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NATURAL RESOURCES IN IRAQ

LEGAL ANALYSIS OF IRAQI OIL CONTRACTS

NIHAD SHUKRI RAMADHAN

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DEDICATION

Every challenging work requires self-efforts as well as guidance of others specially people who are close to our heart and experts in the given field.

I dedicate this thesis to my sweet and loving

Father and Mother,

Whose affections, love, encouragement and daily prays guided me to attain these success and honor

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ABSTRACT

NATURAL RESOURCES IN IRAQ
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The United States alleged that Saddam Hussein had weapons of mass destruction and therefore constituted a threat to the international community. On the contrary, many historians and law pundits believe that the main reason for the invasion and occupation of Iraq was to have access to the huge oil reserves found there. Money gotten from oil production in Iraq account for about 95 percent of government revenue. Oil plays a remarkable role in the global economy and as such much care is administered to issues concerning oil. Considering the value and importance of oil, the large amount of money involved, the risk and time, oil producing countries are instituting measures to have absolute control on this lucrative sector by creating and binding themselves to contracts that have national interest and which meet sustainable development plans of the state. Concession contract, production sharing contract, service contract and joint venture contract are the types of contracts that have been concluded by host countries and international oil companies.

In this thesis, the researcher has discussed: the types and features of the above mentioned types of oil contracts and accentuated the importance of the contracts in balancing interest of the contracting parties; conflicts between the contracting parties; the legal analysis of Iraqi oil contracts; and more especially conflict between Iraqi Federal Government (IFG) and Kurdistan Region Government (KRG) and the way forward to settle these disputes. This thesis is thus directed to the following audiences: the Iraqi law makers, other oil producing states, international oil exploration companies and legal pundits.

Keywords: oil contracts, oil production, Iraq, international oil companies, host state, obligations.

ÖZ

NATURAL RESOURCES IN IRAQ
LEGAL ANALYSIS OF IRAQI OIL CONTRACTS

ABD, Saddam Hüseyin'in kitle imha silahlarına sahip olduğunu ve bu nedenle uluslararası topluma tehdit oluşturduğunu iddia etti. Aksine, birçok tarihçi ve hukukçu, Irak'ın işgal ve işgalinin ana nedeninin orada bulunan devasa petrol rezervlerine erişim sağlamak olduğuna inanıyor. Irak'taki petrol üretiminden elde edilen para, hükümet gelirinin yaklaşık yüzde 95'ini oluşturuyor. Petrol, küresel ekonomide önemli bir rol oynamaktadır ve bu nedenle petrolle ilgili konulara çok özen gösterilmektedir. Petrolün değerini ve önemini, içerdiği büyük miktardaki parayı, riski ve zamanı göz önünde bulundurarak, petrol üreten ülkeler, ulusal çıkarları olan ve sürdürülebilir kalkınmayı karşılayan sözleşmeler oluşturarak ve bağlayarak bu kazançlı sektör üzerinde mutlak kontrole sahip olmak için önlemler alıyorlar. devletin planları. İmtiyaz sözleşmesi, üretim paylaşım sözleşmesi, hizmet sözleşmesi ve ortak girişim sözleşmesi, ev sahibi ülkeler ve uluslararası petrol şirketleri tarafından akdedilen sözleşme türleridir.

Bu tezde araştırmacı, yukarıda belirtilen petrol sözleşmelerinin türleri ve özelliklerini tartışmış ve sözleşme taraflarının menfaatlerini dengelemede sözleşmelerin önemini vurgulamıştır; sözleşme tarafları arasındaki çatışmalar; Irak petrol sözleşmelerinin hukuki analizi; ve daha özel olarak IFG ile KBY arasındaki çatışma ve bu anlaşmazlıkları çözmenin yolu. Dolayısıyla bu tez şu izleyicilere yöneliktir: Iraklı yasa koyucular, diğer petrol üreten devletler, uluslararası petrol arama şirketleri ve hukuk uzmanları.

Anahtar Kelimeler: petrol sözleşmeleri, petrol üretimi, Irak, uluslararası petrol şirketleri, ev sahibi devlet, yükümlülükler.

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ABBREVIATIONS

IOC……International Oil Company

HS……Host State

IFG……Iraqi Federal Government

KRG……...Kurdistan Region Government

PSC……....Production Sharing Contract

BP……British Petroleum

MCC……..……Modern Form of Concession Contracts

INOC……..……Iraq National Oil Company

ERAP…….....Entreprise de Recherches et d'Activités Pétrolières

NOC……..…..National Oil Company

OPEC……..……..Organization of the Petroleum Exporting Countries

UN……..…United Nation

FSC……..……...Federal Supreme Court

SOMO……..……..Sell Oil Market Company

IOGDL……..……..Iraqi Oil and Gas Draft Law

BOCL……..……Basra Oil Company Ltd.

IFMO.....Iraqi Federal Ministry of Oil

TPC.....Turkish Petroleum Company

UNSC…….....United Nation Security Council

ICJ……International Court of Justice

ICC……International Chamber of Commerce

CHAPTER ONE: INTRODUCTION

1.1. Background of the Study:

Oil is an important strategic mineral and a major source of income for many states due to its increasing demand locally and internationally and oil has economic and political importance. Oil production is the main source of national income in Iraq. Since the oil revenues for producing countries constitute about 95% of the national income of these countries, oil revenue therefore plays a vital role in the economic and social development of oil producing countries (Salmana, et al., 2019, pp. 296).

Iraq is also considered as one of the countries that depends on its revenues mainly from the oil sector, and because it is one of the developing countries that is in dire need of the advanced capabilities of the major countries in the field of oil, in order to progress in the development of the petroleum sector.

Oil has become a source of energy, heat, lighting, lubrication, and the generation of countless chemical, medical and industrial compounds. Hence, oil has played a major role in our household and other consumer goods, and in transportation and industries. Through these many uses, people have been allowed to increase their economic welfare.

Oil is a raw material for many industries. It is used in the production of crackers and napalm, and in the production of textiles, fabrics, cosmetics and building materials, it is also a source of protein as food for humans. In short, there are more than 3,000 products that are derived from petroleum (Wilson, et al., 2017).

If this is the role of oil in peacetime, then its role in wartime is greater and more dangerous. "Clemenceau" said at the start of the century that a drop of oil

equals a drop of blood, and "Eisenhower" said that the Allies had swum towards victory in the two world wars over the lake of oil (Miller, 2017).

Oil had a vital role in the 1st world war and in the 2nd world war. During the 1st World War, Germany entered Romania in 1916 to benefit from its oil reserves. However, the Allies were able to annihilate most of the oil wells, pipelines and refineries in them in order to strip Germany of the benefit of those oil resources, which effectively pushed the Germans to solicit an armistice in November 1918. In this time, the German Marshal Ludendorff said inadequate oil resources pushed the German leadership to request an armistice (Winegard, 2016, pp. 12). In World War II, oil played an important –role as well, not only as fuel for ships, planes, and tanks, but also in the production of deadly explosives such as Tulin. In the Sixth of October 1973 War, oil was used as a weapon in this war. The Arab oil-exporting countries met in the State of Kuwait and issued their historic decision on October 18, 1973 with a proposal and pressure from Iraq, which decided to reduce oil production at a monthly rate of less than five percent (5%). This percentage increased to (25%) on November 9, 1973. They also declared that oil was banned from entering the United States of America and the Netherlands because they supported and assisted Israel (Shwadran, 2019).

At this time, report of Institute for Strategic Studies in London concluded that 1973 was when conflict prevailed in Middle East. The use of oil weapons started the birth of the sixth power in the world, the group of oil-exporting countries that was added to the military power of the United States of America, the (former) Soviet Union and China, Japan and the European Common Market.

And that this sixth force reversed some of the balances and concepts, and added to the Middle East region in general and Arab region in particular, a basic role in the new era of the world (Bini, et al., 2016).

If the value of oil and the strive to control its sources prompted the major colonial countries to challenge themselves, the importance of oil prompted the major colonial countries to exercise various means of pressure on the

governments of oil-producing countries. Agreeing to grant their oil companies concessions to use oil on terms commensurate with the interest of these companies.

Example of the pressure exerted by the British government on the government of Iraq and the threat that it threatened to separate the Mosul Brigade from Iraq in order to grant the Turkish company (the Iraq Petroleum Company at the time) the privilege to exploit Iraqi oil (Wali, 2013).

Finally, it can be said that oil was among the main reasons that prompted the Iraqi army to enter Kuwait on 2 August 1990. It can also be said that oil was the main motivation for the United States of America to intervene militarily and wage war on Iraq to expel the Iraqi army from the State of Kuwait. And the main reason for the intrusion and occupation of Iraq between March and April of 2003 was far from the UN Security Council resolutions.

1.2. Literature Review:

It is an established fact that failure to create the right laws on oil contract by the host country will cause serious challenges and exploitation to the detriment of the entire livelihood of the state. Having a thorough review of the existing literature on this topic has been a major priority of this researcher (given the primordial importance of oil) to scout and expose the loopholes in the oil contract dealings so as to contribute to the knowledge of Iraqi oil and provide solution to existing problems for the general welfare of all Iraqi nationals.

According to Birdsall oil is a paramount natural resource in Iraq. Other industries include industries manufacturing chemicals, textiles, building materials, food processing and farming. (Birdsall et al., 2004) noted that modern farming methods and irrigation have greatly increased Iraq's agricultural production. Natural factors and the more complicated political atmosphere between IFG and KRG are amongst the major challenges of Iraqi oil.

Kadirgolam**,** shows an overview of the inconsistent provisions of the Iraqi Constitution with regards to oil in Iraq. This can be deduced in article 111 and

related articles. The Iraqi oil and gas draft law starts by quoting article 111 of the constitution and indicates that the correlated articles (110, 112, 114, and 115) should be read in light of article 111. The reason is that if all of Iraq's oil belongs to the people of Iraq and the Federal government is the sovereign representative of the people, then the federal government should manage the resources.

Nevertheless, article 111 is not really explicit and will need many legal authorities to decipher its true intention. According to The KRG, article 111 mentions that oil and gas belong to all the people of Iraq "in all the regions and governorates" and argues that article 111 must be read together with the federalism provisions in the constitution. This article therefore permits Iraq's oil to be considered the subject of federal or regional government jurisdiction. The KRG has equally reiterated that oil and gas is a residual power left for the regions, because it is not listed as an exclusive or shared authority (Kadirgolam, 2020, pp. 67).

Natural resources especially oil is a very important source of revenue in most oil producing countries. But oil has equally brought a lot of conflicts around the world. Iraq is one of the countries that have really been under violence due to the presence of oil. Many western powers especially the United States of America hide under the guise of searching for chemical weapons to destabilize Iraqi. Tangible evidence proves that their main goals were to get hold of natural resources.

