCN0T61HH20151117> [Accessed 23 Feb. 2018].

²⁶ Anon, (2018). [online] Available at: <https://www.opendemocracy.net/arab-awakening/hawre-hasan-hama/consequencesof-politicized-forces-in-kurdistan-region-of-iraq> [Accessed 22 Feb. 2018].

²⁷Ahmad, H. F. *The Constitutionality of the Kurdistan Regional Government Petroleum Contracts under the Iraqi Constitution Law*, pp7 , (2005).

²⁸Sputniknews.com. (2018). *Iraqi Oil Ministry Warns Foreign Companies Against Contracts With Kurdistan*. [online] Available at: <https://sputniknews.com/middleeast/201710191058372815-iraq-kurdistan-oil/> [Accessed 25 Feb. 2018].

existing oil fields to trigger the balkanization of Iraq. ²⁹Thus, the future of oil sector in KRG is in hands of Iraq government at the moment.

Development in Iraq's oil and the natural gas sector is continuing, in spite of constant delays in agreeing to the organic compound sector and distribution legislation to outline new terms for the management of the country's important oil and natural gas resources. The key point of oil and gas revenue for the Iraqi economy is widely known by Iraqis, and most teams settle for the requirement to form new legal and policy guidance for the advancement of the country's oil and natural gas resources. However, Iraq's Council of Representatives (parliament) has not taken an initiative to think about suggested legislation to this date. This is due to progressing political debate.

Iraqi critics What's more supporters of Different suggested results vary determinedly on an amount for crucial matters, including the legitimate part also forces from federal and regional authorities in managing oil and gas development; the terms and extent of potential foreign participation within the oil and gas sectors; and suggested formulas and mechanisms for equitably sharing oil and gas revenue. Concurrent, a related debate on the managerial status forth city of Kirkuk What's more, suggested amendments on articles for Iraq's constitution that frameworks federal and regional oil and gas rights also are extremely contentious.³⁰

The adoption of an effective regime for petroleum development is strongly influenced by the geological prospects of a country and the technological and financial resources needed for exploration and production of hydrocarbons.³¹ By requiring substantial capital investments and sophisticated technical skills, petroleum developments are often beyond the resources possessed by most governments but are likely to be provided by experienced multinational oil companies³². Majority of estimates place proven Iraqi oil reserves in the neighborhood of 115-116 billion barrels (bbl)³³.Alongside, roughly additional reserves of 45-100bbl located in the unexplored western and southern deserts³⁴.Between 70-80 per cent of the proven reserves are found in oil fields in the south-eastern portion of the country, an area under Shia control. Approximately 20 percent of proven reserves lie in Kurdish dominated northern Iraq, near Kirkuk, Mosul, and Khanaqin. At present, the south-eastern reserves are tapped through

²⁹Martin Chulov. "Kurdish forces abandon long-held lands to Iraqi army and Shia fighters". *The Guardian*, 17 October 2017

³⁰Blanchard C.,Iraq Oil and Gas Legislation, Revenue Sharing, and U.S. Policy, Congressional Research Service, USA,(2009)

³¹ Kamal Hossain, *Law and Policy in Petroleum Development* ,London and New York, (1979); p. 64

³²Ibid, p.58

³³Energy Information Administration, 2007

³⁴Razzak, Weshah, "Iraq: Private ownership of oil and the quest for democracy," MPRA Paper 54, University Library of Munich, Germany, pp7 ,2006.

production at the major north and south Rumaila fields, as well as the several smaller Subha, Luhais, West Qurna and Az-Zubair fields. In terms of Iraq's total daily production of roughly 2+ million barrels (mbl), these fields account for between 1.5-1.9mbl per day. The Kirkuk and other Kurdish Iraqi fields presently produce at a substantially lower level of about 200,000 barrels per day.³⁵

3.4 NATIONALIZATION:

In Oil and Gas contracts between International Oil Companies (IOC) and Governments, a considerable amount of governments are at the top of the pyramid of power; these governments can decide about the fate of every concession granted by IOC. In a worst-case scenario, a certain government is able to call off the entire project as well as expelling IOC from respective country. Additionally, Governments are capable of claiming for financial reparation due to the cancelation of the contract; this case occurred in several countries in the 1970s.³⁶

Nationalization of assets is the other salient topic in political debates; companies are obliged to fulfill the government expectations regarding governmental revenue and time limits. However, according to the past records, the results of negotiations over the nationalization of oil industry can be regulations, and in addition to bilateral compromise that exists between investors and the respective government, which they work for/with.

3.5 REGULATION:

Governments have manipulated companies by using their power as the ruler to change terms in their contracts to boost their profit; this case is accomplished through several ways. Some governments try to make new law and devalue the existing contract and put companies into pressure to make new deals with them. This case occurred in Venezuela, while respective government presented a new set of domestic regulations to IOC and forced them to comply accordingly. The only shelters to seek for IOCs and respective investors are whether to refer to existing contract or file an international arbitration. However, it is worthy of mention that only nominal number of international arbitrations have been filled thus far. Evidently, governments

³⁵Official Energy Statistics, 2008; 2009

³⁶Global Arbitration Review, 15 August 2008

and investors often find an internal solution rather than taking the debate to international arbitration.³⁷

3.6 NEGOTIATION:

The common compromise from investor's side occurs on yielding the asset to government and in return, they expect to have extensions to the deadline of their contracts. These types of settlements can be initiated by either investors or the respective government. Cases similar to aforementioned situations happened in UAE and Libya for instance. One wise move to take for investors is to file an international arbitration, consequently to have something advantageous in hand for proceeding further in biased negotiation with the government. Ecuador case in 2008 is an eligible example for the mentioned situation. Two IOC engaged in a dispute with Ecuadorian government over the same windfall tax and lodged a claim to related international entities but before any serious legal procedures take place, the disputes were settled through yielding valuable assets to the Ecuadorian government. In general, when the host government by its own logic senses that the governmental share in any project is not sufficient they will initiate a negotiation to increase their respective share. Governments concerns about costs in long-term as well as delays in projects, which will postpone their revenue consequently.

3.7. APPLICATION:

The thirst of the investors in hydrocarbon industry for high potential lands yields in increase the expectation of governments about the rate of profitability of oil projects. Thus, there is a growing trend towards raising governmental share in concession auctions. In countries such as Nigeria, Libya, India, and Algeria, auctions were held over high potential lands with bids including a high level of governmental share. In some cases, a rise in governmental share occurs through prior agreement with the investor. However, in the other probable situation, governments present the new set of domestic rules to companies. In the aforementioned case, contracts with stabilization clauses as an assurance for foreign investments can play a significant role.³⁸

³⁷ Peter Cameron, 'Contract stability in the petroleum industry: Changing the rules and the consequences', Middle East Economic Survey (vol XLIX, No 22, 28 May 2007).

³⁸ Kamal Hossain, Law and Policy in Petroleum Development ,London and New York, (1979)

3.8 DEFENSE FOR INVESTORS IN DEVELOPING COUNTRIES:

The firmness of an oil project in long run requires solid and advanced 'stabilization clauses' in the respective contract. Stabilization clause or ex-called 'freezing' is a clause capable of hindering the impact of further legal changes in a host country. For instance, if one PSA declares that the ruling law for this project shall be the one was existed in the time of undertaking the agreement; this contract had employed a stabilization clause for the sake of virtual assurance in unpredictable future of domestic law ahead of the project. Evidently, stabilization clause is not effective enough to restrain the desired and agreed legal condition for the project. In reality, what has been occurred is that governments were able to seize companies' assets and stabilization clauses in contracts were ineffective. Thus, investors sought for a different solution and employed a different type of clause called 'balancing' or 'equilibrium'. The reason behind utilizing balancing clauses in PSA contracts was that they were effective to restrain the economic status of the agreement. Equilibrium clauses attempt to prevent the impact of changes in economic perspective instead of trying to hold the domestic ruling law not to be changed. Hence, after determining a new set of laws by the government, these clauses seek for an economic position that used to be (status quo ante) in the time of contract execution.³⁹

The most important aspect of any stabilization clause for an investor is stability in tax regime which is more straightforward to maneuver for defense in time of legal alternation. The recent case of one IOC versus Peru government testifies the mentioned state, in which the IOC claimed for a protection against the impact of unilateral changes by Peru government regarding tax regime. In this case, the international deemed the World Bank Group (ICSID) as the assigned arbitral tribunal, pondered upon the level of impact generated from the alternation of laws in the host country on both sides of contracts. Manifestly, tax stabilization has its respective limitations and an interpretation of the law against the investors is possible if the impact of legal alternation is not senselessly outrageous.

³⁹ Peter Cameron, 'Contract stability in the petroleum industry: Changing the rules and the consequences', Middle East Economic Survey (vol XLIX, No 22, 28 May 2007).

3.9 THE LEGITIMACY OF SIGNED OIL CONTRACTS IN KRG:

In order to assess the legitimacy of recently executed contracts with administrators of Kurdistan Regional Government (KRG), two categories of constitutional law require further scrutiny. Nevertheless, it is worthy to mention prior to proceeding with the legal assessment that article 1 of Iraqi constitution emphasizes on the unity of Iraq by describing Iraq as a single federal state, which is a fully sovereign state. This constitution functions as a consolidator and guarantees the unity within entire Iraq. Alongside the first article of the Iraqi constitution, article 109 restates the importance of unity by obliging the federal administrators to protect independent Iraq as a single integrated democratic state.⁴⁰

The most related categories of Iraqi constitutional law to the recent hydrocarbon contracts in KRG are articles 110,114 and 115 which address the power distribution in general manner and articles 111 and 112 that are most specified laws regarding governing Iraqi oil and gas.

The Iraqi constitution describes clearly different types of power distribution and their respective principles of authorization. The constitution differentiates between the full and exclusive mandate of federal government, those shared power by federal and the regional governments and the assigned mandate for those governorates with lack of organization and regional governing system.

The exclusive power of federal government in specified areas is outlined in article 110 of the Iraqi constitution. Article 110 itemizes the fields that federal government has absolute power for decision making in those. Fields such as procedures regarding national security, a trend of foreign policymaking, policy employed for international trades and strategies towards treaties negotiations; supervision over citizenship concerns as well as media and mail; administration of water issues nationally and globally; and defining of governmental revenue policy and determining commercial policies as well as its respective regulation. Article 110 does not assign any exclusive dominance of federal government over oil and gas issues. Article 114 of Iraq's constitution clarifies the domains that federal and regional governments share the power of governance.⁴¹

The mentioned domains are entirely clear and narrow; mandate to organize customs policy without defining them initially; control of Iraqi electricity; devising environmental regulations alongside, "development and general planning policies; health and educational policy making;

⁴⁰ Sharif, S. K. ,Production Sharing Contracts of Oil and Gas in Kurdistan Region of Iraq (Doctoral dissertation, Kulliyah of Laws, International Islamic University Malaysia), (2014).

⁴¹ Kelly, M. J., the Kurdish regional constitution within the framework of the Iraqi federal constitution: a struggle for sovereignty, oil, ethnic identity, and the prospects for a reverse supremacy clause, pp.728,(2010).

and distribution of water. Once more, there is no statement addressing the authority over Iraqi oil and gas shared between federal and regional governments.

Article 115 states crucial matters about the existence as well as the delegation of the remaining powers. Article 115 consists of two sentences as pillars of this piece of law. The first sentence declares that all the authorities, who are not introduced as exclusive to the federal government in article 110 are assigned to ruling members of regions as well as those governorates devoid of organized governing body.

The second sentence prioritizes the delegated power as priority pertains to regional officials and administrators of governorates when it comes to shared powers. Therefore, regions and governorates can rule independently regarding the matters mentioned in article 14 and federal government acts inferiorly in these fields. It is worthy of mention that according to articles regarding delegation of power (article 110,114 and 115), there is no statement clarifying governing power over oil and gas is whether exclusively for the federal government or it is a shared one. The Iraqi constitution has two articles exclusively explain the issues around handling oil and gas in Iraq. The most important declaration of these provisions is that all the reserves in Iraqi soil regardless of the respective region or governorate, are owned by all the people of Iraq.⁴²

3.10 THE ESSENCE OF OIL AND GAS POWERS IN IRAQ:

As mentioned before, Iraqi constitution provides articles concerning governance of oil and gas and its respective regional development. Despite the fact that there are uncomplicated statements enlightening some matters, some vague part of these provisions makes the clear interpretations almost impossible.

In article 112, the management of extracted oil from present fields is assigned to federal authorities. There are debates over the range of management and the definition of present fields of oil.

Some experts believe that to define management in this article, it should be interpreted along with "extracted oil". Thus, management will be defined as organizing and supervision over extracted oil and it does not comprise activities involved with contracting and production of oil in order to have extracted oil to be managed by the federal government.⁴³ However, according

⁴² Article 110,114 and 115 Iraqi Constitutional Law (2005)

⁴³Omar A. M. El Joumayle (2017): Oil production and abrupt institutional change: the multi-cyclic Hubbert model and the case of Iraq, Contemporary Arab Affairs, DOI: 10.1080/17550912.2017.1302059

to article 112, the task of management designated to central government should be practiced with the collaboration of sub-national governments of oil-producing regions.