Greg Muttitt commented in his book **"**Fuel on the Fire" that the main purpose was stabilizing global energy supplies as a whole by ensuring the free movement of Iraqi oil to world markets and benefits to US and UK companies (Muttitt, 2011).

According to Antonia Juhasz on his article 'Why the War in Iraq Was Fought for Big Oil' it can be deduced that a military invasion was soon under way and the main motive behind the invasion was to oil.

From when Operation Iraqi Freedom's bombs first landed in Baghdad, and most of the U.S.-led coalition forces had gone, Western oil companies are only getting started.

Before the invasion of Iraq in 2003, Iraq's domestic oil industry was fully nationalized and closed to western oil companies. Just a decade of war later, it was largely privatized and utterly dominated by foreign firms. Many companies from the west such as ExxonMobil, Chevron, BP and Shell, have set up shops in Iraq. The war was the sole reason for this long sought and newly acquired access. The conclusive report of the Task Force of the National Energy Policy Development Group, chaired by Cheney, in May 2001 argued that Middle Eastern countries should be urged "to open up areas of their energy sectors to foreign investment." This is precisely what has been achieved in Iraq (Antonia Juhasz, 2013).

The Iraqi government concluded the first "concession contract" for oil exploration with the Turkish Oil Company in 1925, in order to explore for oil in all Iraqi lands, except for the Basra region in the south, and this company succeeded in discovering the first oil field in Kirkuk in the year 1927, and then discovered in the south the Rumaila field in 1953, and then the Majnoon field in 1957, which is considered one of the five largest oil fields in the world (Al-Bidery, 2014, pp. 34).

When the Second World War ended, there was a change in the conditions of international politics, and the demand for crude oil increased, due to the boom in industry in the major countries, which led to an increase in the price of oil and accordingly, the United Nations General Assembly issued a number of decisions, urging the countries that own oil to invest it. In a way that achieves their national interests (Stevens, 2008).

These factors encouraged the producing countries to request a reconsideration of the oil concessions granted to foreign companies and to find an alternative legal system, to govern contracts that regulate their legal relationship with these companies, as well as to achieve a balance between the interests of the two

parties, and to lift the injustice in the old system, so the producing countries created a new system for decades oil investment, which was included in a number of models of oil contracts, the most important of which are: the production sharing contract, according to which the state became an exclusive right in exploration, production and management. Many oil-producing countries still conclude contracts according to the formula (sharing oil production with investing companies), with a specific participation according to the circumstances surrounding each contract. Joint venture contracts appeared and this type of contract brought with itself additional budget mechanisms for oil contracts. A joint venture contract can provide the oil producing country with greater control and oversight over petroleum operations than both a concession and production sharing contract. Then, oil services contracts that are considered advanced appeared. The oil service contract included legal ideas that reflect the economic, political and legal development in oil-producing countries (Radon, 2005).

However, it is known that oil investments require huge capital and high technical expertise, and that the risk factor placed on the foreign oil company is very high, on the one hand and on the other hand, oil fields and their development are vital to the growth of the economy of oil-producing countries. This wealth is the cornerstone of the development of these countries' economies. Considering the importance of oil in Iraq the stakeholders should always endeavor to put the interest of the entire country and make transparent transactions that can be easily monitored and recommendations given to solve problems arising. This researcher urges other legal students and the civil society to constantly research and keep the society abreast about this important sector of the economy.

1.3. Problem Statement:

The research problem is embodied in answering many questions about the legal system that governs the oil wealth in Iraq, and what are the legislations governing its exploitation in a way that serves the national interest and contributes to developing this sector in particular and pushing it forward, as we

try, in this research or study, to identify points disagreement over the legality of concluded contracts, because there are disagreements about the economic feasibility of contracts concluded in Iraq. As there was a lot of criticism directed at the Iraqi governments about the way they concluded oil contracts.

1.4. Aim of the Study:

The writer aims to highlight the most relevant legal aspects on which Iraqi government relies on in concluding oil contracts and mindful of the huge importance of oil revenue in the growth and development of entire Iraq. The aims of this thesis could thus be classified as follows:

- To analyze the terms of the contract from the legal point of view to show the extent of its legitimacy upon its conclusion.
- To explain the types of contracts concluded and their impact on the higher interests of Iraq.
- To clarify whether Iraq's sovereignty has been preserved in the terms of the current contracts.
- To provide government agencies with academic legal knowledge to be used in the future in concluding oil contracts.

1.5. Importance of the Study:

The importance of research lies in the subject of our study: to show the legal and constitutional extent of the contracts concluded by the Iraqi state with major international companies. Especially since Iraq does not have a clear oil and gas law, but sometimes relies on old laws, and the visions of governments and the ruling political system at other times. Therefore, we find that it is possible that this topic of our research will contribute to identifying the most important defects that occurred in the way oil contracts were concluded in Iraq, through analyzing the legal terms and conditions.

1.6. Question about the Study:

Any research is known to deal with a problem in society. By delving into the folds of this research, the researcher tries to find ways and means to address

this problem. On this basis, this topic of our discussion constitutes at the present time one of the most prominent problems facing Iraq. Because there is a great disagreement over the policies and methods used by Iraqi governments when concluding contracts between the ruling political forces today. On this basis, define the following questions related to the research topic:

1. The disagreement over the methods of concluding contracts between federal state institutions and its political forces raises the question: Were these contracts concluded according to the constitutional and legislative rules in them?
2. It is well known that this type of contract is where countries try to benefit from foreign expertise. This leads us to the question; did the Iraqi state focus on that in concluding these contracts?
3. Iraq is a federal state. Accordingly, there is a disagreement between the federal government and the Kurdistan Regional Government over the concluded contracts. What are the main points of disagreement between the two parties?
4. Oil contracts have many types. What are the types adopted by the Iraqi state? Especially since each type has a specific effect in this sector?
5. If oil disputes arise upon the implementation of these contracts, what are the ways to resolve them in light of international law?

1.7. Theoretical Framework of the Study

The study is divided into four chapters and is presented in an organized form. The first chapter covers the introduction to the study. The second chapter deals with the legal systems for concluding oil contracts in general. As well as the historical development of concluding oil contracts in Iraq and the current model of oil contracts applicable in Iraq. The third chapter deals with the legal regulation of oil contracts. Chapter Four discusses disputes over oil contracts in Iraq. Finally in conclusion we conclude the findings and recommendations for future studies. The list of bibliography is placed at the end of the thesis.

1.8. Methodology:

We rely in our study on the analytical approach of contracts concluded by Iraqi governments in the field of oil. As well as the historical approach through which we learn about the historical extension of oil exploitation in Iraq and the accompanying development in this field.

CHAPTER TWO:

THE LEGAL SYSTEM FOR OIL CONTRACTS IN IRAQ:

2.1. The Concept of Oil Contracts

The novelty of this type of contract, which appeared with the arrival of colonialism at the end of the 19th century, made it enjoy the characteristics and advantages that distinguish it from other well-known decades at the national and international levels. Its importance stems from its position in the extraction and investment of oil and its role in commercial, economic and political aspects. In addition, it is the direct intervention of the state in this type of contract, starting from its conclusion, and the methods used in that, which differ from other regular contracts - which give individuals the freedom to choose them according to the method that is appropriate for them.

Based on the preceding, we must discover the concept of oil contracts and explain them by dividing this issue into three dimensions. In the first section, a definition of oil contracts will be provided, and in the second section, information on the parties to these contracts will be provided, and in the end, types of contracts will be discussed.

2.1.1. Definition of Oil Contracts

Alan defined the oil contract in general terms as an investment contract for economic development to keep pace with the movement of international capital, including the availability of a foreign component in it, and concluded by the state as a public body towards the foreign party (Alan, 2016, pp.165). Another definition that approaches this definition is an investment and economic development contract for the producing state with a private foreign person, related to the implementation of activities that fall within the framework of the state's economic development plans (HAMAD, 2017, pp. 25).

Through arbitration provisions issued in disputes related to oil contracts, a definition of the oil contract can be deduced as a contract concluded between a national company that takes the form of a public project, and a private foreign commercial company subject to foreign private law, whose place is focused on the exploitation of natural resources for a relatively long period, in which the foreign side is bound by making considerable investments in the field of the petroleum industry, establishing permanent facilities, and creating rights of a privileged and not contractual nature that create a kind of long-term cooperation between the two parties through the presence of texts aimed at achieving legislative stability and sanctifying contractual freedom with the contract being subject to a legal system or provisions of international law and it provides protection for the foreign party contracting with the sovereign state, which focuses on amending and terminating the contract by unilateral will that is based on considerations of sovereignty (Ahmed, 2013, pp.175).

On the legislative level, some oil legislations defined oil contracts or some of their types in the context of the provisions that dealt with them, The Sultanate of Oman's Oil and Gas Law defined it (the concession agreement) as follows: "a contract entered into by the government or its representative with others for the purpose of exploration, drilling, discovery, development, and exploitation of petroleum resources, or any of these activities independently" (Art. 1, No. 8, 2011, Official Gazette No. 928 dated January 24, 2011).

And the Ugandan Oil Law defines the oil contract that "agreement: means the agreement concluded between the competent government authority with any natural or legal person under this law to organize the terms and conditions of oil operations" (Art. 2, No. 4, 2013 Official Gazette No. 38 Volume CVI dated July 26, 2013).

The Iraqi Oil and Gas draft Law (IOGDL) of 2007 was devoid of a specific and precise definition of the oil contract. However, some terminology close to it was known, such as the contracting area, to mean (the location where the owner of an exploration and production license is permitted to explore, advance, and produce oil))(Art. 4/26, 2007), and we are surprised the lack of attention The legislator to put a definition of this term in the draft, which was not approved despite the number of terms and expressions that were mentioned in Article (4) devoted to descriptions of terms contained in the draft law, which amounted to (35) definitions.

In light of the previous definitions, we can present a simplified illustration of the oil contract: 'contract between a private foreign investment company and an oil-producing country to exploit its natural oil wealth and establish permanent facilities linked to the investment work it carries out that seeks to achieve its development and economic goals by investing natural resources and achieving financial returns to the producing state, and includes exceptional, unusual conditions within the framework of private legal relations.'

2.1.2. Parties to oil contracts

Through the previous concepts that we mentioned about the concept and definition of oil contracts, these contracts consist of two main parties: the host country or one of its operating institutions that owns this wealth and the second is a foreign investor in this field.

2.1.2.1. Host State

It is represented in oil contracts in the country itself or one of the companies, institutions, or public bodies affiliated to it, where oil resources are considered in the comparative legal systems the public property of the state and its people,

that is, they are among the public property, and therefore the state is the one that undertakes the exploitation and contracting for them, whether by itself or by one of the state agent created for this (Aalan, 2016, pp. 167). Accordingly, when the oil-producing state concludes an oil contract itself through whoever represents it (a president, a prime minister, or a ministers, etc...), such a contract does not raise any legal problem, and it falls within the category of contracts that is termed to be called state contracts, but in the case of a company or government agents acting ultra vires which concludes an oil contract with a foreign private company. This issue raises the question of whether such contracts are considered state contracts or not? And with a disagreement over the answer to this question and controversy raised in the scope of jurisprudence around it accordingly, jurisprudence proposes two criteria for determining whether the state is a party to the contract concluded by its affiliated bodies and institutions or not. According to the legal standard, the authority or public institution bears full responsibility for contracting with it without the state sharing this responsibility with it as long as it has an independent legal personality. The state is therefore no frequently regarded a party to the deal. As for the economic standard, it thinks these entities to be represented by the state at the legal level only, as it applies its policy in the first place and represents its main interests. Therefore, it is difficult to separate it from the state over which it exercises the authority of oversight, supervision, and direction. This criterion is the most correct in accordance Jalal, and, considering that the establishment of these institutions by the state, in the beginning, comes to benefit from them, manages its affairs and expresses its interests, and the contracts that it concludes affect the economic and social fundamentals the interests of the state and society (Jalal, 2012, pp. 79-80). Zahir tends towards the inclusion of those contracts that the agencies or institutions in the state conclude within the state contracts (Zahir, 2013, pp. 23).

Based on this opinion, the researcher believes that the oil investment contracts concluded by one of the state's bodies, institutions, or public companies are state contracts, as the latter cannot be separated from the reliance of these

agencies on them. Because it operates under its control and direction as well as considering its creation.

The Iraqi Federal Ministry of Oil (IFMO) negotiates oil contracts and agreements with foreign investment firms in Iraq. The ministry has signed several memorandum of understanding with international companies to conduct studies and research on oil fields and the purposes and tasks that the ministry sought from behind the conclusion of these contracts between oil exploration and drilling or its production, or the development of some existing fields (Al-Marashi, 2018, pp.125-141).

2.1.2.2. Foreign Investor:

The foreign party in oil contracts - in most cases - is a private foreign incorporeal person, specifically one of the private foreign companies that work in the oil industry and holds the nationality of a country other than the oil-producing country, but this does not prevent the producing country from contracting with a natural foreign person (Abdullah, 2015, pp.12) ,There are some old contracts in which natural persons were contracted, such as the contract concluded between the Iranian government and William Tux Darcy, in 1901, and the contract between the Saudi government and the Greek millionaire (Anasis) and others. These very few cases date back to the time of the first oil contracts, and they have no application today (Zahir, 2013, pp. 23).

It should be noted that the World Bank agreement establishing the International Center for Settling of Commercial Disputes in 1965 included a provision in article (25/2) stipulated that the second party contracting with the state be a foreign investor belonging to another foreign country that is a party to the agreement, whether it is a natural or legal person (see. Art. 25/2 of International Center for Settlement of Investment Disputes). The prevailing international law standard for distinguishing between a national and a foreign company is nationality, as the contracting company is considered foreign when it does not have the nationality of the other country contracting with the second party to the

contract. It is deemed national when it holds its nationality, and In general, it can be said that the foreign capacity is attached to every company that does not have the nationality of the contracting state (Mona, 2010, pp. 22-23). Often they carry the nationality of the country that they follow and take the form or nature of private companies, that is, to regard them as persons of private law in the countries of their nationality. This public, corporate entities are to give them independence from the political systems of their countries and to keep them as far as possible to influence the international political situation, to avoid a clash between the governments of producing countries and foreign companies operating in their respective countries, and to impart protection to the capital invested in the oil sector, as it is one of the most important global strategic commodities, as well as the acquisition of these investment companies' special legal status, makes it difficult to consider them as public law persons and leads to subjecting the disputes arising from the contract to the provisions of public international law. Hence, they strive to make the contract of a special legal nature governed by private law. Therefore, the disputes arising from it are subject to private International law provisions (Ahmed, 2013. pp. 203).

Nevertheless, some foreign companies contracting with the state, despite their capacity as a person of private law, are subordinate to the state to which they belong's control and supervision, and act as if they are a national body with commercial activity, such as the famous British Petroleum company (BP) in which the British government possesses 51% of its capital, and has several representatives on its board of directors, and some companies operating in the field of oil investment fall under the public law persons in the country whose nationality holds such as the Italian National Company for Hydrocarbon Materials and others. Jurisprudence questions about the effect of the legal nature of the contracting person on oil contracts concluded with a company or foreign legal person that is subject to private law or subject to public law, and a large number of jurists that claim there is no differentiation or discrimination in the treatment or in the status of contracts concluded by the oil-producing state with foreign public persons and those that it ends with private foreign persons,

considering that the first group of contracts raises the same legal problems that the second sect raises. Then both sects must receive the same for the legal transaction (Aalan, 2016, pp. 167).

It should have been indicated that the Iraqi Oil and Gas Draft Law (IOGDL) defined an Iraqi person for the law as "any citizen holding Iraqi nationality or any company or institution with a legal personality existing and registered according to Iraqi legislation with its main headquarters in Iraq, and it has more than 50% of the shares owned by Iraqi citizens or Iraqi public or private institutions." (Art, 4/17, Iraqi Oil and Gas Draft Law, 2007). A foreign person, on the other hand, was defined as "any person other than an Iraqi citizen or a company or institution with a legal personality existing and registered under Iraqi legislation and having less than 50% of its capital shares owned by local citizens or Iraqi private or public companies or institutions" (Art.4/18, Iraqi Oil and Gas Draft Law, 2007). It indicates that the legislator took the standard of the head office and the percentage of participation in the company's capital to determine its Iraqi or foreign affiliation.

2.1.3. The Types of Oil Contracts

Oil contracts are classified into four types: oil concessions, Production Sharing Contracts (PSCs), joint ventures, and service contracts.

2.1.3.1.Oil Concession Contracts

The petroleum concession agreement has been defined in several ways. According to Denis Guirauden, the state grants the contract holder exclusive exploration rights, complete development and production rights for each commercial discovery under concession agreements (Guirauden, 2004, pp. 170-210). Cotula, for his part, stated that concessions are contracts in which the government grants the investor the exclusive right to exploit natural resources in a specific area for a set period of time in exchange for payment of royalties, taxes, and fees. (Cotula, 2010, pp. 24).

The following are the standard structures of Concession Contracts:

i. The host state grants the IOC (international oil company) the exclusive right to conduct exploration, development, and production operations in a restricted area for a specified period of time;
ii. The IOC obtains the titles of equipment, petroleum, and natural gas;
iii. The IOC assumes financial and commercial risks.
iv. The IOC agrees to pay bonuses, taxes, royalties, and other fees during the exploration and exploitation phases (Ghadas et al., 2014, p. 35).

The first concession contract took place in Iran in 1901 between an English man, D'Arcy and the Persian government of that time (HAMAD, 2017, pp. 34). This same notion was used by many other countries such as the USA, UK, South Africa, Norway, Russia, Argentina, Australia, New Zealand, France, and Colombia (Ruslan, 2011, pp. 36).

Universally, Concession contracts are classified into two types: the traditional concession contracts that were in use prior to the 1950s, and the modern concession contracts used since the 1950s. Some features of traditional concession contracts include Large surface area, long concession duration, royalty given to the HS by an international oil company, the IOC's required assets and funds for exploration and development operations as foreign direct investment Furthermore, the international oil company owns used equipment and installations. (HAMAD, 2017, pp.35). Nonetheless, the modern form of Concession Contracts (MCC) also grants international oil companies exclusive rights for exploration, development, exportation, and sale of oil from a defined area for a set period of time; however, in modern forms, the range of site usually falls into several limited blocks, the contract duration is limited, the IOC is required to employ national employees, and some modern forms include paying a bonus to the host state, and modern form of concession contracts generally gives further active role for the HS involving its authority to review or control over concessionaire’s decision (Ghadas et al., 2014, pp.35).

In accordance with the preceding, it becomes clear to us that all concession contracts concluded before the Second World War are nothing but a legal formula for the occupation and the plunder of oil wealth belonging to the peoples of the region by using their financial and economic weakness, in addition to the backwardness that occurred in them due to the continuous wars, which led to the emergence of a severe shortage of national expertise in the oil industry.

2.1.3.2.Production Sharing Contract (PSC)

The first modern production sharing contract was signed in 1966 on between Independent Indonesia Oil Company and the Indonesian national oil company (then known as PERMINA) (SSALI EDWARD, 2015, pp. 14). The government appoints the investor (investors) as a contractor to extract the mineral resources under PSC, but the government retains ownership of the resources. Following the agreement, investors continue to operate at their own expense and share the risk with the government portion of the production output. At the production stage of PSCs, a typical scheme of financial relations between investors and the government is as follows (Central Bank of Russia, 2011): the production will belong to the host state, the international oil company has the right to recuperate their investments from the production in the contracted stipulated area. After the company has recovered all costs, the remainder of the output will be shared between the HS and the company, in proportions previously established in the Production Sharing Contract, and the revenue of the company is subject to taxation (Silva, 2010, pp. 44).

Iraq signed its first PSC in March 1997 with such a group of Russian companies for the western side of a Qurna offshore oil in south of Iraq, and another in July 1997 with an alliance of Chinese firms for the Al- Ahdab oil field, also in southern Iraq (Mustafa, 2018).

This type of contract appears to be appropriate for developing countries that lack the necessary capital and expertise to extract their resources and hope to entice IOCs to invest in the oil field. Furthermore, while these contracts can be

very profitable for the foreign investors involved, they frequently carry significant risks during their operations. Malaysia, Thailand, Egypt, Peru, Libya, Sudan, Oman, Philippines, and Angola are among the developing countries that have relied on this type of petroleum production arrangement (HAMAD, 2017, pp. 36).

In light of the preceding, we believe that the production sharing contract is a qualitative leap in contract formulas between the host country and foreign-invested companies because through it, the state can control and exploit its oil wealth, as it should, as it is allowed, to achieve its national interests, and therefore these contracts helping it form national technical cadres specialized in the field of the oil industry, in addition to investing its oil wealth, without allocating any amounts allocated to it from the general budget.

2.1.3.3.Service Contracts

A service agreement contract allows a petroleum company to explore for and extract oil in exchange for a pre-determined fee from the HS. Some states allow the oil company to have crude oil as a fee to make this contract more appealing. This is known as a buyback agreement, and it was started in some Iranian petroleum fields. As a result, the international petroleum company is bound by this contract. The host state has sole ownership of the oil produced and has agreed to cover all of the contractor's expenses. This contract model encourages the host country to nationalize its oil resources. The oil resources are still owned by the NOC of HS (Mustafa, 2018). In the Middle East, the first service agreement contract was signed in Iran in 1966 between ERAP and Iran's National Oil Company, followed by seven more service agreements with Iran as an HS until 1974. In 1968, the Iraqi National Oil Company (INOC) and a French company (ERAP) signed their first service contract (Al-Bidery, 2014, pp. 61).