The usage of “present fields” has yielded to contradictory interpretations. The federal government believes that present fields in article 112 refer to all oil fields regardless of status; being discovered or undiscovered; under the production process or untouched. Thus, the central government claims for having the right of intervention in all the existing oil fields in the present and the future⁴⁴. According to James Crawford⁴⁵, the present fields should be defined according to the collective meaning of the sentence that is employed in it. Thus, when the sentence mentions the oil extracted from present fields, it means the present fields that are already under the process of production and other oil fields with different status cannot inhere in the phrase "present fields".⁴⁶

In Article 112 of the Iraqi constitution, it is clearly explained that sub-national officials of oil-producing regions should collaborate with federal government to devise strategic policies regarding the development of Iraqi revenue gained through oil and gas reserves. The aforementioned statement restricts the producing regional officials to act independently towards contracting with IOCs as the involvement of central government is compulsory. Additionally, article 112 clearly declares that non-producing regions do not have any active role regarding neither management nor policy-making towards oil and gas issues. However, according to article 111, non-producing regions have the right to seek for oil revenue as it belongs to all Iraqi people.

The Iraqi oil is owned by all Iraqi people can be interpreted as non-producing regions have right over the fate of oil reserves. Actually, this interpretation can be taken if we consider article 111 solely. The mentioned interpretation would be problematic regarding oil reserves management due to the extreme difficulty of coordinating the collective consent of all Iraqi people over every single issue of the Iraqi oil. However, the article 112 clarifies the exact meaning behind the article 111 with enlightening about the fate of revenue earned from selling Iraqi oil. Article 112 suggests that the collected revenue of Iraqi oil should distribute proportionally between all the Iraqi people to provide the balanced development throughout entire Iraq.

⁴⁴ O'Sullivan, M. L. *Iraqi Politics and Implications for Oil and Energy*. Harvard Kennedy School. Cambridge: Belfer Center for Science and International Affairs, pp10, 2011

⁴⁵ Crawford J, ` *The Authority of the Kurdistan Regional Government over Oil and Gas Under the Constitution of Iraq*, pp5, (2008)

⁴⁶ Article 112 Iraqi Constitutional Law (2005)

The other debatable interpretation towards article 111 is that since this provision states the ownership of Iraqi oil is assigned to all Iraqis, the management of oil should be in hands of an entity that has authority over all the Iraqis and it means federal government. Although article 111 does not vest the power over oil and gas reserves neither to central nor sub-central governments, the lack of clarity towards the mentioned ownership in respective article yields to contradiction over interpretations as well as a legal excuse for the central government to intervene to every issue regarding oil reserves. The sudden and unpredictable institutional changes due to complicating political environment of Iraq were the major reason for hindered progress despite the great potential in Iraqi oil sector.⁴⁷ The aforementioned analysis has consistency with the point of view; Sullivan explains the lack of consistent policies of central and sub-central governments regarding oil reserves has created fragmentation in development trend of the oil sector and consequently Iraq's economy. In addition, further adds that the generated fragmentation is derived from devoid of pragmatism in officials' approach and even the recent upward trend of oil production has not been adequate to resolve the disintegration of Iraqi politics and economics. The increase in oil production rate in a volatile environment of Iraqi politics can act like a double-edged sword, whether a solution to a long existed problem or a catalyst for balkanization. Thus, internal unification of ruling entities is fundamentally required for the development of oil industry. ⁴⁸

⁴⁷Omar A. M. El Joumayle (2017): Oil production and abrupt institutional change: the multi-cyclic Hubbert model and the case of Iraq, *Contemporary Arab Affairs*, DOI: 10.1080/17550912.2017.1302059 , Article 111 and 112 Iraqi Constitutional Law (2005)

⁴⁸ O'Sullivan, M. L. *Iraqi Politics and Implications for Oil and Energy*. Harvard Kennedy School. Cambridge: Belfer Center for Science and International Affairs, pp 12,2011

3.11 THE PRODUCT SHARING AGREEMENT (PSA):

The governments of countries enjoying prosperous oil and gas fields have been signing different types of contracts to attract foreign and domestic investment as well as the technology to be able to develop their respective petroleum industry. The signed contracts have been majorly concerning the matters of exploration along with the development of oil and gas reserves. In recent decades, the most common type of contract for the mentioned matters has been Product Sharing Agreement (PSA). PSA, in general, is a type of contract that the host state or government continues to possess the petroleum reserves while the contractor whether as a mere investor or combination of investor and operator is compensated for cost recovery and profit accordingly.⁴⁹

The most host governments of oil and gas resources have found PSA as a great substitution of classic concession, which was common back in the 1960s. The reason underlying the popularization of PSAs is that host governments have found this type of contract as a reliable instrument to gain what they demand from exploration and development of their respective petroleum reserves.

Despite the fact that there are debates about the first signed PSA, probably the best nominee for this matter is the one occurred in the 1960s after the nationalization of assets employed by a Dutch oil company in Indonesia. The production-sharing agreement between the Indonesian government and the Independent Indonesian American Petroleum Association (IIAPCO) over aforementioned nationalized oil facility called PERTAMINA. After Indonesia independency from Dutch colonial center, the fresh government found the classic concession as a destructive practice and the IIAPCO PSA was signed as a reaction to strengthen Independent Indonesia's economy. The newly signed contract had two distinctive features that were new in oil industry worldwide; first was the designation of control management relating to petroleum operations to host government and second was determining crude oil as the instrument to distribute share instead of monetary payments.⁵⁰The signed PSA provided a clear scheme of cooperation as IIAPCO would be the investor and shall accept all the negative consequences regarding the capital loss, however, in return could have access to maximum 40 percent of annual oil production to recover the operating costs. Over the succeeding cost recovery, the extracted oil

⁴⁹ Muttitt, Greg. "Production Sharing Agreements - Mortgaging Iraq's Oil Wealth," *ArabStudies Quarterly*, pp.90, June. (2006).

⁵⁰ Behn, D. *Sharing Iraq's Oil: Analyzing Production-Sharing Contracts Under the Final Draft Petroleum Law*, pp.8, (2007).

would be shared in 65/35 split, which the larger proportion would be allotted to PERTAMINA as the governmental representative and smaller division would be allocated to IIAPCO.⁵¹

3.12. THE KRG MODEL PSA:

The Preliminary KRG titled PSA so-called KRG Model PSA, which is available for download in the official page of KRG titled Ministry of Resources, explains the fundamental systematic process of proposed cooperation in KRG oil and gas industry through PSA. The Model PSA offers an exploration operation with 5 years duration at first stage with the capacity to be extended to 7 years requiring negotiation for the later period. After discovery, The Model PSA proposes a contract with 20 years duration for continuing petroleum production with capacity for further negotiations regarding extensions.

According to KRG Model PSA sliding scale, IOC shall pay the government 10 percent of total Petroleum production at first place as a royalty payment for operating on a KRG oil field. Extracted crude oil and dry gas or non-associated gases (gas extracted from those fields, which are devoid of liquid petroleum) are entitled 'Export Petroleum' in Model PSA. KRG prefers to be paid with Export Petroleum rather than monetary payments.

In the Second Stage, after deducting Royal payment from Export petroleum, the residual is termed "Net Available Oil" and will be shared between IOC and KRG for cost recovery and profit assignment based on factor "R" in "Total Profit Oil" section. The assigned amount of Net Available Oil for cost recovery shall not exceed 40 percent of the total amount of Net Available Oil. The rest of Net Available Oil shall be dedicated to Total Profit Oil for sharing between contractors and KRG based on a system functioning according to ratio profits to costs so-called factor "R" in oil and gas contracts.⁵²

The distribution of Total profit oil on the basis of cumulative revenue divided by cumulative cost or so-called R factor could range between 30/70 percent division to 15/85 percent division which the larger share belongs to KRG while smaller share pertained to domestic and foreign contractors. As mentioned earlier KRG prefers to receive its respective share through produced petroleum rather than monetary payments. However, according to Model PSA, KRG is capable to obligate IOC to arrange trading procedures for KRG's share titled petroleum

⁵¹Blanchard, Christopher.2007."Iraq: Oil and Gas legislation, Revenue Sharing, and U.S.Policy," *Congressional Research Service Report for Congress*, October: pp 15.

⁵²Model Production Sharing Contract: Kurdistan Region Briangwilliams.us. (2018). *TheKrgs Model Form Of PSCThe Principal Provisions Subgroup - Oil and Gas in Iraq*. [online] Available at: <https://www.briangwilliams.us/oil-gas-in-iraq/iii-the-krqs-model-form-of-psc-the-principal-provisions-subgroup.html> [Accessed 3 Mar. 2018].

products whether this share is royalty payment or further payment as shared profit. The mentioned obligation would be applied if the IOC has an interesting network for arranging trades at the global level.

The allocated share for contractors that ranges between 15 to 30 percent of Total profit oil should be divided between foreign contractors as well as domestic ones, which is called Gross Contractors Share. Domestic contractors are KRG public companies, which accounted as KRG subsidiaries for operational and commercial purposes. The allocated share for KRG public companies is 20 percent of Gross Contractors Share according to the Model PSA. The residual 80 percent is titled Gross Foreign Contractors, which is divided into 80/20 split. The larger share of the aforementioned split is titled Foreign Contractors Net Retained while the remaining 20 percent dedicated to KRG Social Program.⁵³

3.13. THE LEGAL CONSEQUENCES OF SIGNED PSAs IN KRG

International Oil Companies (IOC), which signed Product Sharing Agreement (PSA) with KRG and they have been acting according to their contract with KRG, are dissatisfied with the trend of KRG's payments. Mentioned IOCs has provided services, which are not completely paid by KRG, thus they seek for compensations through a proceeding that could turn these PSAs to profitable projects.⁵⁴ IOCs are filing lawsuits and claiming for a remedy in order to seize Kurdish oil and gas products, which are available in reach of foreign courts' jurisdictions since these products are the only KRG's assets outside Iraq territory easily convertible to cash by these companies.⁵⁵

IOCs are trying to resolve their unsettled services rendered for KRG through targeting Kurdish oil and gas productions stored in different foreign hydrocarbon trading centers. Judicial efforts based on enforcing or collecting the reward, remedy according to final judgment or filed based on pre-judgment actions provided by attachment or garnishment could be the legal options on the table for IOCs in order to cash debts. Despite the fact that there are slight differences

⁵³Model Production Sharing Contract: Kurdistan Region Briangwilliams.us. (2018). *TheKrgs Model Form Of PSCThe Principal Provisions Subgroup - Oil and Gas in Iraq*. [online] Available at: <https://www.briangwilliams.us/oil-gas-in-iraq/iii-the-krqs-model-form-of-psc-the-principal-provisions-subgroup.html> [Accessed 3 Mar. 2018].

⁵⁴See reports of a London Court of International Arbitration award against the KRG in dispute involving Dana Gas, Pearl Petroleum, and others. Dana Gas Gets Favourable Ruling in Kurdistan Case, Pipeline Oil & Gas Magazine (6 July 2015)

⁵⁵ KRG Close to Resuming Payments to Oil Companies, Financial Tribune (23 January 2017)

between signed PSAs with KRG that their quantity exceeds 50, the foundation of these PSCs are similar and based on the existing KRG's Model PSA.⁵⁶

There are a few numbers of converging provisions within KRG model of PSA with reference to the matter of IOCs as foreign contractors in KRG titled PSAs targeting allocated produced oil and gas as KRG share located in the international market to compensate their unsettled services.⁵⁷ The most related provisions to mentioned matter are Article 20, itemizing the assets of KRG relating to a PSA signed with IOCs and Article 41, providing a list of situations which KRG would relinquish its respective sovereign immunity accordingly. These provisions along with other provisions assistive to present a better interpretation with respect to mentioned provisions will be assessed further in this text.

As a matter of consideration, it is debatable if "Article 20 – Title to Assets" determines produced oil and gas assigned to KRG according to a PSA between KRG and IOCs is a KRG's asset or not. If it is concluded based on the mentioned provision that oil and gas products are KRG's assets, consequently no other entity could claim for seizing those assets. However, there are three distinct reasons could invalidate the mentioned conclusion.

First, there are no terms in Article 20 to declare that oil and gas designated to KRG is immune from any judicial claim. As shall be interpreted from the exact text of this provision, during the development phase, the assets and instruments employed by IOCs for the purpose of operations under respective PSA shall become KRG's assets whether when all costs of operation have been recovered or when the signed PSA has finished. Whichever mentioned circumstances occur earlier the employed instruments automatically shall become KRG's assets. Moreover, it is obvious that all cost of utilized assets by IOC for the sake of conducting the promised project should be recovered by the end of the contract.

On the other hand, Article 20 states that during pre-development phase or exploration stage, all the used assets belonging to IOCs for the purpose of exploration shall remain IOCs' property or their respective outsourced entity and KRG does not have any control over them. Additionally, the same situation occurs with those instruments that IOCs lease them to conduct the project. Also important to mention that the article 20 does not apply to assets used in the operational project under PSA, which pertain to IOCs' employees as well as their respective affiliated companies.

⁵⁶ Taurus Petroleum Ltd v State Oil Company of the Ministry of Oil, Republic of Iraq, EWHC Civ 3494 (Commercial), Case No Folio(2013) 328 of 2013 (High Ct of Justice, Queen's Bench Comm Ct) (hereinafter Taurus v SOMO); Taurus v SOMO (2015)

⁵⁷ Mnr.krg.org. (2018). *PSCs SIGNED*. [online] Available at: <http://mnr.krg.org/index.php/en/the-ministry/contracts/pscs-signed> [Accessed 5 Mar. 2018].