Pure service contracts, risk service contracts, and technical assistance contracts are the three main types of service contracts. In a risk service contract, private oil companies bear all risk of exploration and production operations while also having the potential to profit, and all production belongs to

the HS; in the event that resources are discovered, the company receives a cash fee for its services along with interest on the extracted resources, and vice versa. HS accepts all risks in a pure service contract, and the company also acquires an interest in the produced resource. The host state, on the other hand, has the most clout under the technical assistance agreement. At the same time, the private oil company has no chance of acquiring a stake in the resource, and this arrangement allows the HS to benefit more from the transnational's technological, capital, and professional expertise while maintaining control and sovereignty over national mineral resources (SSALI EDWARD, 2015, pp 19-20).

In light of the preceding, it becomes clear to us that the contracting company is not obligated to pay taxes, legal fees, and royalties to the host country, nor is it obligated to pay the rewards of signing the contract and production, as it is the case in joint ventures and production-sharing contracts. This is because the foreign company does not intend to profit from oil production, as it takes its wages in exchange for providing its services, which are agreed upon with the host country. It was stipulated in the agreement of the Iraqi National Oil Company and the French company ERAP, which states: "No part of ERAP's activities under this contract is subject to taxes in Iraq." In addition, the service contract is not considered a concession grant, nor is it equivalent to the foreign company entering the project as a partner of the national party, as is the case in other oil contracts (Art. 7/3, contract between the Iraqi National Oil Company and the French ERAP Company, 1968)

2.1.3.4.Joint Venture Contracts

Compared to Concession Contract and PSC, joint venture contracts allow the host states to control better and supervise the petroleum operations (HAMAD, 2017, pp. 38). For the HS, this type of contract is seen as a beneficial option. Both parties share the risks, costs, production, and profits under the terms of the joint venture contract. A Joint Venture Contract establishes a partnership in which the interests of both parties are balanced by sharing the rights and obligations in petroleum operations. The HS participates in petroleum

operations and bears the costs and risks associated with them. The host state suffers losses if the commercial discovery fails, which is different from the Concession and PSCs (Ghadas et al., 2014, pp. 39).

Joint ventures compel the parties to collaborate on projects to varying degrees, allowing IOCs to transfer their skills, technology, and expertise to the HS's national oil company. The HS and the IOC are in charge of making decisions under this type of contract. The government is entitled to a share of the joint venture's profits (usually in kind), as well as any royalties or taxes levied (Radon, 2016 pp. 7). Furthermore, in terms of risks, costs, and management participation, the scope of government participation in practice varies greatly from one contract to the next. This type of contract was first used in Iran and Jaya, Indonesia, in 1977, and it was followed by other countries. It has been used in Australia's North West Shelf, Nigeria, and Russia (HAMAD, 2017. pp.38-39).

2.2. Historical Perspective of Iraqi Oil Contracts

2.2.1. Granting Oil Concessions during the Monarchy:

The interest in exploiting Iraqi oil dates back to the last quarter of the 19th century, after a German mission in 1871 attempted to search and explore for oil in Iraqi lands. In 1890, a consultant in the Ministry of Oil in the Ottoman Empire submitted a report to the Sultan in which he revealed the presence of oil in Iraq, and the Sultan suggested investing it through Western oil companies specialized in the field of oil, but these attempts did not have the desired result until after the independence of Iraq in the 1920s (Wali, 2013).

In light of the monarchy in Iraq, three oil concessions were granted to explore, produce and exploit oil. The first concession was granted to the Turkish Oil Company (TPC) Limited in 1925, and for a period of 75 years, the concession area included all Iraqi lands except for the portable lands and the lands located in the state of Basra, southern Iraq. Then, by the 1931 agreement, it was amended to include all lands located in Baghdad and Mosul, bordered by the eastern bank of the Tigris River except the concession area of the Khanaqin Oil

Company (Metz, 1988). Exploration and development of oil continued by the TPC within the selected plots until 1929, when the TPC changed its name to the Iraqi Oil Company. And the TPC was structured as follows: 50% for Anglo-Persian Oil Company, 22.5% for the Deutsche Bank, 22.5% for Anglo-Saxon Petroleum Company and the other 5% for Gulbenkian. The Anglo-Persian Oil Company represented British interests (Kadirgolam, 2020, pp. 42).

The Iraqi government granted the second oil concession in 1932 to the British oil development company for a period of 75 years as well, as the new concession area included all the lands located on the western side of the Tigris River and the northern side of the 33rd parallel, and the concession above was approved under Law No. 45 of 1932 (Mikdashi, 1966).

Then, in 1938, the BOCL obtained a third oil concession for a similar period of 75 years, starting from the date of the contract's entry into force. The concession area included the content of this contract, all Iraqi lands, islands, flooded lands, and Iraqi interests in the neutral zone, which are not covered by the concession agreements previously mentioned (Yacoub, 2015, pp. 36).

Work continued under these privileges until 1952, and as a result of the changes that took place in international politics after the end of World War II, the Iraqi government amended the terms of those previous agreements in a manner consistent with its national and economic interests, so that the government obtained a percentage of the rent from the profits of oil production, with the imposition of a tax at the rate of 50% on the profits of the invested companies (Alnasrawi, 1994, pp. 3).

2.2.2. Management and Investment of Oil Wealth after the Revolution of July 14, 1958:

The revolution of July 14, 1958, constituted a significant turning point in the struggle of the Iraqi people and their democratic forces and marked the beginning of a new phase in the development of Iraq on the political, economic, and cultural levels. The revolution wanted to remove the dominance of the oil companies and set an intensity to manipulate the Iraqi people's capabilities to

achieve the protection of the oil wealth and its national investment. The government took the following steps:

2.2.2.1. Recovering Unused Lands:

The government issued a swift decision to review the concession of oil companies operating in Iraq and formed a committee for this purpose. Negotiations began and lasted for nearly three years, as the Iraqi delegation focused on the demand for the companies to give up the unused portion of the lands allocated to the concession and reconsider the cost accounts. Oil prices, checking corporate profits, and increasing the share of the Iraqi government (Saul, 2007, pp. 746-792).

Iraq tried to strengthen its position in the negotiations, so it sought to establish the OPEC, so the oil ministers of Iraq, Saudi Arabia, Kuwait, Venezuela and Iran met in Baghdad in September 1960, and announced the establishment of the organization and pledged to demand the oil companies at fixed prices and to return what was deducted from the price and that the companies would not make any reduction only without consulting the organization (Ahrari, 2014, pp. 10).

To preserve the national wealth, the government issued a law - designating investment areas for oil companies - No. 80 of 1961, according to which it restored 99.5% of the concession areas allocated to these companies. It stipulates in Article 4 that "the lands to which the provisions of articles two and three of this law do not apply shall be free of all the rights that have been created on them for companies." (John, 1977)

From this, it becomes clear: that the government restricted the concession area to companies only with the fields explored and produced, after the companies owned most of the Iraqi lands under the concession granted to them, and that this law provided Iraq with the opportunity to invest these areas, through national companies operating directly and without the need for expertise Foreign (Ahmed, 2009, pp.11).

It is worth noting that the enactment of this law is a significant shift in the history of the oil industry in Iraq, as it pushed the government to develop towards establishing the NOC and granting it the right to the concession of recovered areas, especially after foreign companies refrained from searching and exploring for oil in response to the government's decision to withdraw unused areas from them. In 1964 the Iraqi government issued Law No. 11 of 1964 to establish INOC (Law No. 11, 1964, published in Iraqi Official Gazette No. 912 dated 8-2-1964).

In order to restore its oil wealth, the government was not satisfied with these measures, and to open the field for the INOC to legally invest in oil, issued the law on the allocation of investment areas to the INOC, law No. 97 of 1967 (Law No. 97, 1967, published in Al-Wagayeh Al-Iraqiyeh No. 1449 dated 7/8/1967), according to which it granted the right to the national company to invest in oil and gas. And all hydrocarbon materials, in all Iraqi lands, including territorial waters and their continental shelf, and Iraqi interests in the area of neutrality, without having the right to grant a concession to any foreign company (Stevens, 2008, pp. 5-30).

Despite the objection of the companies operating in Iraq, the INOC concluded the first service contract with the French Oil Corporation "ERAP" in 1968 to explore and develop part of the explored fields in southern Iraq. Then it contracted with the competent Soviet government institution - Machinoexport - in 1969 for cooperation in oil investment within technical assistance framework (Smolansky et al., 1991. pp.38). The INOC contracted with the Brazilian national oil company - Petrobras - in 1972 for cooperation in oil investment with a service contract. Following the powers granted to it in the law, the third paragraph of article two of the contract stipulates that: “The Company shall contract with companies or bodies that carry out work related to their purposes in various aspects of cooperation.” (Rahim, et al., 2018, pp. 110)

2.2.2.2. Nationalization of Shares of Foreign Oil Companies Operating in Iraq:

After the success of Iraq, in the first stage to restore the oil concession areas that foreign companies do not exploit, the continuing increase in global demand for Iraqi crude oil, and the growing awareness of the importance of oil resources in accelerating the development of the national economy, the primary oil market and its manipulation of the oil price in a way that harms the Iraqi economy, and after the oil operating companies refused to pay compensation to the Iraqi government for the damage, they suffered in 1971. All these were some of the reasons that pushed the Iraqi government - on 6/1/1972 - to the issuance of the decision to nationalize the Iraq Oil Company, according to Law No. 69 of 1972 (Law No. 69, 1972, Published in the Iraqi Official Gazette No. 2164 dated 1/6/1972). During the nationalization of the shares of oil companies operating in Iraq, foreign companies imposed a virtual blockade on the purchase of Iraqi oil after the nationalization decision and used their influence to push international parties, including the French government, to suspend its oil agreement with Iraq, and to refrain from buying Iraqi oil until the problem with the oil companies is legally resolved. But Iraq was able to market Iraqi oil to new sources, so 20 million tons were sold to Italy, and several agreements were concluded with socialist countries, Brazil and Ceylon, in addition to signing barter agreements according to which the value of Iraqi goods and equipment imported with Iraqi crude oil was paid, and leasing and owning tankers to market oil. Iraqi and break the blockade of foreign transport companies (Abdul-Jabbar, 2013, pp. 71). On March 1, 1973, the two parties (Iraqi government and international oil companies) reached an agreement which stipulated the following:

1. Foreign companies give up their concession in the Mosul Oil Company to the Iraqi state without compensation.
2. The oil companies paid all accumulated Iraqi dues, which amount to (141) million pounds sterling.