Manifestly, the purpose of providing Article 20 in KRG Model PSA is to determine the fate of employed assets in different phases of oil and gas projects. Thus, the mentioned provision is not adequate to conclude anything concerning possible judicial actions of IOCs towards claiming for KRG designated petroleum products located in reach of foreign jurisdictions to compensate unsettled services provided by IOCs.⁵⁸

The second reason that Article 20 is not proper provision to afford immunity for KRG towards IOCs' judicial efforts in order to seize KRG designated petroleum products in foreign jurisdictions would be the range of its application to particular assets. As it explained thoroughly earlier in the text, it is completely clear that how the produced oil and gas would be divided between the contractors and KRG in accordance with KRG Model PSA. The divided petroleum products would be considered whether as royalty or profit oil designated to KRG or profit/cost oil assigned to the contractor. Thus, if the general meaning of 'asset' is considered, designated oil and gas to KRG whether as royalty or profit would be KRG's asset.⁵⁹

Evidently, Article 20 provided 'Assets' with the first letter as uppercase intentionally to address the mentioned 'Assets' to the group of terms defined in Article 1. In Article 1, a list of terms used in Model PSA along with their intended definitions is provided to avoid further ambiguity and "Assets" is one of them. Article 1 defines 'Assets' as "land, platforms pipelines, plant, equipment, machinery, wells, facilities and all other installations and structures and all Materials and Equipment". Moreover, the term 'Materials and Equipment', which again has been used with uppercase is defined in a different provision known as Article 19. In Article 19 section 1, the term "Materials and Equipment", which their respective supply procedures and provisions are contractor's responsibility is defined as any item or good required for the Petroleum Operation. Clearly, extracted oil and gas are an output of Petroleum Operation, not its requirements. Moreover, according to Article 1 and 19, the term "Assets" includes all the requirements for petroleum operation during exploration and development phase and its range of application is limited. Hence, oil and gas designated to KRG are not among the defined "Assets" and consequently, article 20 is not applicable to them.⁶⁰

The third and the last reason that invalidates providing immunity for extracting oil and gas designated to KRG against IOCs' claims in foreign courts is relevant to the aforementioned first

⁵⁸ Article 20 Iraqi Constitutional Law (2005)

⁵⁹Zedalis, R. J. Remedial actions against oil sourced from the Kurdistan Region of Iraq: issues of concern for companies claiming breach of a PSC. *The Journal of World Energy Law & Business*, 10(6), 505-519, (2017).

⁶⁰ Mills, R. M., & Sen, A. *Under the mountains: Kurdish oil and regional politics*. Oxford: Oxford Institute for Energy Studies , pp.13, (2016).

Article 1 and 20 Iraqi Constitutional Law (2005).

reason. Article 20 clearly states that in what situations the employed assets by IOC in the development phase of petroleum operation shall be accounted as KRG property. The mentioned situations that IOC should relinquish its employed assets have one similar aspect, which is the main reason for transposing the possession of assets from IOC to KRG. Whenever the cost of operations conducted by IOC in the development phase of the project has been recovered whether after deduction of royalty payment or at the end of the PSA, since IOC has been paid for its employed assets on the oil site, therefore, the ownership of those assets shall transpose to KRG.⁶¹

All things considered, the philosophy underlying the Article 20 is to decide about the fate of employed assets by IOC in the development phase of petroleum operation in a fair manner. Article 20 range of application is extremely limited and this provision should be referred when the debate is concerning the ownership of defined "Assets"

Article 41 specifies where KRG or any governmental company within KRI agrees to waive and where to seek sovereign immunity for itself as well as its respective 'assets'. Article 20 employs the term 'Assets' with upper case to address some very specific properties defined clearly in Article 1. Thus, the intentional employment of term 'assets' with lower case in Article 41 conveys the general meaning of 'assets' term. Sensibly, the asset in general means anything can be accounted as valuable including properties and instruments of oil production as well as produced oil and gas. On the aforementioned premise, it is critical to determine is it possible to claim oil and gas entitled to KRG as a remedy in any foreign Arbitration while Article 41 cancel the sovereign immunity over 'assets' belonging to KRG or any governmental subsidiary.⁶²

Article 41 provides waiver in three different types of situations, and all are worthy to mention. First of all, Article 41 provides a waiver to nullify any claim towards sovereign immunity when it comes to a category of issues called expert determinations. Article 42 specifies expert determinations as for issues regarding valuation, accounting or any other technical issue which needs an expert for mediation or arbitration and unequivocally declares that any claim for sovereign immunity toward expert determinations issues is relinquished.⁶³

Thus, Article 41 provides a waiver of sovereign immunity in accordance with expert determinations provided by Article 42. According to the exact terms of Article 42, Lawsuits

⁶¹ Kelly, M. J. The Kurdish regional constitution within the framework of the Iraqi federal constitution: a struggle for sovereignty, oil, ethnic identity, and the prospects for a reverse supremacy clause.pp.778, (2010).

⁶²Zedalis, R. J. Remedial actions against oil sourced from the Kurdistan Region of Iraq: issues of concern for companies claiming breach of a PSC. The Journal of World Energy Law & Business, 10(6), 505-519,(2017).

⁶³ Article 1 and 20 Iraqi Constitutional Law (2005).

brought for mediation or arbitration should draw in a 'dispute' which is delineated in the introduction part of the Article 42. As Mentioned Article states, the used term of dispute applies to any kind of dispute or controversy derived from or connected with the terms within the PSA or the practical activities operated under conditions of the respective PSA.⁶⁴ It is essential to determine the potential of some side agreement regarding the main PSA to structure the base of some lawsuits for mediation or arbitration.⁶⁵

The employed term of 'Connected with' can include some side agreements in the mentioned 'dispute' for a waiver, since commonly side agreements used as an explanatory complement for PSA contracts to resolve the vague parts of the main contract. Thus, the mentioned type of side agreement could be accounted as 'connected with' main PSA and have the potential for being subjected to Article 42 arbitration and consequently activate the waiver within Article 41.

The second type of situations is itemized in section b of Article 41, which is applicable for waiver of sovereign immunity. Any proceedings regarding administration of law or managerial issue which can be assistive for experts assigned for meditations or arbitrations are included in a waiver of sovereign immunity.

Manifestly, Article 41 does not include any managerial or other types of executive lawsuits in a waiver of immunity that is not for assisting arbitrations and mediations submitted to respective experts. On the premise of second types of situation, in a hypothetical situation preceding a lawsuit to claim remedy for unpaid provided services would not activate Article 41's waiver of sovereign immunity, since it is not an aiding proceeding towards determined issues, which should be submitted to an expert in Article 42. According to exact terms provided in Article 41, KRG would waive its sovereign immunity if only the proceeded lawsuit against the government is assistive for the assigned expert regarding mediations or arbitrations.⁶⁶

The Third and last category of situations that are able to activate the waiver of sovereign immunity are those proceeding efforts based on results of an expert determination, mediation, arbitration or assistive lawsuits for an expert determination. The mentioned proceeding efforts comprise remedial or preceding actions as well as any possible type of judicial decisions. However, regardless of the nature of judicial decisions, the most important attribute of a qualified proceeding for activating waiver of sovereign immunity is that it should be derived from a lawsuit under the supervision of an assigned expert concerning those fields specified in

⁶⁴ Article 41 and 42 Iraqi Constitutional Law (2005).

⁶⁵ Zedalis J. Rex, *The Legal Dimensions of Oil and Gas in Iraq Current Reality and Future Prospects*, Cambridge University Press, UK, pp.256 (2009), Muhammad, Z. I. Effectiveness of Current International Arbitration Law and Practice for Commercial Contracting Parties, in *Transnational Oil and Gas Industry*, pp.20, (2016).

⁶⁶ Article 41 and 42 Iraqi Constitutional Law (2005).

expert determinations, mediations or arbitrations. If a judicial effort does not meet the mentioned qualification, it would not be able to activate the waiver of sovereign immunity.⁶⁷

The tricky part of the term provided in section c of Article 41 is including 'pre-judgment attachment' as a judicial effort which may cause misunderstanding for further remedial proceedings (See chapter 4).

In the aforementioned situation, the waiver of sovereign immunity stated in Article 41 will be definitely activated since the aforementioned pre-judgment attachment is in accordance with expert determinations, mediations or arbitrations provided in Article 42. Thus, the result of the pre-judgment fall under the category stated in section c of article 41 and would activate the waiver of sovereign immunity and the available assets of KRG in respective foreign court's jurisdiction would be seized as the resulted reward against KRG and in favor of the plaintiff.⁶⁸

⁶⁷ Kaczorowska, A. Public international law. Routledge, Ireland, pp.620-627,(2015).

⁶⁸ Article 41 and 42 Iraqi Constitutional Law (2005).

4. CHAPTER ASSESSMENT OF LEGAL PROBLEMS

4.1. LEGITIMACY ISSUES:

In this section, legal problems and assessments upon the matter are presented in relation to the research objectives and questions. The most related categories of Iraqi constitutional law to the recent Oil and Gas contracts in KRG are articles 110,114 and 115⁶⁹ which address the power distribution in general manner and articles 111 and 112⁷⁰ that are most specified laws regarding governing Iraqi oil and gas. The Iraqi constitution describes clearly different types of power distribution and their respective principles of authorization. The constitution differentiates between the full and exclusive mandate of federal government, those shared power by federal and the regional governments and the assigned mandate for those governorates with lack of organization and regional governing system.⁷¹

The exclusive power of federal government in specified areas is outlined in article 110 of the Iraqi constitution. Article 110 itemizes the fields that federal government has absolute power for decision making in those. Fields such as procedures regarding national security, the trend of foreign policymaking, policy employed for international trades and strategies towards treaties negotiations; supervision over citizenship concerns as well as media and mail; administration of water issues nationally and globally; and defining of governmental revenue policy and determining commercial policies as well as its respective regulation.⁷²

Article 110 does not assign any exclusive dominance of federal government over oil and gas issues. Article 114 of Iraq's constitution clarifies the domains that federal and regional governments share the power of governance.⁷³ The mentioned domains are entirely clear and narrow; mandate to organize customs policy without defining them initially; control of Iraqi electricity; devising environmental regulations along with "development and general planning policies; health and educational policy making; and distribution of water. Once more, there is no expression of a provision addressing the authority over Iraqi oil and gas shared between federal and regional governments.

Article 115 states crucial matters about the existence as well as the delegation of the remaining powers. Article 115 consists of two sentences as pillars of this piece of law. The first sentence declares that all the non-stated authorities, who are not introduced as exclusive to

⁶⁹ Article 110,114 and 115 Iraqi Constitutional Law (2005)

⁷⁰ Article 111 and 112 Iraqi Constitutional Law (2005)

⁷¹Endeshaw, S. T., Lodolini, E. M., &Neri, D. Effects of untreated two-phase olive mill pomace on potted olive plantlets. *Annals of Applied Biology*, 166(3), 508-519,(2015).

⁷² Muhammad, Z. I. Effectiveness of Current International Arbitration Law and Practice for Commercial Contracting Parties, in *Transnational Oil and Gas Industry*,pp.22,(2016).

⁷³ Article 110,114 Iraqi constitutional Law 2005

the federal government in article 110 are assigned to ruling members of regions as well as those governorates devoid of organized governing body.

The second sentence prioritizes the delegated power as priority pertains to regional officials and administrators of governorates when it comes to shared powers. Therefore, regions and governorates can rule independently regarding the matters mentioned in article 14 and federal government acts inferiorly in these fields. It is worthy of mention that according to articles regarding delegation of power (article 110,114 and 115), there is no expression of provision clarifying governing power over oil and gas is whether exclusively for the federal government or it is a shared one.⁷⁴

The Iraqi constitution has two articles exclusively explain the issues around handling oil and gas in Iraq. The most important declaration of these provisions is that all the reserves in Iraqi soil regardless of the respective region or governorate, are owned by all the people of Iraq.⁷⁵

4.1.1 OIL AND GAS POWERS OF REGIONAL AUTHORITIES:

As mentioned before, Iraqi constitutional Law 2005 provides articles concerning about governance of oil and gas and its respective regional development. Despite the fact that there are uncomplicated statements enlightening some matters, some vague parts in these provisions make the clear interpretations almost impossible. In article 112, the management of extracted oil from present fields is assigned to federal authorities. There are debates over the range of management and the definition of present fields of oil.⁷⁶ Some experts believe that to define management in this article, it should be interpreted along with "extracted oil". Thus, management will be defined as organizing and supervision over extracted oil and it does not comprise activities involved contracting and production of oil in order to have extracted oil to be managed by the federal government⁷⁷. However, according to article 112, the task of management designated to central government should be practiced with the collaboration of sub-national governments of oil-producing regions.

The usage of "present fields" has yielded to contradictory interpretations. The federal government believes that present fields in article 112 refer to all oil fields regardless of status;

⁷⁴ Behn, D.. Sharing Iraq's Oil: Analyzing Production-Sharing Contracts Under the Final Draft Petroleum Law,pp.9,(2007)

⁷⁵Mills, R. M., & Sen, A. Under the mountains: Kurdish oil and regional politics. Oxford: Oxford Institute for Energy Studies,pp.37, (2016)

⁷⁶ Article 112 Iraqi constitutional Law 2005

⁷⁷Zedalis R, Oil and Gas in the Disputed Kurdish Territories Jurisprudence, Regional Minorities and Natural Resources in a Federal System, Routledge, USA & Canada, pp60., (2012)

Zedalis, R. J. Remedial actions against oil sourced from the Kurdistan Region of Iraq: issues of concern for companies claiming breach of a PSC. The Journal of World Energy Law & Business, 10(6), 505-519 (2017).

being discovered or undiscovered; under the production process or untouched. Thus, the central government claims for having the right of intervention in all the existing oil fields in the present and the future ⁷⁸. Nevertheless, according to James Crawford (2008), the present fields should be defined according to the collective meaning of the sentence that is employed in it. Thus, when the sentence mentions the oil extracted from present fields, it means the present fields that are already under the process of production and other oil fields with different status cannot inhere in the phrase "present fields".