3. The companies sell the pipeline to transport oil passing through Lebanese territory and the loading terminal in Tripoli to the Iraqi government after obtaining the approval of the Lebanese authorities.
4. Iraq pledged to give the companies a quantity of 15 million tons of crude oil from the Mediterranean ports, provided that the quantity is divided into two shipments, the first shipment of 7 million tons received in 1973, and the second 8 million tons received in 1974. This quantity covers the value of all compensation demanded by the companies, in addition to the value of the oil pipelines passing through Lebanese territory, and the value of the loading terminal in Tripoli (Irakipedia, 2021)

The issuance of Law No. 69 of 1972, which provided for the nationalization of the operations of the Iraqi Oil Company, made the state control 65% of the ownership of the oil industry, and control of this industry was completed with the issuance of the Basra Oil Company Law No. 70 of 1973 (Law No. 70, 1973, Published in the Iraqi Official Gazette No. 2283 dated 7/10/1973). And Law No. 200 of 1975 (Law No. 200, 1975, Published in the Iraqi Official Gazette No. 1395 dated 8/12/1975). As for the operations of the Mosul Oil Company, it was ceded in favor of the National Oil Company according to the March 1973 agreement. Thus the ownership of the entire oil industry was transferred to the Iraqi government, and since that date, it has been managed by it.

2.2.3. The Post – Nationalization Era

The Iraqi government nationalized the shares of the BOCL in 1975 and controlled its export operations directly. To effectively sustain its petroleum industry, the Iraqi government-endorsed three approaches in that period. Firstly, it issued regulations to regulate the industry and maintain complete control over it. Second, it employed companies specializing in geological scans to look for areas not previously subject to oil exploration, primarily in the country's north. Finally, it signed contracts with firms from a variety of countries, including the Soviet Socialist Republic (hereinafter the USSR), Germany, Romania, Bulgaria, and Czechoslovakia to undertake survey operations and exploration (Al-Bidery,

2014, pp. 42). The Soviet Union was a major player in the Iraqi oil market. It assisted Iraq in developing skills such as transportation and well-drilling by providing equipment and training to the Iraqi national oil company. Iraq established successful policies for the development and control of its oil industry during this time. Iraq exported its first consignment of oil products to the international market in 1972. This demonstrated the country's ability to explore and export petroleum to the international market, as well as its strength in combating oil company monopolies. Iraq became the first Gulf country to have complete control over its oil revenues (Cedeno, 2008, pp. 19).

The border dispute between Iraq and Iran severely worsened their relationship in 1979 and led to a war in 1980. The war exposed severe damage to the enormous petroleum wealth of both countries. In 1984, the tanker war began, and warplanes bombed ships carrying oil. The attacks included the warring countries and spread to other countries such as Kuwait and Saudi Arabia. As a result of these attacks, Iranian crude oil production has decreased, and Iraqi revenues have also fallen below the average level. In Iraq, the oil industry suffered massive damage to its tankers and oil export ports, refineries, and pipelines. For example, the essential refineries in Iraq, Kirkuk, and Basra were bombed. Oil revenues spent on arms have deprived other sectors of their revenues (Alnasrawi, 1994, pp. 87). Faced with serious economic difficulties caused by the war, Iraq raised its crude oil production above the level set by OPEC. Other OPEC members did not welcome this move as some tried to halt Iraq's use of pipelines, which made it longer into their territory to reduce mass production by Iraq (Cedeno, 2008, pp. 60).

There were several ramifications of the Iraq-Iran war. After the war ended in 1988, several OPEC members, including Kuwait, deviated from the standard policy on production and caused a lowering of oil prices. The changes adversely affected Iraqi oil revenue, and Iraq accused Kuwait was trying to sabotage the Iraqi economy through the lowering of oil prices. It also accused Kuwait of stealing Iraqi oil from the Rumaila oil field through drilling to eased oil extraction across the border. This led to Iraq and Kuwait's relationship deteriorating, and

because of the strained relationship on August 2, 1990, Iraq invaded and occupied Kuwait. The United States of America and its allies supported Kuwait and launched military attacks on Iraq for six weeks. To weaken Iraq's financial ability, America and its allies have targeted Iraqi infrastructure, including pipelines and oil refineries. (Al-Bidery, 2014, pp. 44). Additionally, the UNSC (United Nation Security Council) passed Resolution No. 661 (Security Council Resolution, 1990), which provides economic sanctions against Iraq. Another resolution, No. 687 (Security Council Resolution April 8, 1991), was also issued that subjected Iraq to the international community's demands and demanded its withdrawal from Kuwait as a condition for lifting sanctions. Many assets of Iraq were frozen in international banks, and Iraq was prevented from trading. There was a dearth of basic human needs such as medicines, food, and medical equipment in the whole of Iraq. Living conditions became terrible in Iraq, and in 1991 the UN admitted that Iraq needed to rebuild its infrastructure and ensure its humanitarian needs (Foote et al., 2004, pp. 47-70).

The worsening living conditions in Iraq persuaded the Security Council to pass Resolution No. 986 in April 1995 (Security Council Resolution 1995). Under the auspices of the United Nations, Iraq was allowed to sell a limited amount of oil to meet basic humanitarian needs. Iraq was able to sell $1 billion worth of oil every three months. This effort was insufficient to meet all of Iraq's basic needs. As a result, Saddam Hussein urged foreign oil companies to sign contracts in order to exert pressure on the international community to lift economic sanctions. Iraq signed a contract with the China National Petroleum Corporation, allowing China to exploit oil from the Ahdab oil field. This attracted companies from China, Russia, and a number of other countries. In addition, in 1997, the Russian company LUK Oil signed a 23-year contract to develop the Qurna oil field. (Abdul-Jabbar et al., 2013, pp. 86).

As can be seen from the above, historical and political events have had a significant impact on the Iraqi oil industry in the post-nationalization era. The industry grew rapidly in the 1970s as a result of the Iraqi government's nationalization laws, new company participation, and the signing of service and

development agreements. However, between the 1980s and 1990s, the outstanding achievements were set back by two successive wars that severely damaged the oil infrastructure, as well as UN sanctions. Furthermore, some of the oil agreements reached with various foreign oil companies did not benefit Iraq.

2.2.4. Post Occupation Iraq 2003 Onwards

In March 2003, America falsely accused Saddam Hussein of possessing weapons of mass destruction, constituting a significant threat to world peace. They gained UK support and, together with their allies, launched a military attack on Iraq to eliminate Saddam Hussein's authority. As a result of this attack, the United States of America and its allies could impose their control and occupation of Iraq. However, the international community was aware that these allegations were false and based on incorrect intelligence information. The event was devastating to the economy of Iraq, which accumulated debts amounting to $380 billion.

On May 22, 2003, the United Nations Security Council passed Resolution No. 1483 (Security Council Resolution, 2003), allowing Iraq's government to resume crude oil exports. Despite the resolution allowing Iraq to raise enough money from oil exports, the sector has faced numerous challenges, including corruption, high petroleum prices, and the fragility of Iraq's institutions, all of which have resulted in petroleum revenue being misappropriated and misused (Al-Bidery, 2014, pp. 46).

The first to control the Iraqi Oil Ministry after 2003 was the US Army when it occupied Iraq. After several months of occupation, the oil industry returned to the control of the Iraqi Oil Ministry again despite the challenges of the occupation. The "Coalition Authority" formed steering committees to manage oil fields formed by both sides (Iraqi and foreign) to temporarily manage oil affairs through a bilateral memorandum of understanding between the Iraqi Ministry of Oil and foreign oil companies. Their duties were to conduct oil operations temporarily. Nearly 48 memoranda of understanding were signed between the

Ministry of Oil and major oil companies, and the spending was on account of those companies (foreign companies that carried out oil operations were donating spending to manage oil operations) as evidence of goodwill on their part for the Iraqi side, wishing (foreign companies) to be able to obtain long-term oil contracts in Iraqi fields in the future (Yasser, 2017, pp. 31).The adoption of government policy to support foreign investment and the relative calm in security situation after 2007 changed the situation (Wali, 2013).

In 2007 the Iraqi Oil and Gas Draft Law (IOGDL) was drafted but had not yet been ratified by the Parliament of Iraq. This law defines general principles for foreign investment in the oil sector (Al-Bidery, 2014, pp. 48). Between 2007 and 2011, large deals with companies from Korea, China, the U.S., France and Britain were concluded. The companies had to explore and drill new areas in Iraq.

In light of the above, it becomes clear to us that the Iraqi oil investment contracts went through many stages, and in each stage, they were modified by the political and economic conditions of the country, But the question that imposes itself: What is the current model applied to Iraqi oil contracts under the permanent constitution (2005)? We will try to discuss this question in the next section.

2.3. Current Applicable Type of Oil Contracts in Iraq

Since the models of oil contracts approved in Iraq differ between the federal government and the Kurdistan Regional Government, we will discuss the respective models.

2.3.1. Iraqi Federal Government (IFG)

The Contracts and Licenses Department of the Iraqi Federal Ministry of Oil (IFMO) announced in 2009 the first round of licenses to develop a group of oil fields, but they, and after that, it announced three other rounds to develop the remaining productive fields and to increase their production, and adopted the service contracts formula with foreign companies (Hadi, 2017, pp.153).

Accordingly, the advantages and disadvantages of these contracts can be extracted as follows:

2.3.1.1. The Advantages of Service Contracts for the Development and Production of Oil for the Federal Government

The federal service contract has advantages that make it distinct when implementing oil operations, and the most important of these advantages are:

1- Federal government ownership of oil produced:

The federal government is authorized to own increased production of crude oil after the development of the oil field by the contractor, and this is considered pure ownership, without giving any percentage or shares to the foreign company (Ghandi, et al., 2014). It was stated in the preamble of the service contract for the development of the Gharaf field between South Oil Company and the Malaysian Petronas Karigali Company in 2009 that: "All gas and oil resources within the territories and territorial areas of the Republic of Iraq are owned by the entire people of the Republic of Iraq."

The same applies to all fixed and movable assets related to oil operations, the cost of which is considered recoverable. It shall be the property of Iraq, as the same contract stipulates that "all assets acquired or supplied by the contractor or operator related to petroleum operations, and whose costs are recoverable based on the provisions of this contract, become the property of the South Oil Company." (Art. 2/1, service contract between South Oil Company and the Malaysian Petronas Karigali Company, 2009).

2- Oil operations expenses and production profits:

The contracting company bears all expenses and responsibility for the risks surrounding oil operations, from the start of the project until it becomes a source of income, as well as the costs and other expenses incurred, related to and for the oil operations and for its interest such as the cost of protecting the environment, taxes and legal fees (Abd Ghadas, 2014, pp. 38.), as stipulated in the service contract for the development of the Al-Garraf field, that "the

company shall incur all costs and expenses required to implement petroleum operations according to the development plans, work programs and approved budgets." (Art. 2/2, service contract between South Oil Company and the Malaysian Petronas Karigali Company, 2009).

This type of contract differs from other oil contracts in that the oil company recovers what it spends on the project since it started work till the end of the contract period. In addition, a certain percentage of the profit is paid to it in cash or in-kind according to the agreement of the two parties (Kadirgolam, 2020, pp. 110). The first paragraph of article 19 of the service contract for the development of the Badra field stated that: "The contractor shall be entitled to the oil costs, additional costs and profitability of the petroleum operations executed under this contract." However, the contractor's recovery of its expenditures incurred in oil operations, and its dues from profits, is subject to the increase in the daily production of the oil field and to that ratio agreed upon between the parties in the contract, and vice versa. The IFMO does not bear any financial obligations towards the contracting company, as the third paragraph of Article 19 of the contract mentioned above stipulates that: "Petroleum costs and profitability become due and payable upon presentation of account lists as of the chapter in which the first commercial production is achieved." (Bahjat, 2014, pp. 49).

3- Duration of contract implementation and enforcement:

These contracts are distinguished by their short duration, as their period ranges from twenty to twenty-five years (Al-Bidery, 2014, pp. 63), as stipulated in the service contract for the development of the Gharaf field that: "The basic period of this contract shall be twenty years from the date on which the contract comes into force, and that the period can be extended." (Art. 3/2, service contract between South Oil Company and the Malaysian Petronas Karigali Company, 2009).

It is worth noting that the IFOM did not differentiate between the period of development of the field and the period of production, and it granted the

contractor a fixed period for both phases. The Licensing and Contracts Department for the enforcement of contracts with foreign companies after signing them requires the approval of the Council of Ministers of the Federal Government, and then the contractor is informed of this in writing by the competent authority. Otherwise, the contract does not produce any legal effect (Bahjat, 2014, pp.50).

4- Abandoning the investment area:

Under the service contracts of the IFOM, contracting companies are obligated to abandon unused areas forcibly, potential reservoirs in the contract area, or all reservoirs in which commercial quantities of oil have not been discovered within a specified period, the calculation of which starts from the date of the contract's entry into force (Shaimaa, 2012, pp. 105).

2.3.1.2. Disadvantages of Service Contracts to Iraqi Federal Government

Despite the advantages enjoyed by the service contracts of the IFOM, they are not without shortcomings. Some of the disadvantages are:

1- Lack of national expertise:

Under the terms of service contracts concluded with foreign companies, the contractor plays a major role in the implementation of oil operations, thus leaving the national oil companies only a marginal role, whether in the stage of exploration, development, or production, which leads to the consideration of local employees as foreigners in oil operations, This prevents the formation of national expertise to rely on in managing the project in the future (Ghandi, et al, 2014), as the service contract for the development of the Garraf field stipulates that: "After the joint operating company undertakes the implementation of petroleum operations, being the operator, the contractor continues his obligations in the joint management of the joint operating company, and assumes the main role in all of the planning, decisions, control and day-to-day implementation of petroleum operations." (Art. 9/10, service contract between the South Oil Company and the Malaysian Petronas Karigali Company, 2009)

2- Ownership rights and financial rewards:

The royalty that oil countries receive from the oil exports produced by the investing company is an essential resource for its general budget, but the IFMO neglected this resource in its contracts. The contracting companies were not obligated to pay it, even though the IOGDL had obligated contracting companies to pay, as it is stipulated that: "The INOC, its subsidiaries and holders of exploration, development and production licenses shall pay the royalty on oil produced from the development and production areas, at 12.5% twelve and a half percent of the total production." (Art 41/1, Iraqi oil and gas draft law, 2007).

As for the contract reward, it has become, as a general rule, divided into three phases, in which a premium is paid at each stage, as follows:

i. Signature Reward: It is due to be paid upon signing the oil contract without waiting or affecting the results from the oil operations.
ii. Discovery reward: It is due to be paid upon discovering oil in commercial quantities in the contract area.
iii. Production bonus: It means the amount payable each time crude oil production reaches certain levels, determined by the contract and according to the agreement (Bahjat, 2014, pp.51).

However, we note that the Ministry of Oil did not abide by this rule in force in the field of oil investment, as it obligated contracting companies to pay the signature donation only, excluding the rest of the other types of rewards, and this is detrimental to the economy of Iraq, as the service contract for the development of the Al-Gharaf field stipulates that "Within thirty days from the effective date, companies shall deposit in a bank account specified by the Southern Oil Company the signature reward, non-refundable, of one hundred million US dollars" (Art. 4, service contract between the South Oil Company and the Malaysian Petronas Karigali Company, 2009).

3- Depletion of national oil reserve:

Service contracts were, as a general rule, distinguished by a fundamental advantage, namely: preserving the national wealth from unjustified depletion, and preserving the oil reserve in the ground, so that it can be exploited in the future by the national oil company directly, without the interference of the foreign-invested company, because the service contracts It has no economic value if this condition is not observed (Kawa, 2010, pp.109).

However, the IFMO overlooked this sensitive point when concluding service contracts with foreign companies, so all the oil in the field became within the scope of the contract investment.

2.3.2. Kurdistan Regional Government (KRG)

The Oil and Gas Law of the KRG No. 22 of 2007 adopted the model of PSCs for the investment of oil fields located within the geographical boundaries of the administration of the regional government.

This system has advantages and disadvantages as well, which can be summarized as follows:

2.3.2.1. The Advantages of Production-Sharing Contracts for the Kurdistan Region

Production sharing contracts have great importance on the practical level, which calls for their adoption in the field of oil contracts, and the essential advantages of them can be explained as follows:

1- **The investing company bears the cost of exploration and production and its risks:**

These contracts bind foreign companies to participate through the contract provisions that they do not enter into the partnership until after discovering oil in commercial quantities. This means that only the foreign company will incur the loss in the event of a fail operation at the research and drilling stage (Radon, 2005, pp. 69).

The PSC between the KRG and the American Hunt Oil Company in 2007 stipulates that the regional government has the right to enter the contract with

participation through the national oil company that it forms for this purpose as a partner, six months after the investing company announced the discovery of commercial oil (Art. 4, PSC between KRG and American Hunt Oil Company, 2007).

2- Control over all oil operations:

Since the KRG is a party to the PSC, this party becomes the owner, of course, of a large portion of the production. The practical reality reveals ownership of not less than 80%, and therefore the government will not remain at the mercy of the oil investing company.

Likewise, the Kurdistan Region's Oil and Gas Law obligated foreign companies operating in the region to provide the government with all data and information related to oil operations, as the first paragraph of Article 32 stipulates that: "The region shall have the right to own all data and information, whether they are preliminary, processed, interpreted or an analyst for oil or oil operations in the region." (Art. 32, Kurdistan Region's Oil and Gas Law no. 22, 2007)

The KRG also divided the oil investment contract into two phases: Intending to control all oil operations, the first: the exploration and drilling phase, for a period of five years, which can be extended for two years, and the second phase: for development and production for a period of twenty years, provided that it is extendable for a period of five years, at the request of the contracting company. At this stage, the government concludes a new contract with the same prospecting company for development and production, and in this case, the necessary information is available to control and supervise oil operations on the ground and protect national interests, as the fourth paragraph of the article thirty-seven of the same law stipulates that "After the exploration period ends, the development period begins, which lasts for twenty years." (Art. 37/4, Kurdistan Region's Oil and Gas Law no. 22, 2007)

It is worth noting: that these clear and accurate texts in the oil and gas law for the Kurdistan region by dividing them into the implementation stages of oil contracts, lead to the continuity and seriousness of work, in addition to the

inability of contracting companies to conceal information and data related to oil operations.

3- Financial returns and profits:

The share of the KRG's profits in the partnership contracts depends on the profit that is produced from the amount of Profit Petroleum, so the higher its percentage, the higher the government's profit rate, on the other hand, the profit rate of the investing company decreases and the share of the contracting parties is determined according to the profitability factor, as this percentage is determined according to this factor from the general revenues of selling profit oil at the company's expenses, from the day of exploration to the discovery of commercial oil. If the profitability coefficient is one or less, then the government's profit is 70% and the company 30%, but if the profitability factor is more significant than one and less or equal to two, then the government's profit is between 70% to 85%, and the company's profit rate ranges between 15% to 30% (Bahjat, 2014, pp.54). According to our estimation, the average percentage is about 20% of the remaining oil after deducting the percentage of the rent, or about 18% of total production. If the profitability factor is more significant than two, then the government's profit is 85%, and the company's profit is 15%.

The law also obligates investing companies to pay bonuses to the regional government in three stages. First: Upon signing the contract, in the participation contract of the American Hunt Oil Company in 2007, the company was obligated to pay two million US dollars within thirty days from the date of signing, and the second stage: is the time when the company starts the process of exploration and search for oil in the region thirty days after the start date of oil drilling, and the third stage: when the company announces the discovery of commercial oil, as the percentage of this reward is determined according to the percentage of crude oil production, For example: In a partnership contract for the same company, it is obligated to pay two million five hundred thousand US dollars at the time of discovering commercial oil, and when production reaches ten million barrels in the area of the contract, the company is obligated to pay five million

dollars to the KRG, and this amount is not refundable. Also, the company may not consider it as part of the cost of oil (Kholoud, 2012, pp. 190).

The contracting companies are also obligated to pay the taxes and legal fees due on them during their period of work in the Kurdistan region, following the oil and gas law, as it stipulates that "the contractor, the authorized person, and everyone who participates in oil operations shall pay taxes imposed by the regional government." (Art. 40/1, Kurdistan Region's Oil and Gas Law no. 22, 2007)

From the preceding, it is clear that the Kurdistan Regional Government's total profits from its oil contracts are more than 80%, which confirms the compatibility of these contracts with the rules of oil investment in the world.

4- Acquiring national experiences in the field of the oil industry:

The Ministry of Natural Resources of the KRG can benefit from the scientific and technological expertise and competence of contracting companies by exploiting them to form national expertise in the field of oil exploration and production and to rely on them in the future to exploit this wealth directly, all by employing technicians and local workers in the oil operations during the contract implementation period, as the third paragraph of Article 26 stipulates: "Giving priority to citizens of the region and other regions in Iraq for training and employment in oil operations." (Art. 26/3, Kurdistan Region's Oil and Gas Law no. 22, 2007).

2.3.2.2. The Disadvantages of Production Sharing Contracts

Despite the many advantages of production sharing contracts; however, it is not without flaws, as it is subject to criticism like any other legal work, and these disadvantages or flaws can be summarized in the following points:

1- The right of the contracting company to dispose of its share of the profit oil:

Since the partnership contracts make the contracting company a trustworthy partner for the host country, so it has the right to dispose of its share of the profit

oil and sell it in the global oil markets, as it is its owner. Therefore, it leads to the inability of the producing country to control its oil exports, and thus it prevents the implementation of the recommendations and decisions issued by the OPEC regarding the production ceiling, or what is recognized as the share of oil-producing countries in the OPEC (Kristen, 1999).