In article 112 of the Iraqi constitution, it is clearly explained that sub-national officials of oil-producing regions should collaborate with federal government to devise strategic policies regarding the development of Iraqi revenue gained through oil and gas reserves. The aforementioned statement restricts the producing regional officials to act independently towards contracting with IOCs as the involvement of central government is compulsory.⁷⁹ Additionally, article 112 clearly declares that non-producing regions do not have any active role regarding to neither management nor policy making towards oil and gas issues. However, according to article 111, non-producing regions have the right to seek for oil revenue as it belongs to all Iraqi people.⁸⁰

The Iraqi oil is owned by all Iraqi people can be interpreted as non-producing regions have right over decided about the fate of oil reserves. Actually, this interpretation can be taken if we consider article 111 solely. The mentioned interpretation would be problematic regarding oil reserves management due to the extreme difficulty of coordinating the collective consent of all Iraqi people over every single issue of the Iraqi oil. However, the article 112 clarifies the exact meaning behind the article 111 with enlightening about the fate of revenue earned from selling Iraqi oil. Article 112 suggests that the collected revenue of Iraqi oil should be distributed proportionally between all the Iraqi people to provide the balanced development throughout entire Iraq.⁸¹

The other debatable interpretation towards article 111 is that since this provision states the ownership of Iraqi oil is assigned to all Iraqis, the management of oil should be in hands of an

⁷⁸Tas D, `Petroleum Development in the Kurdistan Region of Iraq: A struggle over Competency,pp.111, (2011).

⁷⁹Zedalis R, Oil and Gas in the Disputed Kurdish Territories Jurisprudence, Regional Minorities and Natural Resources in a Federal System, Routledge, USA & Canada, pp.65, (2012)

Mills, R. M., & Sen, A. Under the mountains: Kurdish oil and regional politics. Oxford: Oxford Institute for Energy Studies, pp.27,(2016).

⁸⁰ Article 111 and 112 Iraqi Constitutional Law (2005)

⁸¹Crawford J, The Authority of the Kurdistan Regional Government over Oil and Gas Under the Constitution of Iraq,pp.7,(2008).

entity that has authority over all the Iraqis and it means federal government⁸². Although article 111 does not vest the power over oil and gas reserves neither to central nor sub-central governments, the lack of clarity towards the mentioned ownership in respective article yields to contradiction over interpretations as well as a legal excuse for the central government to intervene to every issue regarding oil reserves.⁸³

4.2. LEGAL AND REMEDIAL CONSEQUENCES OF SIGNED PSAs:

Legal and remedial consequences of signed PSAs were declared illegal by Iraqi federal government for KRG Iraq's oil minister retaliated against a pair of companies that had signed PSAs with Kurdistan. Korea National Oil Company and OMZ of Austria, The KRG reacted to the oil ministry's punitive moves by publishing an independent formal legal opinion from James Crawford, a widely respected expert in international law at Cambridge University, that the PSAs were legally valid.⁸⁴

International Oil Companies (IOC), which signed Product Sharing Agreement (PSA) with KRG and they have been acting according to their contract with KRG, are dissatisfied with the trend of KRG's payments. Mentioned IOCs has provided services, which are not completely paid by KRG, thus they seek for compensations through a proceeding that could turn these PSCs to profitable projects.⁸⁵ IOCs are filing lawsuits and claiming for a remedy in order to seize Kurdish oil and gas products, which are available in reach of foreign courts 'or arbitrations' jurisdictions since these products are the only KRG's assets outside Iraq territory easily convertible to cash by these companies.

IOCs are trying to resolve their unsettled services rendered for KRG through targeting Kurdish oil and gas productions stored in different foreign hydrocarbon trading centers. Judicial efforts based on enforcing or collecting the reward, remedy according to final judgment or filed based on pre-judgment actions provided by attachment or garnishment could be the legal options on the table for IOCs in order to cash debts. Despite the fact that there are slight differences

⁸²Zedalis R, *Oil and Gas in the Disputed Kurdish Territories Jurisprudence, Regional Minorities and Natural Resources in a Federal System*, Routledge, USA & Canada, pp.4(2012).

⁸³ Article 111 Iraqi Constitutional Law (2005)

⁸⁴ Kurdistan Defies Iraqi Authorities On Oil Contracts' (*The Independent*, 2018) <<https://www.independent.co.uk/news/business/news/kurdistan-defies-iraqi-authorities-on-oil-contracts-780291.html>> accessed 11 June 2018.

⁸⁵Donovan, Thomas W. "Iraq's Petroleum Industry: Unsettled Issues". *Middle East Institute*.pp.29, Retrieved 23 June (2013).

between signed PSAs with KRG that their quantity exceeds 50, the foundation of these PSAs are similar and based on the existing KRG's Model PSA.⁸⁶

As previously mentioned in regard to KRG Model PSA sliding scale, IOC shall pay the government 10 percent of total Petroleum production at first place as a royalty payment for operating on a KRG oil field. Extracted crude oil and dry gas or non-associated gases (gas extracted from those fields, which are devoid of liquid petroleum) are entitled 'Export Petroleum' in Model PSA. KRG prefers to be paid with Export Petroleum rather than monetary payments.⁸⁷

In the Second Stage, after deducting Royal payment from Export petroleum, the residual is termed "Net Available Oil" and will be shared between IOC and KRG for cost recovery and profit assignment based on factor "R" in "Total Profit Oil" section. The assigned amount of Net Available Oil for cost recovery shall not exceed 40 percent of the total amount of Net Available Oil. The rest of Net Available Oil shall be dedicated to Total Profit Oil for sharing between Contractors and KRG based on a system functioning according to ratio profits to costs so-called factor "R" in oil and gas contracts.

The application of the financial system for calculating cost and profit of oil and gas contracts based on the direct measurement of profits gained from a project started in the early 1980s in oil and gas industry. While in that time, the employment of fiscal terms according to the rate of return was rare. R factors or financial systems on the basis of proportional incomes to costs have been widespread due to their simplicity regarding mathematical calculations.⁸⁸

The mentioned systems have received negative critics by host governments as well as assigned experts for determination due to their vulnerability to being manipulated. Both systems do not encourage contractors to be efficient and choose the most economical way to operate. In contrast, contractors find these systems more profitable through spending carelessly. The capacity of manipulation within these systems is not derived from employing measurements regarding profitability. While the immoderate factors involved in governmental shares combined with stage by stage variations would provide a chance of manipulation. Despite the fact that these systems are not flawless regarding manipulation, the possibility for

⁸⁶Zedalis, R. J. Remedial actions against oil sourced from the Kurdistan Region of Iraq: issues of concern for companies claiming breach of a PSC. *The Journal of World Energy Law & Business*, 10(6), 505-519. (2017)

⁸⁷Crawford J,` The Authority of the Kurdistan Regional Government over Oil and Gas Under the Constitution of Iraq,pp.12 (2008) , Donovan, Thomas W. "Iraq's Petroleum Industry: Unsettled Issues". *Middle East Institute*,pp.29, Retrieved 23 June 2013.,Muttitt, Greg. "Production Sharing Agreements - Mortgaging Iraq's Oil Wealth," *ArabStudies Quarterly*,pp.26,June. (2006)

⁸⁸Moore, C. R. Oil and gas contracts utilizing R Factors and rates of return: Theory and practice. *The Journal of World Energy Law & Business*,10(6), 471-487. doi:10.1093/jwelb/jwx021 (2017).

a significant misrepresentation not being spotted by experts is extremely low. Thus, host governments are not concerned about the employment of these fiscal systems in their PSAs since all the financial documents should be confirmed by assigned experts.⁸⁹

Systems on the basis of the rate of return or R factor are much more resistant to misrepresentation due to three distinct reasons. First, R factors employ continuous variables in calculating costs and profits while discrete or stair steps functions make the system more vulnerable to manipulation. Second, systems based on the rate of return especially R factor functions according to factors that are not responsive to costs of oil operation. Fiscal systems depending on operating costs involving production process are exposed to manipulation whereas financial systems functioning via investment for further development are less susceptible to falsification. Third and last, RoR systems operate according to functions with lower slopes in comparison with discrete functions. Thus, ROR systems do not behave extremely volatile in determining shares in relation to minor alternations of profitability determinants.

The distribution of Total profit oil on the basis of cumulative revenue divided by cumulative cost or so-called R factor could range between 30/70 percent division to 15/85 percent division which the larger share belongs to KRG while smaller share pertained to domestic and foreign contractors. As mentioned earlier KRG prefers to receive its respective share through produced petroleum rather than monetary payments. However, according to Model PSA, KRG is capable to obligate IOC to arrange trading procedures for KRG's share titled petroleum products whether this share is royalty payment or further payment as shared profit. The mentioned obligation would apply if the IOC has an interesting network for arranging trades in the global level.⁹⁰

The allocated share for contractors that ranges between 15 to 30 percent of Total profit oil should be divided between foreign contractors as well as domestic ones, which is called Gross Contractors Share. Domestic contractors are KRG public companies, which accounted as KRG subsidiaries for operational and commercial purposes. The allocated share for KRG public companies is 20 percent of Gross Contractors Share according to the Model PSA. The residual 80 percent is titled Gross Foreign Contractors, which is divided ranging between 80/20

⁸⁹Ibid, Behn, D. Sharing Iraq's Oil: Analyzing Production-Sharing Contracts Under the Final Draft Petroleum Law,pp.10,(2007)

⁹⁰Moore, C. R. Oil and gas contracts utilizing R Factors and rates of return: Theory and practice. *The Journal of World Energy Law & Business*,10(6), 471-487. doi:10.1093/jwelb/jwx021, (2017).

Crawford J,The Authority of the Kurdistan Regional Government over Oil and Gas Under the Constitution of Iraq,pp.11, (2008)

split and 60/40 split. The larger share of aforementioned split is titled Foreign Contractors Net Retained while the remaining 20 to 40 percent dedicated to KRG Social Program.⁹¹ There are a few number of converging provisions within KRG model of PSA with reference to the matter of IOCs as foreign contractors in KRG titled PSA targeting allocated produced oil and gas as KRG share located in international market to compensate their unsettled services. The most related provisions to mentioned matter are Article 20, itemizing the assets of KRG relating to a PSA signed with IOCs and Article 41, providing a list of situations which KRG would relinquish its respective sovereign immunity accordingly. These provisions along with other provisions assistive to present a better interpretation with respect to mentioned provisions will be assessed in further text.⁹²

4.2.1. ARTICLE 20: TITLE TO ASSETS

As matter of consideration, it is debatable if "Article 20 – Title to Assets" determines produced oil and gas assigned to KRG according to a PSA between KRG and IOCs is an KRG's asset or not. If it is concluded based on the mentioned provision that oil and gas products are KRG's assets and therefore to seize these assets it requires an entity from within KRG and no other. As previously mentioned, the three reasons to this matter are explained in other words as following:⁹³

Judicial claims against PSAs of oil and gas in KRG are not facing obligations in regard to the PSAs' immunity. Based on Article 20, KRG declares assets and any tools/equipment that have been used during development stages by IOCs and their PSAs that are entitled to become an asset of KRG. This can be bound to the timeframe of an individual PSA and whether finished or that the costs have been turned into balanced/profit-making. In the time of the rise of these issues, the instruments and tools that are being used by the IOCs are to be withdrawn and automatically turn into assets of KRG⁹⁴.

In contrast to the abovementioned claims, it is also stated that the assets under IOCs' pre-development phases are to remain as their assets and under their control (or outsourced by them). This borders the authority and control of KRG within early stages of a PSA that is its

⁹¹Tas D, 'Petroleum Development in the Kurdistan Region of Iraq: A struggle over Competency, pp.120 (2011).

⁹²Zedalis R, Oil and Gas in the Disputed Kurdish Territories Jurisprudence, Regional Minorities and Natural Resources in a Federal System, Routledge, USA & Canada, pp.65(2012).

⁹³Kelly, M. J. The Kurdish regional constitution within the framework of the Iraqi federal constitution: a struggle for sovereignty, oil, ethnic identity, and the prospects for a reverse supremacy clause, pp.778 (2010)

⁹⁴Zedalis J. Rex, The Legal Dimensions of Oil and Gas in Iraq Current Reality and Future Prospects, Cambridge University Press, UK, pp.232, (2009)

pre-development stage.⁹⁵ Thus, the mentioned provision is not adequate to conclude anything concerning possible judicial actions of IOCs towards claiming for KRG designated petroleum products located in reach of foreign jurisdictions to compensate unsettled services provided by IOCs.

As it is explained thoroughly earlier in the text, it is clear how the produced oil and gas would be divided between the contractors and KRG in accordance with KRG Model of PSA. The divided petroleum products would be considered whether as royalty or profit oil designated to KRG or profit/cost oil assigned to the contractor.⁹⁶

In Article 1, a list of terms used in Model PSA along with their intended definitions is provided to avoid further ambiguity and "Assets" is one of them. Article 1 defines 'Assets' as "land, platforms pipelines, plant, equipment, machinery, wells, facilities and all other installations and structures and all Materials and Equipment"⁹⁷. According to Article 1 and 19, the term "Assets" is referred to all requirements of petroleum operations during exploration and development stages. It is important to note that the range applied to these is within a limited framework. Hence, oil and gas designated to KRG are not among the defined "Assets" and henceforth, article 20 is not applicable to them.⁹⁸

The third and the last reason that invalidates providing immunity for extracting oil and gas designated to KRG against IOCs' claims in foreign arbitration tribunals. Yet, it is relevant to the aforementioned first reason. It is unambiguously stated in Article 20 that KRGs' claim towards employed assets by IOCs during the stages of development of petroleum is situational and those situations are termed. The main reason for transposing the possession of assets from IOC to KRG is due to the cost of operations that is being undertaken by a or a group of IOCs and royalty payments has been deduced during development and/or during ending/completion stages of PSA and when IOC has received its payment based on the operation and therefore the possession and ownership of assets are transported to KRG⁹⁹ Article 20 range of application is extremely limited and this provision should be referred when the debate is concerning the ownership of defined "Assets".

⁹⁵ Article 20 Iraqi Constitutional Law (2005)

⁹⁶ Zedalis, R. J. Claims against Iraqi oil and gas. CUP, Cambridge Google Scholar, PP.118, (2010)

⁹⁷ Kelly, M. J. The Kurdish regional constitution within the framework of the Iraqi federal constitution: a struggle for sovereignty, oil, ethnic identity, and the prospects for a reverse supremacy clause, pp.272 (2010)

⁹⁸ Article 1, 19 and 20 Iraqi Constitutional Law (2005)

⁹⁹ Zedalis, R. J. Claims against Iraqi oil and gas. CUP, Cambridge Google Scholar, pp.124 (2010), Kelly, M. J. The Kurdish regional constitution within the framework of the Iraqi federal constitution: a struggle for sovereignty, oil, ethnic identity, and the prospects for a reverse supremacy clause, PP.120, (2010).

4.2.2 ARTICLE 41: WAIVER OF SOVEREIGN IMMUNITY:

Article 41 specifies where KRG or any governmental company within KRI agrees to waive and where to seek sovereign immunity for itself as well as its respective 'assets'. Article 20 employs the term 'Assets' with upper case to address some very specific properties defined clearly in Article 1. In the light of this premise, determination of the possibility of a gas and oil claim that is against KRG and if it can be redeemed in a foreign arbitration tribunal is to be deemed necessary. This is while Article 41 strictly limits the sovereign immunity over the belongings of KRG as well as other governmental subsidies.¹⁰⁰

Article 41 provides waiver in three different types of situations. Initially, Article 41 provides a waiver to nullify any claim towards sovereign immunity when it comes to a category of issues called expert determinations.¹⁰¹

Based on this, to understand and measure the potential of side-agreements in regard to PSA structure with its relation to mediation or arbitration clauses.¹⁰²

In addition, Article 41 does not include managerial or executive lawsuits in a waiver of immunity that are not of aid for the arbitrations and mediations that have been submitted to respective experts. According to exact terms provided in Article 41, KRG would waive its sovereign immunity if only the proceeded lawsuit against the government is assistive for the assigned expert regarding mediations or arbitrations.¹⁰³

Lastly, the expert or experts and their determination on the proceeding cases in regard to mediation, arbitration and/or assistive lawsuits can enable the waiver of sovereign immunity to be activated and initiate its process. The mentioned proceeding efforts comprise remedial or preceding actions as well as any possible type of judicial decisions. This is while, the decision-making process is extremely dependent on the qualifications of the proceedings, which have been conducted under direct supervision and control of an expert within the area of that specific case (arbitration, mediation, and assistive). If a judicial effort does not meet the mentioned qualification, it would not be able to activate the waiver of sovereign immunity.¹⁰⁴

¹⁰⁰Zedalis, R. J. Remedial actions against oil sourced from the Kurdistan Region of Iraq: issues of concern for companies claiming breach of a PSC. *The Journal of World Energy Law & Business*, 10(6), pp.,505-519. (2017)

¹⁰¹ Article 41 and 42 Iraqi Constitutional Law (2005)

¹⁰² Kaczorowska, A Public international law. Routledge. (2015).

¹⁰³ Muhammad, Z. I. Effectiveness of Current International Arbitration Law and Practice for Commercial Contracting Parties, in *Transnational Oil and Gas Industry*, pp.25(2016)

Zedalis, R. J. Remedial actions against oil sourced from the Kurdistan Region of Iraq: issues of concern for companies claiming breach of a PSC. *The Journal of World Energy Law & Business*, 10(6), 505-519. (2017)

¹⁰⁴Zedalis, R. J. Remedial actions against oil sourced from the Kurdistan Region of Iraq: issues of concern for companies claiming breach of a PSC. *The Journal of World Energy Law & Business*, 10(6), 505-519. (2017)

In contrast, analysis of a hypothetical situation, in where an IOC proceeded a pre-judgment attachment based on evidence regarding mistakes (e.g. accounting, drafting, documentation) from KRG to an arbitration tribunal. In our suppositional case, the result of the lawsuit is a reward against KRG or one of its governmental subsidiaries and the oil and gas products belonging to KRG, as KRG's assets are available in the respective determiner tribunal's jurisdiction.¹⁰⁵

In the aforementioned situation, the waiver of sovereign immunity stated in Article 41 will be definitely activated since the aforementioned pre-judgment attachment is in accordance with expert determinations, mediations or arbitrations provided in Article 42. Thus, the result of the pre-judgment fall under the category stated in section c of article 41 and would activate the waiver of sovereign immunity and the available assets of KRG in respective foreign court's jurisdiction would be seized as the resulted reward against KRG and in favor of the plaintiff.¹⁰⁶

4.3. MOST FREQUENT COMMERCIAL DISPUTES ARISEN FROM PRODUCT SHARING AGREEMENTS

Host governments of oil-producing countries and IOCs, which involved in petroleum operations through PSA have confronted numerous disputes recently. The reason for these mentioned disputes is the political and economic complexity of the situations surrounding a signed PSA. The most unique terms of a PSA to be assessed are those related to the commercial perspective of an oil and gas contract. Thus, the most frequent disputes from the commercial perspective derived from the usual form of PSA will be spelled out in further text.¹⁰⁷

4.4. COST RECOVERY OR PROFIT OIL ALLOCATION:

The cost of operation expended by the contractor can be recovered through receiving a share from extracted oil. The amount of extracted oil for cost recovery or so-called Cost Oil is determined in terms of PSA, Mostly there is a limit for it ranging from 40 to 50 percent of the extracted oil. Moreover, there have been some rare cases that host governments have allowed for the unlimited use of cost oil for expenditure recovery. Overall, the determination of cost recovery limitations and procedures depend on the technical features of the oil and gas field,

¹⁰⁵ Kelly, M. J. The Kurdish regional constitution within the framework of the Iraqi federal constitution: a struggle for sovereignty, oil, ethnic identity, and the prospects for a reverse supremacy clause, PP.757, (2010).

¹⁰⁶ Article 41 and 42 Iraqi Constitutional Law (2005)

¹⁰⁷ Mills, R. M., & Sen, A. , Under the mountains: Kurdish oil and regional politics. Oxford: Oxford Institute for Energy Studies.pp.19, (2016).

such as the amount of existing gas in the field, type of the soil in the area and the degree of electricity availability¹⁰⁸.

One common financial instrument that has been used in PSAs is Margin Deposit, which has a great impact on the cost of operation. A margin deposit is employed to guarantee the fulfillment of the signed contract and protects the investment and its respective return within the project. Thus, those PSAs augmented by margin deposits usually have the higher upper limit for using produced oil as cost oil. There are other costs that usually should be recovered by cost oil besides direct operating costs, such as devaluation of assets during operation or so-called Depreciation, the cost for reduction of production or Depletion, the cost for limited-life assets or Amortization and cost of credits. If the expended cost exceeds the designated cost oil, the residual of the expended cost will be carried forward to the next accounting period. The terms related to the distribution of extracted oil as royalty payment, the cost recovery and shared profits are extremely vital for involved entities. Thus, the mentioned terms have great potential to arise disputes among contracting parties.¹⁰⁹

4.5. EXTENSION:

Host governments and investors depending on the situation may make a request for PSA extension. Despite the fact that PSAs in nature are long-term contracts, either party may find it more profitable to extend the signed agreement. Negotiation for extension comprises political and economic complexities, which could yield to further disputes. The relentless environment surrounding the international market of petroleum as well as political atmosphere could be the reasons underlying the arisen disputes. In particular, political changes in the host countries such as regime changes and alteration of governing party have been the main factors of arisen disputes regarding negotiations for PSAs extensions¹¹⁰.

¹⁰⁸James M. Gaitis ed., JURIS , The Leading Practitioners' Guide to International Oil & Gas Arbitration,(2015) Muhammad, Z. I. Effectiveness of Current International Arbitration Law and Practice for Commercial Contracting Parties, in Transnational Oil and Gas Industry. (2016).

¹⁰⁹Bindemann, K. (1999). *Production-sharing agreements: an economic analysis*, Oxford Institute for Energy Studies,pp.23, October (1999).

¹¹⁰James M. Gaitis ed., JURIS , The Leading Practitioners' Guide to International Oil & Gas Arbitration,PP.585,(2015)

4.6. TERMINATION DISPUTES:

As it is truly common among all types of natural resource contracts, disputes can arise through misinterpretation of assigned duties delegation for involving entities in a PSA. Ambiguity in the employed contract terms regarding delegation of duties and consequent responsibilities could be the reason underlying emerged disputes.¹¹¹

4.7. ENVIRONMENTAL:

Considering Environmental Standards and accepted environmental practices in conducting PSAs terms are crucial. Contracting parties should contemplate upon Domestic and international environmental laws and act accordingly during agreed operations. Negligence towards environmental law regardless of being domestic or international could arise issues questioning the legitimacy of the signed PSA¹¹².

4.8. STABILIZATION CLAUSES:

The employment of contractual guards or in particular stabilization clauses could be heart-warming for the investors as these contractual instruments could protect the investment from breaching the contract due to lack of legally accepted performance. The interpretational gap between the commercial contract law and international law could arise disputes upon breaching a contract including stabilization clauses¹¹³.

4.9. DOCTRINE OF CHANGED CIRCUMSTANCE CLAIMS:

The doctrine of changed circumstance is a common legal instrument among oil-producing countries, which are members of OPEC intergovernmental organization. The above mentioned legal instrument as a court-imposed doctrine provides modification of the agreed contractual terms according to recent circumstantial changes. The modification requires convincing changes in circumstances that prevent the contract to fulfill its initial purposes¹¹⁴.

According to the doctrine of changed circumstances, major alteration of conditions that create a different environment surrounding the contract requires further arbitration. The unpredictable

¹¹¹Ibid

¹¹²Kyla Tienhaara, *Foreign Investment Contracts in the Oil & Gas Sector: A Survey of Environmentally Relevant Clauses*, 11 Sustainable Dev. L. & Pol'y 15, 16 (2011).

¹¹³Thomas W. Waelde & George Ndi, *Stabilizing International Investment Commitments: International Law Versus Contract Interpretation*, 31 Tex. Int'l L.J. 215, 218-19 (1996).

¹¹⁴Ernest E. Smith & John S. Dzienkowski, *A Fifty-Year Perspective on World Petroleum Arrangements*, 24 Tex. Int'l L.J. 13, 46 (1989).

conditions that yield to unbalanced profitability for contractual parties could provide termination or modification of the executed contract through arbitration¹¹⁵.

¹¹⁵James M. Gaitis ed., JURIS , The Leading Practitioners' Guide to International Oil & Gas Arbitration,PP.633,(2015)

5. CHAPTER CONCLUSIONS

5.1. CHAPTER OVERVIEW

This section of this study tends to summarize the findings and data collected in the previous chapters, noting the important factors of this research.

5.2. STUDY FINDINGS AND RECOMMENDATIONS

After extensive research and thoroughly investigating the existing literature and influential factors that are involved in this case, this study highlights the complexity and highly sophisticated nexus and body of this topic. The oil and gas industry is one of the most important and vital industries (or to an extension could be called the most significant industry) has numerous factors that are involved. In addition, this industry has a variety of players and parties that play the role of authority. These authorities can be domestic or international. Despite the aforementioned parties, there are several other bodies that play the major role in this context that can be namely politics and the skewness of these parties towards profit-making. This skewness is majorly addressing individuals or a specific group that is an endeavor to make the most profit of a single agreement/contract. Western “superpowers” tend to interfere and intervene with any significant aspect of the aforementioned oil and gas contracts. Specifically, the PSA contracts that are oil and gas related are under the influence of such powers. Many issues arise from various interferences that occur due to the interests of these powers. What can be called “the invisible hand”¹¹⁶ leads societies towards conflict and domestic problems that if followed deeply, leads to those superpowers and their involvement in these societies. It is clear and vivid to a scholars’ eye that countries such as the USA and the UK influence the directions of societies to achieve more profit from different areas.