2- The contracting company has control over production and operating expenses:

Although the producing country retains legal ownership of the crude oil reserves, the foreign oil companies contracting with it determine the level of oil production and determine the cost of oil operations, from the beginning of the drilling work until the discovery of oil in commercial quantities. Therefore, the absence of central control by the host state on the expenses of the investing company, concerning the costs recovered, leads to wastefulness by the investing company and allows scrupulous companies to manipulate the actual amount of money spent in research and drilling (Kadirgolam, 2020. pp. 105).

In light of the foregoing, Bahjat mentioned that what Iraq needs urgently and directly is the foreign investments necessary for the advancement of the oil industry and that the best way to provide this is to resort to concluding production-sharing contracts with international oil companies. Many people inside and outside Iraq have expressed their concerns that the Kurdistan Regional Government will conclude these contracts, which, in their view, leads to the control of these companies over this industry, which enables them to monopolize the benefits of a large part of Iraq's revenues in this field. Some people who lack knowledge and experience in oil industry contracts, especially in production-sharing contracts, have contributed to these concerns. In addition, the production sharing contracts are not static or fixed texts, as some see, but rather are subject in their design and formulation to the desires and demands of the signatory states. This provides the opportunity for Iraq, if concluded, to guarantee the terms and conditions that are consistent with its national policy, which preserve the rights and interests of its people, and affirm its sovereignty

over the sources of its oil wealth, in a manner that fully and permanently safeguards its national interests (Bahjat, 2014, pp. 56-57).

Ruba Husari conducted an interview with the Minister of Natural Resources in the Kurdistan Regional Government, Dr. Ashti Hawrami, and he argues that the PSC is the best contract model to be used in Kurdistan and Iraq. Due to the high risk in the search for oil in Kurdistan and Iraq, the oil sector in Kurdistan has not been developed, and significant funds, expertise and technology are needed to manage oil operations. Therefore, the PSC is the only model that can persuade international oil companies to invest in the petroleum sector in Kurdistan (Ruba Husari, 2010).

However, Routledge reported that production-sharing contracts are very generous to international oil companies compared to the profits that international oil companies make under service contracts in the form of flat fees per barrel of oil produced. Routledge also mentioned another severe criticism against PSC: the contract term, which would lock up the host country in long-term contracts on unfair terms (Rutledge, 2004).

From the viewpoint of the researcher and previous studies (Ruba Husari (2010), Bahjat (2014)), the production sharing contracts concluded by the regional government in northern Iraq and the oil-producing companies due to their economic and financial returns, which amount to 85% of the profits. It contributes to preserving the state's ownership of oil reserves, as the partnership contract includes production only and obliges investing companies in bearing the costs of exploration and production and their risks.

This chapter discussed the concept of oil contracts, and this chapter presented the Iraqi oil industry from the first discovery of oil until the present time. The Iraqi government did not have an essential role in managing its petroleum industry until 1958. It was reflected in its oil agreements that included unfair conditions. After 1958, the role of the Iraqi government became stronger by issuing important legislation to regulate the petroleum sector and nationalize oil. It also reviewed many petroleum agreements previously concluded with oil companies.

This chapter presents the current model applied to oil contracts in Iraq. After discussing the legal system for Iraqi oil contracts in general, a question arises here: What are the legal regulations for oil contracts? This is what we will try to discuss in the third chapter.

CHAPTER THREE:

LEGAL REGULATION OF OIL CONTRACTS:

3.1. The Legal Nature of Oil Contracts

Determining the legal nature of these agreements is vital in deciding whether they should be subject to national litigation or arbitration. The legal nature of oil contracts has been interpreted and concluded differently in oil-producing states. The researcher found out that there are four different opinions on this subject. There is a trend that believes that oil contracts are from general international law contracts or are international agreements, while the second trend is that oil contracts are administrative. While the third trend is to give the status of private law contracts to oil contracts, and finally, a middle trend has emerged between the previous trends, which see that oil contracts are of a unique mixed or complex nature, and we will shed light on each of the directions as mentioned earlier and assign each of them a separate branch.

3.1.1. Oil Contracts as International Contracts

Abd Ghadas suggests that oil contracts fall within the scope of international treaties. Thus rules of general international law are applied to them, so that the state's breach of its contractual obligations entails international accountability

under international law. He adds that the wisdom of internationalizing oil investment contracts is that the law of the international community guarantees adequate legal protection for the foreign party and gives it the ability to adhere to the rules of this law vis-à-vis the contracting state directly (Abd Ghadas et al., 2014, pp.39). As well as Curtis stated that "a large portion of public international law is devoted to the interpretation and impact of treaties, which are contractual agreements, many treaty law rules can be applied to economic development agreements." (Curtis, 1988).

However, according to Al-Saeed, economic development agreements are not actually treaties because one party to an economic agreement is an individual or a private company. Superficially, they look very similar to treaties, both in negotiation and in drafting. However, they cannot be considered treaties as they are not between persons of international law (Al-Saeed, 2002, pp. 150).

The International Court of Justice also refused to consider the oil contracts as an international treaty when the United Kingdom government filed a case against the Iranian government in the case of the nationalization of the Anglo-Iranian Oil Company before the court (Anglo-Iranian Oil Co (the UK v. Iran) [1952] ICJ Rep 93) and demanded that the Iranian government consider the nationalization of oil in violation of the principles of international law. But finally, the court reached its conclusion that it does not have the mandate to resolve the issue because the oil contracts, according to the wording of its ruling, are not in an international treaty (Abdelrehim, et al., 2011). This is best explained in the separate opinion of Sir Arnold McNair: "The court cannot accept the opinion that the contract signed between the Iranian government and the Anglo-Persian Oil Company is dual. It is nothing more than a concession contract between a government and a foreign company. The UK government is not a party to the contract; there is no privacy contract between the government of Iran and the government of the UK. Under the contract, the Iranian government could not claim the UK government any rights it might claim from the company, and it could not be required to perform any obligations towards the UK government that it would be bound to perform towards the company. The document bearing

the signatures of representatives of the Iranian government and the company has one purpose: regulating the relations between that government and the company about the concession. It does not regulate the relations between the two governments" (Al-Bider, 2014, pp. 70).

The dissertation of Al-Bidder asserts that petroleum agreements under Iraqi law are not international treaties because oil agreements are concluded in a manner that distinguishes them procedurally from international treaties. Oil agreements are subject to Iraqi law rather than international law. Under Iraqi law, an international treaty will not be valid unless approved by the parliament of Iraq, whereas a petroleum agreement does not need to be validated by the Iraqi Parliament. According to (Al-Bidery, 2014, pp. 69), parties in international treaties are nation-states, while parties in oil agreements are HS and the oil company.

We believe that this opinion is imprecise because the term treaty under international law only applies to agreements concluded between sovereign states, according to (Art. 2, Vienna Treaty of 1969). This defined treaty as "an international agreement concluded between two or more states in writing, and subject to international law, whether in one or more documents, regardless of the term applied to it."

Considering the vast importance of oil in the world and the oil trading industry has been characterized by the dominant position of multinationals who need enough protection in the event of a dispute, the researcher still believes that the interest of the host states is still paramount. Thus, oil contracts should not be considered international treaties so that the host state should always have its sovereignty protected.

3.1.2. Oil Exploration and Drilling Contracts as an Administrative Contract

A contract between two parties is known as an administrative contract. One of them is a public person. Because Iraq is a civil law country, it is critical to determine whether the oil deal is an administrative contract. The oil contract is not an administrative contract under Iraqi law, as should be clear from the start.

As a host country, Iraq negotiates oil contracts on an equal footing with oil companies. It is not an administrative contract in which only the state has the authority to modify it. The host country cannot change the terms of an oil contract unless the other party agrees to the change. Unlike administrative contracts, oil contracts include a stability clause (Sejad, 2019, pp. 70).

Some may see petroleum agreements as being similar to administrative contracts and thus subject to administrative law. This is because, in some ways, the contract is governed by the host country's general law, bringing it closer to the idea of an administrative contract (Brown et al., 1998, pp. 69).

A public authority must come to a decision in order to serve the public interest. As a result, the host country is free to unilaterally amend or cancel the petroleum agreement. The second party to oil contracts, on the other hand, can reserve the right to adequate compensation for any damages that may result from the contract's amendment or cancellation (Soloveytchik, 1993, pp. 261). Unlike an administrative contract, a private contract, which is governed by private law, contains principles such as the contract's binding force and the parties' legal equality. This viewpoint is reflected in the laws of countries whose legal systems are influenced by French law. Administrative contracts have unique characteristics, according to the French Council of State, and should be governed by specific rules to protect the public interest (Brown, et al., 1998, pp. 202). Civil laws, according to this viewpoint, are enacted to protect the rights of individuals. As a result, the law affirms the equality principle. As a result, according to the French Council of State, applying civil law to these contracts would obstruct the operation of public utilities or prevent them from providing adequate service. As a result, these rules should be disregarded (Gassan, 2008, pp. 133).

Contracts entered into by a legal entity or by governments to administer a public facility or utility are considered administrative contracts under administrative law. It also includes conditions that are common in private law, according to Al-Saeed (Al-Saeed, 2002).

It is possible to say that an oil contract between a government or a public authority and a concessionaire is intended to serve the public interest. However, in contrast to the administrative contract's specific conditions, the oil contract includes a clause called the stabilization clause that is intended to keep the contract stable. This clause states that the host country cannot change the terms of the contract due to new laws unless the other party agrees to the change (Bahjat, 2014, pp. 25).

The administrative contract was distinguished from the oil contract in the arbitration in which Texaco participated in the case of the Texaco Overseas Petroleum Company v. Libyan Arab Republic (Texaco Overseas Petroleum Company v. Libyan Arab Republic (1979) 53 ILR 389). The Libyan government signed agreements with Texaco and Calasiac in 1955 and 1968, respectively, and when Libya enacted Law No. 66 of 1973, nationalizing the Texaco and Calasiac concessions, a dispute arose between the contracting parties. The two companies have informed Libya's government that their dispute will be resolved through arbitration. Dupuy, the sole arbitrator, rejected the Libyan government's claim that the concession signed with the two companies was merely an administrative contract. The Libyan government's contract with the two companies, according to Dupuy, put the parties on an equal footing and did not include any special conditions (Sejad, 2019, pp. 74).

As a result, even if the oil contract includes elements of public law, such as royalties or taxes, it is not considered a public or administrative contract under Iraqi law. However, this contract contains elements of private law, such as consent and provisions for damage compensation. Furthermore, when a contract with a petroleum company is reached, Iraq signs it on an equal footing (Al-Bidery, 2014, pp. 71).