While legal and liability issues lay within the means of oil and gas contracts (particularly in Iraq and KRI) the sales of gas and oil from Iraqi resources is an ongoing process. This allows buyers to manipulate the means of contracts and abuse the problematic situation that is in existence within the Iraqi borders. In turn, this leads to a lesser price for purchasing Iraqi oil and gas as the contracts are deemed “problematic”. Hence, intermediaries and other third-parties play a major role in the transference of oil and gas from Iraq and specifically KRI to

¹¹⁶ The invisible hand is a term used by Adam Smith, 1776; Rothschild, E., 1994, Skousen, M. The making of modern economics: The lives and ideas of great thinkers. Routledge, PP.13 (2015).
Alami, A. N., Wuryandari, G., Yustiningrum, R. E., & Sriyanto, N. ,Foreign Policy and Energy Security Issues in Indonesia. Springer, pp.111(2017).

other parts of the world. This is while the price of gas and oil being sold is different than the internationally agreed price.¹¹⁷ Article 110 itemizes the fields that federal government has absolute power for decision making in those. Fields such as procedures regarding national security, the trend of foreign policymaking, policy employed for international trades and strategies towards treaties negotiations; supervision over citizenship concerns as well as media and mail; administration of water issues nationally and globally; and defining of governmental revenue policy and determining commercial policies as well as its respective regulation.

Article 115 consists of two sentences as pillars of this piece of law. The first sentence declares that all the non-stated authorities, which are not introduced as exclusive to the federal government in article 110 are assigned to ruling members of regions as well as those governorates devoid of organized governing body.¹¹⁸ The second sentence prioritizes the delegated power as priority pertains to regional officials and administrators of governorates when it comes to shared powers. This implies that the governorates of each territory (non-stated authority) within their regions are amongst the ruling members of those areas within the body of law that governs within that state. Exclusivity of those authorities is and must be under the federal government. This by itself is ambiguous and can have several interpretations.¹¹⁹ The ambiguity of such articles and regulations in regard to the governance of states and non-states can lead and cause more conflicts and obstacles on the path towards sustainability and thus, legalized, shared, joint agreements. Due to the fact that Iraqi body of law and its structure has been under transformation and severe changes over the past decade, this ambiguity and sophistication do not seem to have moved towards a better or more adequate mean. The domestic conflicts that occurred in the 2000s and the subsequent chaotic situation has led to drastic changes in the law structure of Iraq. This has had a major impact on the in-state conflicts and incoherence among authorities. As mentioned earlier in this section, the interference of superpowers has merely added up to the context of sophistication of this matter. Iraq and more specifically KRI, withholding and possessing enormous resources of gas and oil have been a point of interest for decades. This fact is an inseparable issue for the advancements and development of the country. Notwithstanding that the parties involved have different perspectives and decisions in this sector, particularly when it comes to oil and gas

¹¹⁷Zedalis, R. J. Claims against Iraqi oil and gas. CUP, Cambridge Google Scholar, pp.107, (2010).

¹¹⁸ Article 110 and 115 Iraqi Constitutional Law (2005)

¹¹⁹Zedalis R, Oil and Gas in the Disputed Kurdish Territories Jurisprudence, Regional Minorities and Natural Resources in a Federal System Routledge, USA & Canada, pp.110(2012).

industry as it has a gigantic profit for the parties as well as the nation. Authorities do not comply with each other in relation to the shared powers and their level of engagement for this matter. It simply yields in a matter of ambiguity and complexity for the case at hand.

In article 112, the management of extracted oil from present fields is assigned to federal authorities. There are debates over the range of management and the definition of present fields of oil.¹²⁰ The complexity of statements within articles regarding the sharing of power and authority over contracts does not merge into a consensus as the federal government intends to manage and have surveillance over the PSAs of each state that clearly does not comply with parts of articles of Iraqi constitutional law.¹²¹ Extracted oil and other activities, which are relevant to this matter, require extensive supervision and comprehensive compliance with the constitutional law of Iraq. However, the changing state of law structure and system cannot be considered as a mean of enhancement in regard to this matter. According to article 112, the task of management designated to central government should be practiced with the collaboration of sub-national governments of oil-producing regions.¹²²

The federal government believes that present fields in article 112 refer to all oil fields regardless of status; being discovered or undiscovered; under the production process or untouched. Thus, the central government claims for having the right of intervention in all the existing oil fields in the present and the future. This is clearly against or to some extent in contradiction to the vague statements of constitutional articles that share the power and authority among the national states.¹²³ As mentioned earlier in this section, the interests or deviations of each party leads to a higher level of sophistication for this matter as no party tends to negotiate or openly state their intentions in regard to this issue. Interference of international bodies and their interests are also involved and add to the extent of complications in this sense.

The aforementioned statement restricts the producing regional officials to act independently towards contracting with IOCs as the involvement of central government is compulsory. Additionally, article 112 clearly declares that non-producing regions do not have any active role regarding neither management nor policy-making towards oil and gas issues. However, according to article 111, non-producing regions have the right to seek for oil revenue as it

¹²⁰ Article 112 Iraqi Constitutional Law (2005)

¹²¹ Behn, D. Sharing Iraq's Oil: Analyzing Production-Sharing Contracts under the Final Draft Petroleum Law, pp.12, (2007).

¹²² Zedalis, R. J. Remedial actions against oil sourced from the Kurdistan Region of Iraq: issues of concern for companies claiming breach of a PSC. *The Journal of World Energy Law & Business*, 10(6), 505-519, (2017).

¹²³ Kelly, M. J. The Kurdish regional constitution within the framework of the Iraqi federal constitution: a struggle for sovereignty, oil, ethnic identity, and the prospects for a reverse supremacy clause, pp.755, (2010)

belongs to all Iraqi people. Rights of people and their share of each barrel are neglected by various means. Parties that are authorized to make a decision upon this matter seemingly have different interests than merely intending to the rights of mass and nation. The Iraqi oil is owned by all Iraqi people can be interpreted as non-producing regions have right over decided about the fate of oil reserves.¹²⁴

International Oil Companies (IOC), which signed Product Sharing Agreement (PSA) with KRG and they have been acting according to their contract with KRG, are dissatisfied with the trend of KRG's payments. Mentioned IOCs has provided services, which are not completely paid by KRG, thus they seek for compensations through a proceeding that could turn these PSAs to profitable projects. IOCs are filing lawsuits and claiming for a remedy in order to seize Kurdish oil and gas products, which are available in reach of foreign courts' jurisdictions since these products are the only KRG's assets outside Iraq territory easily convertible to cash by these companies.¹²⁵ This shows the importance of open and clear negotiations as well as laws and regulations, especially in regard to international PSAs and other agreements upon the subject of gas and oil contracts of KRG. These assets can be turned into liabilities if there is a lack of adequate and sufficient regulation upon the matter.

According to KRG Model PSA sliding scale, IOC shall pay the government 10 percent of total Petroleum production at first place as a royalty payment for operating on a KRG oil field. Extracted crude oil and dry gas or non-associated gas (gas extracted from those fields, which are devoid of liquid petroleum) are entitled 'Export Petroleum' in Model PSA. KRG prefers to be paid with Export Petroleum rather than monetary payments. The federal government of Iraq clearly has issues with several aspects of this matter and tends to create obstacles for the means of contracts in regard to international conventions and agreements. This can be deemed as one of the major issues in this case that creates complexity on an international scale, which leads to more complaints and court cases both for KRG contracts and other Iraqi contracts of gas and oil that are presently active or are to be activated in the upcoming future. Due to the high extent of profits from oil contracts, no party tends to change or restructure some aspects for the enhancement of these projects and contracts.¹²⁶ Regardless of the extent of a complication of this subject, a simple recommendation/solution can be a or a

¹²⁴ Article 111 and 112 Iraqi Constitutional Law (2005)

¹²⁵ Sharif, S. K. , Production Sharing Contracts of Oil and Gas in Kurdistan Region of Iraq (Doctoral dissertation, Kulliyah of Laws, International Islamic University Malaysia),pp.5, (2014).

¹²⁶ Sharif, S. K. , Production Sharing Contracts of Oil and Gas in Kurdistan Region of Iraq (Doctoral dissertation, Kulliyah of Laws, International Islamic University Malaysia),pp.6, (2014).

number of negotiations that have not deviated and are clearly stated from each side of the authorized parties within Iraqi federal government and the KRG authorities as a shared power of authority over the contracts. These contracts have been issues in the KRI and the authority over the contracts are given to the KRG for supervision and maintaining the procedural means of the functions of projects. However, conflicts among both parties (federal government and KRG authorities) and their inconsistent negotiations and deviation in regard to the profit-making solely creates more obstacles and does not lead to a more sustainable and enhanced flow of work for the aforementioned PSAs of gas and particularly oil extractions and resources of Iraq and KRG.

Subsequently, this issue cannot be solved or enhanced as long as the parties that are involved have incoherence in their statements and have no intention towards open negotiations. This originates from the deviations of parties, from which each party looks into their own benefits and not the national scale benefit that is to be majorly towards the people. Law system and body structure of regulations must initially tend to the benefits of people of a country or region rather than the authorities or specific groups within these areas. Thus, this study encourages the authorities of Iraq and subsequently KRG to re-initiate their negotiations in regard to gas and oil contracts and PSAs that are signed or are to be signed. New statements or articles within the law system should be issued. These statements must avoid any type of ambiguity. Moreover, the issuance of new statements and regulations for PSAs and agreements of gas and oil must comply with the authorized parties for each state as well as on a national scale. Negotiations and agreements (domestically) must note the importance of this unambiguity amongst the articles and statements for enhancement of contracts and agreements on an international basis. The well-being and improvement of quality of life for the Iraqi nation must be the priority for the authorities. Transforming the ambiguous statements of Iraqi law system can be done in a mid-term basis of 3-5 years if all authorities and experts create a joint convention with a significant objective towards merely oil and gas contracts of Iraq and KRG for improvement of PSAs internationally and sharing the benefits/profits for the people of Iraq. This requires a consensus amongst all the parties involved with controlling the variables such as interference of superpowers and their impact on societies in regard to their interests. Thus, consensus and coordination of all parties for this matter seems to be of necessity. It appears that only an honest, open, and non-deviated negotiation and statement of a regulation structure can lead to the enhancement of eligibility and/or legal form of PSAs of KRG and subsequently other PSAs of Iraq in the particular case of gas and oil as Iraq possesses vast

resources of gas and oil on a global scale. Therefore, immediate decisions must be made for protecting the people of Iraq for their future as the resources are finite and until the fields are not emptied, laws, regulations, and contracts will be made upon them that can cause issues or lead to benefits for all Iraqi people as well as other nations, due to the fact that natural resources such as gas and oil are considered resources of earth for all humanity and can benefit mankind in the advancement of life.

5.3. STUDY LIMITATIONS:

This study faced a number of restrictions due to the importance and confidentiality of vital information whether from literature or the authorities, which did not tend to openly discuss terms or provide sufficient data. The context of gas and oil contracts (PSAs) is crucial and therefore, authorities do not share new and significant data in relation to the ongoing processes. Moreover, political and economic matters have led the gathering of firsthand data to a vague and fruitless endeavor. The complex and sophisticated nexus of this subject restricts researcher in regard to the information that is given for the research. Hence, this study had limits for data collection.

5.4. FUTURE RESEARCH RECOMMENDATIONS:

This study has taken a doctrinal approach towards the subject of PSAs of gas and oil within KRG and Iraq. A recommendation for future study takes a comparative approach to the Middle Eastern countries to compare the systems of PSAs for gas and oil. This can create a better understanding of the phenomenon as well as the creation of comparable solutions that have been applied in other countries of the region. This also contributes to the literature as the literature lacks sufficient evidence for the case of Middle Eastern countries. Moreover, future studies can look into other influential variables such as political, economic, and social factors that can have an impact on this matter. Similarly, mediating and/or moderating variables that are involved in this subject can be investigated or tested through empirical evidence and tested against statistical primary evidence that can be gathered via qualitative or quantitative measures such as interviews with authorities or questionnaire surveys that address the issue on a social basis. This approach does not exist in the literature, which can give an advantage to the case as this subject needs to be examined from various aspects and the importance of social aspect is vital and cannot be neglected.

BIBLIOGRAPHY

BOOKS

Alami, A. N., Wuryandari, G., Yustiningrum, R. E., & Sriyanto, N. ,Foreign Policy and Energy Security Issues in Indonesia. Springer, (2017).

Babavn A. Oil, Petroleum, Hydrocarbon, Colorado, USA,, 2011

Cordesman A., 2010, Economic Challenges in Post-Conflict Iraq, Center for Strategic and International Studies (CSIS), Washington DC, USA.

Ismail K., 2010, Oil Exploration and production Contracts-Legal Studies, Dar Al-Shatat for legal library, Egypt.

Mattei U., 2000. Basic Principles of Property Law: A Comparative Legal and Economic Introduction, p 77, USA.

Maugeri L., 2006. The age of oil: The mythology, history, and future of the world's most controversial resources, Greenwood Publishing Group, USA.

McBeth B. S., 1983. Juan Vicente Gomez and the Oil Companies in Venezuela 1908-1935, Cambridge University Press, UK

Mills, R. M., & Sen, A. (2016). Under the mountains: Kurdish oil and regional politics. Oxford: Oxford Institute for Energy Studies.

Sekaran, 1992. Research Methods for Business: A Skill Building Approach, John Wiley, New York.

Skousen, M. The making of modern economics: The lives and ideas of great thinkers. Routledge, (2015).

Styan D., 2006. France and Iraq: Oil, Arms, and French Policy Making in the Middle East, TJ International Ltd, UK

Thomas J. Lane, 2000. Oil and Gas, West Virginia University College of Law, USA

Thornton J., 2009. The Impact of Nationalization and Insecure Property Rights on Oil and Gas Development in Russia's Asia Pacific, University of Washington.

Tordo S., 2007, Fiscal System for Hydrocarbons- Design Issues, the International Bank for Reconstruction and Development- the World Bank, Washington D.C., USA

Valérie Marcel, Oil Titans: National Oil Companies in the Middle East, Chatham House, (2006).

Waleed al-Nuwaiser, The Oil Market in Post-war Iraq, Global Financial Sector Development, British Institute of International & Comparative Law, (2005).

Whitney G., et al, 2010. U.S. Fossil Fuel Resources: Terminology, Reporting, and Summary, Congressional Research Service, USA.

Zedalis J. Rex, 2009. The Legal Dimensions of Oil and Gas in Iraq Current Reality and Future Prospects, Cambridge University Press, UK

Zedalis R, Oil and Gas in the Disputed Kurdish Territories Jurisprudence, Regional Minorities and Natural Resources in a Federal System (Routledge, USA & Canada 2012).

Zedalis, R. J. Claims against Iraqi oil and gas. CUP, Cambridge Google Scholar. (2010)

ARTICLES

Adenikinju A., and Oderinde L. 2010, Economics of Offshore Oil Investment Projects and Production Sharing Contracts: A Meta Modeling Analysis, University of Ibadan, Nigeria.

Ahmad, H. F. The Constitutionality of the Kurdistan Regional Government Petroleum Contracts under the Iraqi Constitution Law 2005

Ahmed H., 2012, Officials Hopeful New Agreement Could Resolve Baghdad-Erbil Oil and Gas Disputes, media release, 18. September, published by Rudaw Media Company, viewed 20. September. 2012. <http://www.rudaw.net/english/kurds/5213.html>

Ali and Partners, 2004, Kuwait Oil Sector, Bridge Business Cultures- Legal Notice, available on: http://www.mideastlaw.com/article_kuwait_oil_sector.html

Antonia J., and Greco S. Emily, 2008. Big Oil's Last Stand, Foreign Policy In Focus Institute,

Bagirov S., 2007. Azerbaijan Oil: Revenues, Expenses, and Risks, Central European University, Budapest, Hungary.

Behn, Daniel. 2007. "Sharing Iraq's Oil: Analyzing Production-Sharing Contracts Under the Final Draft Petroleum Law," Centre for Energy, Petroleum, and Mineral Law and Policy – Dundee University. Working paper, September, Council of Ministers: Oil and Energy Committee. 2007. *Draft Iraq Oil and Gas Law*. Baghdad, Iraq.

Bernardini P., 2008. Stabilization and Adaptation in Oil and Gas Investment, Journal of World Energy Law and Business, published by Oxford University Press, United Kingdom

Bidness N. 2003. Middle Eastern Oil: An Historical Perspective and Outlook, available on: www.freerepublic.com

Bindemann K. Oct 1999, Production Sharing-Agreements: An Economic Analysis, Oxford Institute for Energy Studies, United Kingdom.

Blanchard C., 2010, Iraq: Oil and Gas Sector, Revenue Sharing, and U.S Policy, Congressional Research Service, the Library of Congress, Washington DC, USA. Available on: www.crs.gov

Blanchard C., Iraq: Oil and Gas Legislation, Revenue Sharing, and U.S. Policy, Congressional Research Service. USA, 2009

Boykett T., et al, 2012, Oil Contracts- How to Read and Understand a petroleum Contracts, Version 1.1, Austria.

Bressand A., 2009, 'Foreign Direct Investment in the Oil and Gas Sector-Recent Trends and Strategic Drivers', Chapter Four, School of International and Public Affairs, Columbia University, Columbia, p. 130. Available on: www.energy.sipa.columbia.edu

Carolina E., Etal, 2011. Summary of Competition/Antitrust Laws and Application in Select Jurisdictions, USA.

Cotula L., 2010. Investment Contracts and Sustainable Development, published by InternationalInstitute for Environment and Development, London, United Kingdom.

Crawford J,`The Authority of the Kurdistan Regional Government over Oil and Gas Under the Constitution ofIraq` (2008)

Curtis K., 2008, Conducting Market Research Using Primary Data, published by Western Extension Marketing Committee, University of Nevada, Reno, USA, viewed 22 March 2013,<<http://ag.arizona.edu/arec/wemc/nichemarkets/07conductingmarketresearch.pdf>>

De Vaus D., 2002, Surveys In Social Research, 5th edition, Routledge: Australia. Available on:http://books.google.com.au/books/about/Surveys_in_Social_Research.html?id=1IRDJEtBg48>

Dennis S., 2001, Natural Resources and the Informed Citizen, Sagamore Publishing, Library ofCongress Catalog Card Number: 00-107472, ISBN: 1 -57167-479-9, United States.

Donovan, Thomas W. "Iraq's Petroleum Industry: Unsettled Issues". Middle East Institute. Retrieved 23 June 2013.

Ed Clowes, Court Awards Dana Gas \$121m in Latest Settlement Against KRG, Gulf News (14 February 2017) <www.gulfnews.com/business/sectors/investment/courtawards-dana-gas-121m-in-latest-settlement-againt-kr-1.1978543> (accessed 18 February 2017).

E Kurd, 2013, 50 foreign oil companies operating in Iraqi Kurdistan, viewed on 5 April2013<<http://www.ekurd.net/mismas/articles/misc2013/2/invest905.htm>>

El-Katiri L., et al, 2011. Anatomy of an Oil-based welfare state: Rent distribution in Kuwait, Oxford Institute for Energy Studies, London, available on: < www.lse.ac.uk/LSEKP>

Endeshaw, S. T., Lodolini, E. M., &Neri, D. (2015). Effects of untreated two-phase olive mill pomace on potted olive plantlets. *Annals of Applied Biology*.

Ernest E. Smith & John S. Dzienkowski, *A Fifty-Year Perspective on World Petroleum Arrangements*, 24 Tex. Int'l L.J. 13, 46 (1989).

Ernst and Young's Global Oil and Gas Center, 2011, Navigating Joint Ventures in Oil and Gas Industry, Advisory Oil Service Organization, UK.

- Gav B., 2008, Iraq's Oil: The Greatest Prize of All, viewed on 18 April 2013 <http://peakenergy.blogspot.com/2008/11/iraqs-oil- greatest-prize-of-all.html>
- General Policy Forum (GPF), 2002, Oil in Iraq, viewed on 12 April 2018 <http://www.globalpolicy.org/political- issues- in- iraq/oil- in- iraq.html>
- Goldman J., 2007. 'A Study of the Relationship Between Mineral Rights Allocation and Oil Extraction Rates', Senior Honor thesis, Policy Analysis and Management, USA
- Greener S., 2008, 'Using Secondary Data', Business Research Methods, Chapter 8, published by Ventus ApS, pp.73-78 , viewed 24 March 2013, <<http://finddoc.blog.com/files/2010/08/introductionto-research- methods.pdf>>
- Hemdad Faisal Ahmad-The Constitutionality of the Kurdistan Regional Government Petroleum Contracts under the 2005 Iraqi Constitution. *American International Journal of Contemporary Research - Vol. 5, No. 2; April 2015*
- Hemdad Faisal Ahmad-The Constitutionality of the Kurdistan Regional Government Petroleum Contracts under the 2005 Iraqi Constitution. *American International Journal of Contemporary Research - Vol. 5, No. 2; April 2015*
- Hussain A. 2012, 'Our Oil Industry between Service Contracts and Production Sharing Agreements', Al-Jaredah Daily Public Political Journal, issued by: Arabic Communist Movement, viewed on: 16-Aug.-2012. Available on: www.aljaredah.com
- Hussein U., 2007. The Economic Technical Study of Oil and Gas Law project, Ministry of Oil Baghdad.
- Ibrahim K., 2009. "Oil Exploration and Production Contracts", PHD thesis, University of Salahaddin- Erbil, Iraq.
- Jaffe A., 2007, Iraq's Oil Sector: Past, Present and Future, James A. Baker III Institute for Public Policy, Rice University, USA, p. 35.
- James M. Gaitis ed., JURIS 2015- The Leading Practitioners' Guide to International Oil & Gas Arbitration
- Joe Stork, Middle East Oil and the Energy Crisis, Monthly Review Press, (1975).
- Journal of Comparative Law, 6 (3). ISSN 1387-3091, University of Strathclyde Glasgow, viewed 05 January 2013, < <http://strathprints.strath.ac.uk/581/1/strathprints000581.pdf>>.
- Kaczorowska, A Public international law. Routledge. (2015).
- Kamal Hossain, Law and Policy in Petroleum Development, London and New York, (1979);

Kelly, M. J. (2010). The Kurdish regional constitution within the framework of the Iraqi federal constitution: a struggle for sovereignty, oil, ethnic identity, and the prospects for a reverse supremacy clause.

Khajavi A., 2010, A Realistic Output for Iraq's Oil Production in 2030, Middle East Economic Survey (MEES), released 03. July, viewed 03. September, 2012, <<http://www.mees.com/en/articles/1874-a-realistic-outlok-for-iraqs-oil-production-in-2030>>

Khansi B, 2006. Aspirations of the foreign oil companies on oil from Kurdistan Iraq, available on www.KRG.org.

Kostic M, 2007. Energy: Global and Historical Background, Northern Illinois University, Dekalb, Illinois, USA.

Kramer B., Anderson O., 2005. The rule of capture - an oil and gas perspective, Texas Tech University School of Law, USA

Kumar R., 2005, 'Research: a way of thinking', Research Methodology- a Step by Step Guide for Beginners, Second edition, Sage Publications Ltd., pp. 1 -14, Malaysia.

Kunins L., 2005, Iraq Oil: Reserve, Production, and Potential Revenue, Congressional Research Service (CRS) Report, order code: RS21626, Library of Congress, USA.

Kyla Tienhaara, *Foreign Investment Contracts in the Oil & Gas Sector: A Survey of Environmentally Relevant Clauses*, 11 Sustainable Dev. L. & Pol'y 15, 16 (2011).

Lauterpacht E., 1988, International Law Reports, Volume 77, published by Cambridge University Press, reprinted in 2001, UK. Available on: www.amazon.com

M. Pugh; N. Cooper; M. Turner (4 January 2016). *Whose Peace? Critical Perspectives on the Political Economy of Peacebuilding*. Palgrave Macmillan UK. pp. 59–. ISBN 978-0-230-22874-0.

Martin Chulov. "Kurdish forces abandon long-held lands to Iraqi army and Shia fighters". *The Guardian*, 17 October 2017.

Meurs P., 2008, Maximizing the value of government revenues from upstream petroleum arrangements under high oil prices, a discussion document, published by: Van Meurs Corporation, East of Paradise, Nassau, Bahamas, USA.

Moore, C. R. (2017). Oil and gas contracts utilizing R Factors and rates of return: Theory and practice. *The Journal of World Energy Law & Business*, 10(6), 471-487. doi:10.1093/jwelb/jwx021

Mostafa, M. (2018). *Iraq's oil production up 36% in 2017: official*. [online] Iraq news, the latest Iraq news by Iraqi News. Available at: <https://www.iraqinews.com/business-iraqi-dinar/iraqs-oil-production-36-2017-official/> [Accessed 20 Feb. 2018].

Muhammad, Z. I. (2016). Effectiveness of Current International Arbitration Law and Practice for Commercial Contracting Parties, in *Transnational Oil and Gas Industry*.

Muttitt, Greg. 2006. "Production Sharing Agreements - Mortgaging Iraq's Oil Wealth," *ArabStudies Quarterly*, June.

Natt A. 2011. 'Kurdistan's oil reserves are predicted to be 85-90 billion barrels'. *HawlerNewspaper*, issue 1190, page 5.

Newswire.ca. (2018). *IHS Launches First Detailed Report on Iraq's Oil Reserves and Production Potential Since Start of Iraq Conflict*. [online] Available at: <https://www.newswire.ca/news-releases/ihs-launches-first-detailed-report-on-iraqs-oil-reserves-and-production-potential-since-start-of-iraq-conflict-533674181.html> [Accessed 10 Feb. 2018].

O'Sullivan, M. L. 2011. *Iraqi Politics and Implications for Oil and Energy*. Harvard Kennedy School. Cambridge: Belfer Center for Science and International Affairs.

Ritchie J. and Spencer L., 'Qualitative data analysis for applied policy research', Bryman A. and Burgess R., *Analyzing Qualitative Data*, Routledge, USA, 2012

Rutledge L., 2004, *The Sakhalin II PSA- A Production `Non- Sharing` Agreement- Analysis of Revenue Distribution*, p. 6, Sheffield Energy & Resources Information Services (SERIS), United Kingdom.

Ryan A., 2009. *The Oil and Gas Lease In Oklahoma*, Oklahoma Bar Association, USA.

Salim S., 2009, 'The Geo Strategic Importance of Oil Fields in Kirkuk Governorate - Study in Political Geography', MA thesis, University of Baghdad, Iraq.

Saudi Aramco, 2010. *Saudi Aramco At a Glance: Useful Information on Saudi Aramco, its history, milestones, operations and projects*, Saudi Arabia.

Saunders M., et al, 2009, *Research Methods for Business Students*, fifth edition, Pearson Education, p. 12, UK.

Shafiq T., 2012. *Iraq's Oil History: Prospects and Limitations*, Istanbul, available on: www.iraqoilforume.com

Sharif, S. K. (2014). *Production Sharing Contracts of Oil and Gas in Kurdistan Region of Iraq* (Doctoral dissertation, Kulliyah of Laws, International Islamic University Malaysia).

Six, S. and L. Van Geuns. 2014. *The Iraqi Oil Surge in a New Energy Landscape*. Clingendael International Energy Programme. The Hague: The Netherlands.

Suleiman A., 2012, "The Effect of Oil Exports on the Economic Development of Iraq during period 1970-2009, and its reflections on the Kurdistan Region", PHD thesis, Salahaddin University Iraq.

Suleiman K., 2012, *Iraq's Treasures- stories and journal reports about Iraq's natural resources*, Aras Press, Erbil-Kurdistan, Iraq.

Sunley E., Baunsgaard T., and Simard D., 2002, 'Revenue from the Oil and Gas Sector: Issues and Country Experience', the paper prepared for the IMF conference on fiscal policy formulation and implementation in oil producing countries, June 5-6-2002, available on: www.siteresources.worldbank.org.

Sunstar M., 2008. *Oil from Rockefellers to Iraq and beyond*, available on: www.4shared.com/docu.

Tas D, 'Petroleum Development in the Kurdistan Region of Iraq: A struggle over Competency' (2011).

Tetra Tech, 2009. *Assessment of Risk, Legal Issues, and Insurance for Geologic Carbon Sequestration in Pennsylvania*, Department of Conservation and Natural Resources, Pennsylvania.

Thieme N., Lujala P., and Rod J. Ketil, 2007. *The Petroleum Dataset: Country Profiles*, Norwegian University of Science and Technology (NTNU), Norway.

Thomas W. Waelde & George Ndi, *Stabilizing International Investment Commitments: International Law Versus Contract Interpretation*, 31 *Tex. Int'l L.J.* 215, 218-19 (1996).

U.S. (2018). *Exclusive: How Kurdistan bypassed Baghdad and sold oil on global...* [online] Available at: <https://www.reuters.com/article/us-iraq-kurdistan-oil/exclusive-how-kurdistan-bypassed-baghdad-and-sold-oil-on-global-markets-idUSKCN0T61HH20151117> [Accessed 23 Feb. 2018].

US and Foreign Commercial Service, 2012. *Doing Business in Iraq: 2012 Country Commercial Guide for US Companies*, Department of Commerce-United States of America.

Weijun T., 2008, *Research methods for Business Students*, Shanghai Jiao Tong University, Viewed 23 March 2018, http://site.iugaza.edu.ps/walhabil/files/2010/02/Chapter_7.pdf

Williams C., 2007, 'Research Method', Journal of Business & Economic Research, Grand Canyon University, Vol. 5, No. 3, P.66, viewed 21 March 2013, <<http://journals.cluteonline.com/index.php/JBER/article/viewFile/2532/2578>>

Williams J., 2006. The History of Energy, Franklin Institute, United States of America. Available on: www.fi.edu

Wing J., 2012. Iraq's Oil Exports and Revenues Both Take a Hit in June 2012, viewed on 22. Oct.2012 < <http://musingsoniraq.blogspot.com/2012/07/iraqs-oil-exports-and-revenues-both.html>>

World Intellectual Property Organization (WIPO), 2000, Constitution of Syrian Arab Republic, United Nations, Geneva, Switzerland, Available on: <http://www.wipo.int/wipolex/en/details.jsp?id=10848>

Yinjian Y. and Bangwei Z., 2011. On the Substance of Civilization in Human Society Entering into the Nanomaterials Age, Hunan University, China.

Young E. and McMichael C., 1998, 'Impact of Production Sharing Terms on Investment Community Performance Statistics', paper presented to Society of Petroleum Engineer's (SPE) Annual Technical Conference and Exhibition, New Orleans, USA, 27-30 September
Youssef B., 2012, white terror kills more than two persons in Kurdistan every day. Viewed on 20 March 2013: <http://www.niqash.org/articles/?id=3025&lang=ar>

Zedalis, R. J. (2017). Remedial actions against oil sourced from the Kurdistan Region of Iraq: issues of concern for companies claiming breach of a PSC. The Journal of World Energy Law & Business,

OTHER SECONDARY SOURCES

Addustour, 2011. The History of Iraq in two decades: Increase the struggle between British and Germans to compete to achieve raw materials, Iraq, available on: www.daraddustour.com

Anon, (2018). [online] Available at: <https://www.opendemocracy.net/arab-awakening/hawre-hasan-hama/consequencesof-politicized-forces-in-kurdistan-region-of-iraq> [Accessed 22 Feb. 2018].

Ansari N., 2012, Research Method versus Research Methodology, the Aligarh Muslim University, India. Viewed 21 March 2018, < <http://www.slideshare.net/Nazir118/research-method-versusresearch-methodology-12277511> >

Atraqchi, 2007, Geographical Oil Distribution of Iraq's Oil fields, Baghdad, viewed 28. March.2018, available on: ><http://www.iraqcenter.net/vb/showthread.php?t=30188>

Canadian Institute of Mining (CIM), 2011. Estimates of Unrisked Prospective Oil Resources, Netherland Swell Associations Inc, Canada.

Cockburn P., 2008., Oil giants return to Iraq: Shell, BP, Exxon Mobil and Total set to sign deal with Baghdad, viewed on 15 April 2018 <http://www.independent.co.uk/news/world/middle-east/oilgiants-return-to-iraq-851036.html>

Council of Ministers: Oil and Energy Committee. 2007. *Draft Iraq Oil and Gas Law*. Baghdad, Iraq.

Energy Information Administration (EIA), 2009, Iraq Energy Data, Statistics and Analysis-Oil, Gas, Electricity, Coal, available on: www.cabs@eia.doe.gov

Energy Information Administration, 2002, Iraq: Oil and Economy, viewed 25. August. 2012, USA ><http://usgovinfo.about.com/library/weekly/aaIraqoil.htm> <

Energy Information Administration, 2007

Global Arbitration Review, 15 August 2008

<https://sputniknews.com/middleeast/201710191058372815-iraq-kurdistan-oil/>

<https://www.iraqinews.com/business-iraqi-dinar/iraqs-oil-production-36-2017-official/>

<https://www.ogj.com/articles/print/volume-102/issue-14/general-interest/sustainable-supply-from-saudi-arabia-iraq-oil-reserves-or-politics.html>

<https://www.opendemocracy.net/arab-awakening/hawre-hasan-hama/consequencesof-politicized-forces-in-kurdistan-region-of-iraq>

<https://www.reuters.com/article/us-iraq-kurdistan-oil/exclusive-how-kurdistan-bypassed-baghdad-and-sold-oil-on-global-markets-idUSKCN0T61HH20151117>

<https://www.voanews.com/a/abadi-calls-for-calm-in-kurdistan-barzani/4091905.html>

Indexmundi.com. (2018). *Iraq Economy Profile 2018*. [online] Available at: https://www.indexmundi.com/iraq/economy_profile.html [Accessed 19 Feb. 2018].

IRAQ CONSTITUTIONAL LAW 2005

Iraq: Energy Data, Statistics And Analysis, Country Analysis Briefs, Energy Information Administration' (2006) <<http://www.eia.doe.gov/emeu/cabs/Iraq/pdf.pdf>> accessed 25 May 2018.

Iraq's KRG to Pay Oil Companies According to Contracts in 2016 <www.thepeninsulaqatar.com/business/middle-east-business/368595/iraq-s-krg-to-pay-oil-companies-according-to-contracts-in-2016> (accessed 14 February 2018).

Iraqi Constitution, 2005, viewed 21 March 2018, Available on <www.iraqinationality.gov.iq/attach/iraqi_constitution.pdf>

Iraqi Constitution, 2005. Isikli E., 2003, Marketing Research, Methods and Tools, Department of Agriculture and Economics, Ege University Turkey, <http://om.ciheam.org/om/pdf/c61/00800154.pdf>

KRG Close to Resuming Payments to Oil Companies, Financial Tribune (23 January 2017) <<https://financialtribune.com/articles/energy/57973/krg-close-to-resuming-payments-to-oil-companies>> (accessed 14 February 2017) (mentioning Genel Energy, DNO, and Gulf Keystone especially, and non-payment for seven weeks);

KRG Close to Resuming Payments to Oil Companies, Financial Tribune (23 January 2017)

Kurdistan Board of Investment (KBI), 2012, Doing Business in the Kurdistan Region, An official Publication of the Kurdistan Board of Investment & the General Consulate of France in Erbil, page 26, Erbil.

Kurdistan Board of Investment, Kurdistan's Economy, viewed 15. September. 2012, Kurdistan. <<http://www.kurdistaninvestment.org/economy.html>>

Kurdnet, 2013, 50 foreign oil companies operating in Iraqi Kurdistan, viewed on 18 March 2013 <http://www.ekurd.net/mismas/articles/misc2013/2/invest905.htm>

Middle East Economic Survey (MEES), 2008, Baghdad Lays Down on KRG Contracts, Vol LINO. 7, by Middle East Petroleum and Economic Publications (Cyprus) Ltd, available on: www.mees.com

Ministry of Planning of Kurdistan Region (MoP), 2012, Energy Sector, viewed 02.September.2012, <<http://www.mop-kr.org/index.jsp?sid=1&id=281&pid=274>>

Ministry of Planning, 2011, 'Kurdistan Regional Government- Seventh Donors Meeting', Kurdistan Regional Government, 02-June, Erbil, Iraq, p. 3.

Mnr.krg.org. (2018). A *NEW PSC*. [online] Available at: <http://mnr.krg.org/index.php/en/the-ministry/contracts/new-psc> [Accessed 27 Feb. 2018].

Mnr.krg.org. (2018). *PSCs SIGNED*. [online] Available at: <http://mnr.krg.org/index.php/en/the-ministry/contracts/pscs-signed> [Accessed 5 Mar. 2018].

Model Production Sharing Contract: Kurdistan Region Briangwilliams.us. (2018). *TheKRGs Model Form OfPSC The Principal Provisions Subgroup - Oil and Gas in Iraq*. [online] Available at: <https://www.briangwilliams.us/oil-gas-in-iraq/iii-the-krqs-model-form-of-psc-the-principal-provisions-subgroup.html> [Accessed 3 Mar. 2018].

Northern Illinois University, 2005, Responsible Conduct in Data Management, DeKalb, USA, viewed 22 March 2013, <http://www.niu.edu/rcrportal/datamanagement/dctopic.html>

Official Energy Statistics, 2008; 2009

Ogj.com. (2018). *Sustainable supply from Saudi Arabia, Iraq: Oil reserves or politics?*. [online] Available at: <https://www.ogj.com/articles/print/volume-102/issue-14/general-interest/sustainable-supply-from-saudi-arabia-iraq-oil-reserves-or-politics.html> [Accessed 10 Feb. 2018].

'Oil And Energy Trends - Wiley Online Library' (*Oilandenergytrends.com*, 2018) <http://www.oilandenergytrends.com/ger/ger_iraq.asp#t2> accessed 10 February 2018

Oil and Gas Law of the Kurdistan Region- Iraq No. (22)- 2007.

Omar A. M. El Joumayle (2017): Oil production and abrupt institutional change: the multi-cyclic Hubbert model and the case of Iraq, Contemporary Arab Affairs, DOI: 10.1080/17550912.2017.1302059

OPEC (Organization of Petroleum Exporting Countries). 2016. Annual Statistical Bulletin. Vienna: Public Relations and Information Department in OPEC.

Patton J., 2008, Russian Federation Energy Policies and Risks to International Joint Ventures in the Oil and Gas Industry, Florida Institute of Technology, University of Blvd. Melbourne, USA.

Pearson C., 2003, Blood, Oil, and Sand: The Hidden History of America's War on Iraq, DallasPeace Centre, viewed on 15 April 2013 <<http://www.greens.org/s-r/30/30-03.html>>

Peter Cameron, 'Contract stability in the petroleum industry: Changing the rules and the consequences', Middle East Economic Survey (vol XLIX, No 22, 28 May 2007).

Radon, J., 2005, The ABCs of Petroleum Contracts: License-Concession Agreements, Joint Ventures, and Production-sharing Agreements. A Reporters Guide to Energy and Development of OpenSociety Institute.

Rasheed M., and Martines M., 2008. Energy for Generations: Saudi Aramco 75th year Anniversary, EPRasheed Publisher, Saudi Arabia.

Razzak, Weshah, 2006. "Iraq: Private ownership of oil and the quest for democracy," MPRA Paper 54, University Library of Munich, Germany.

Razzanelli M., 2004. Wars in the Gulf, Why? (The Turbulent History of the American ForeignPolicy in Iraq and the Middle East), University of California San Diego, available on:www.ucsd.edu

Reports of a London Court of International Arbitration award against the KRG in dispute involving Dana Gas, Pearl Petroleum, and others. Dana Gas Gets Favourable Ruling in Kurdistan Case, Pipeline Oil & Gas Magazine (6 July 2015)

SIPTU (Services, Industrial, Professional, and Technical Union), 2010. Optimizing Ireland's Oil and Gas Resources, ISBN 978-0-9555823-3-2, printed by Trade Union Labor, Liberty Hall, Dublin.

Society of Petroleum Evaluation Engineers (SPEE), 2007. Definition of Resources and Reserves, Calgary chapter, Canada. Available on: www.petsoc.org

Sputniknews.com. (2018). *Iraqi Oil Ministry Warns Foreign Companies Against Contracts With Kurdistan.* [online] Available at: <https://sputniknews.com/middleeast/201710191058372815-iraq-kurdistan-oil/> [Accessed 25 Feb. 2018].

Taurus Petroleum Ltd v State Oil Company of the Ministry of Oil, Republic of Iraq [2013] EWHC Civ 3494 (Commercial), Case No Folio 328 of 2013 (High Ct of Justice, Queen's Bench Comm Ct) (hereinafter Taurus v SOMO)

Taurus v SOMO [2015] EWCA Civ 835, Case No A3/2013/3616 (Ct of App, CivDiv) (28 July 2015);