Given the foregoing, as well as the lack of clarity regarding the preferred criterion and the deciding factor in determining whether a contract is administrative or not, it is impossible to accept the current trend of administrative oil investment contracts.

3.1.3. Oil Contracts are Private Law Contracts

The holders of this opinion believe that the oil contract is considered permanent as just a civil contract and is subject to the provisions of the civil law of the host country, as they said: that bilateral agreements can only be the product of the agreement of the two parties, and the owners of this opinion have relied on a set of considerations to justify their point of view, including Practical considerations: That the requirements of international trade necessitate not adhering to common law methods of contracting, because if the state adheres to its sovereignty; It destroys the contractual relationship with the foreign party, and it also raises political problems between the host country and the foreign contractor's state, if the company resorts to the diplomatic protection of its state, so the state must descend to the level of the private contractor (Weaver, et al., 2006).

In addition, the authors of this opinion have based on considerations that: The state exercises its sovereignty within its territory, but outside this domain, it does not have this right, and therefore the state stands in the position of equality with the foreign contractor, and accordingly, the activity of the contracting state can only be carried out with foreigners on the legal equality of the parties. Therefore, the authority of the state diminishes in oil contracts in favor of the idea of private law, as this fact is based on data from reality and the law, as long as the state has become in control of oil activities, so it must respond to the requirements of practical reality imposed by the business world, and what requires a kind of legal equality between the foreign party and the host country (Bahjat, 2014, pp. 26). As well, the ICJ supported this trend, as it went in its judgment issued in 1958 to settle the dispute between Saudi Arabia and Aramco that the petroleum concession contract is not considered an exercise by the state of its sovereignty, and it is not subject to public law, but rather is subject to private law because it is a contract of a commercial nature (Al-Wathiq, 2020).

The Iraqi Constitution stipulated that "Oil and gas is the property of all the Iraqi people in all the regions and governorates" (Art. 111, Iraqi Constitution 2005). According to this article, agreements whose subject matter is oil are a special

type of private contract. The Iraqi constitution grants this special form of special wealth protection. Iraqi law should exclusively govern the substantive issues of such agreements.

In the researcher's viewpoint, the oil contract cannot be regarded as a private contract by these elements alone. It cannot deny or ignore the aforementioned public law elements.

3.1.4. Oil Contracts are of a Special Mixed or Compound Nature

The owners of this trend believe that oil investment contracts are of a special mixed nature, with combined characteristics of public law and private law, and are subject to both of these laws, as they reflect the presence of elements belonging to public law and private law on the one hand, and contain internal and international elements on the other hand, and also includes aspects of usual equality in private law, and known expressions of authority in public law (Ghadas, et al, 2014).

On this basis, the contracts in question are a legal act of a dual nature, as the producing state grants the license to exploit its own will, and there is no role for the other contracting's will in that. Therefore, oil investment contracts in their part that create a right for the investing company to exploit oil is a decision or a license Administrative and individual. In its other part, which includes the right of the contractor or obligee confirmed by the disposal of the state, based on the agreement of the administration with him, who makes them private contracts, and according to the previous concept, the legal nature of oil investment contracts has two aspects, the first of which is statutory. We find it in some of the terms or conditions related to the organization of the facility, which is termed (the facility law), and the other is contractual. It appears in the rest of the other terms and conditions related to the various benefits granted to the concessionaire (the investor) that were the motive for his contract, so they have a contractual nature, and it is clear that the distinction between them is by dividing the content of the contract according to the categories of its clauses (Sejad, 2019, pp. 80).

This view was adopted by the arbitrator (Dr. Sobhi Mahmassani) in the Liamco v. Libya case (Libyan American Oil Company (LIAMCO) v. Libyan Arab Republic (1977) 62 ILR 140), when he stated, “Although a concession contract partakes of mixed public and private legal character, it retains a predominant contractual nature”. In this regard, the arbitrator Cavin, in Sapphire v. National Iranian Oil Company (Sapphire International Petroleum Ltd. v. National Iranian Oil Company (1963) 35 ILR 136) indicated that a petroleum contract has a nature distinct from that of other commercial contracts (Al-Bidery, 2014, pp. 74).

From the researcher's point of view, oil investment contracts are considered among the public law contracts, taking into account the privacy they enjoy, distinguishing them from all other contractual relationships. In addition to that, an authorized authority in the state concludes oil agreements as a person of law. It enjoys the advantages of public authority, and its goal is to achieve the public interest, which makes it part of the framework of administrative contracts. Therefore, if the conditions of the administrative contract theory are applied to it, we conclude that oil contracts are subject to the same legal system of administrative contracts but are of an international character.

3.2. Legal Implications of Oil Contracts

Oil contracts entail rights and obligations that both parties know about the contract, which indicates the type of contract and helps determine its legal nature and determine the appropriate description for it, as the HS has special advantages in the local contract. In international contracts, the foreign company, even if it does not enjoy the benefits of the state, deals with it on an equal and does not accept otherwise as a substitute.

Based on the preceding, we divide this section into two requirement, the first in which we deal with the rights and obligations of the HS, and the second in which we refer to the rights and obligations of the foreign company.

3.2.1. Host State Rights and Obligations

The contract for oil exploration and drilling creates rights and obligations for the host state once it signs this contract, as it grants it the right to control its oil

wealth and direct it towards achieving its national goals and the most important of these rights and obligations are:

3.2.1.1. Host State Rights:

Among the most important of those rights that the state is entitled to are:

1- The right to ownership and sovereignty over natural (oil) resources:

The state's right to its natural resources is manifested in two main aspects: the first is the state's ownership of its natural resources, and the second is sovereignty over these resources, as the state is the real owner of the oil and gas wealth that is present in the ground, regardless of the owner of the land surface, and most countries are subject to the exploitation of their resources. Natural resources for a system based on its ownership of these resources, except for a few of them, which give the owner of the surface of the ground ownership of the wealth in its interior, as is the case in the United States of America (Schrijver, 1997). No doubt determining the state's ownership of its oil wealth is followed by its right to exercise sovereignty over these resources and to exploit them in a way that achieves its interests. International conventions have tried to determine this right following numerous international decisions and agreements.

For his part, the Iraqi legislator sought to establish this right in many constitutional and legal texts, as the 2005 constitution stipulated that "oil and gas are the property of all the Iraqi people in all regions and governorates" (Art. 111, constitution of Iraq, 2005). and at the level of oil contracts; the oil service contract between the government of Iraq and ERAP for the year 1968 stipulated in article (6/1) that "The Iraqi National Oil Company is the sole owner of the oil produced."

From the above, we conclude that the principle of state ownership and sovereignty over its oil resources is one of its publicly and nationally recognized rights and the investing company has no ownership right over the reserve or extracted oil.

2- The right of the state to collect financial taxes on oil produced from its territory and to exploit it:

The international law of the state recognizes, as an aspect of its sovereignty, the right to organize its public facilities and impose its authority over its territory, including the persons and other things that it includes, and following this principle, the state can issue laws it deems appropriate and serve the public interest, including legislation related to the collection of taxes and legal fees (Salih et al., 2015, pp. 171).

In the context of oil investment, the IOGDL of 2007 indicated that oil imports include “amounts obtained from oil and gas sales belonging to the state, signature bonuses and production bonuses for oil contracts with foreign companies”(Art. 11 / b, 2007).

These fiscal revenues and duties obtained by the HS are represented in the following: fees and rent, royalties, taxes, and signature bonuses.

3- The state’s right to amend or terminate the contract:

The principle of the public interest justifies granting the producing state the right to amend its oil contracts and not adhering to the principle of the sanctity of the contract, because the government and its affiliated agencies represent the people and seek to protect its public facilities, so it must have the right to amend the contract, to be able to invest its wealth. Oil in a way that achieves its national interests and access to keep pace with the continuous development of public utilities run by the state, especially the oil facility (Anderson, 2014).

Siraj stated that the contracting state has a right to terminate the contract exclusively in specific cases, the most important of which is the case of the company’s breach of its obligations related to the oil research and exploration, or the breach of its obligations related to the financial dues to or if it waives its rights and obligations in violation of what was agreed upon in the contract. In contrast to these cases, the company will be rewarded for breach of any obligation (Siraj, 1998, pp. 107).

However, Basman indicated that the contracting state does not have the right to terminate the contract, even if the contracting company violated its obligations, and was content to define the state's right to claim compensation from the foreign company for the breach of its contractual obligations (Basman, 2014, pp. 116). Regarding the position of Iraqi law, the draft federal oil and gas law concerned the issue of respecting the legal rules in general and those related to combating corruption in particular, as the licensing contract was considered a void contract if it violated the laws of the Republic of Iraq in general and in particular the anti-corruption laws, indicating the penalty for violating these rules before the authorized person, cancellation of the licensing contract that belongs to him in whole or in part, with the necessity to indicate that each licensing contract includes a clause indicating this condition and its penalty; The person concerned violates the relevant laws of Iraq to fight corruption, and he is judged according to the criminal law in force (Art. 37, Iraqi Oil and Gas Draft law, 2007).

In the researcher opinion that the state in oil investment contracts has the right to terminate the contract without the approval of the foreign company contracting with it, if the implementation conflicts with the public interest, and in specific cases exclusively, as we mentioned before, in case the company breaches its obligations.

4- The state's right to supervise and control:

The oil contracts included provisions that give the host states the right to monitor and supervise the various petroleum operations carried out by foreign companies on the territory of those countries to ensure the goodwill of the oil company in carrying out its duties by what was agreed upon in the contract. These texts are not texts establishing this right, but rather revealing texts of a certain thing fixed to it, meaning that state control and supervision of the oil company's business without including the contract for this right is not considered an infringement of the rights of the company (Hunter, 2014, pp. 48-58).

The IOGDL of 2007 in Clause (a) of Article (30) affirmed that "Competent bodies or their authorized representatives may have the right to inspect sites, including

buildings and facilities, as well as all properties, restrictions and data kept by the INOC and the owners of the right to prospecting. And production related to oil operations".

3.2.1.2. Host State Obligations

Oil contracts entail obligations on the donor country of the oil concession, and these obligations can be summarized as follows:

1- **Commitment to removing obstacles facing the foreign party:**

The host state must take all necessary measures to assist the investing company in completing the implementation of the contract by providing facilities for the transportation of equipment and fixture and facilitating the entry of foreign workers and technicians to the territory of its country.

2- **The obligation to provide adequate protection to the foreign party:**

This obligation is stipulated in the contract itself or in the state's laws to encourage investment, and it is an obligation to exert care. Its occurrence is presumed in the event of turmoil, revolutions and wars, because no country accepts the destruction of its economic structure, regardless of the contributor to this structure (Johns et al., 2016).

3- **Payment of financial dues to foreign companies – recovery of expenses and payment of profits:**

The most important characteristics that are unique to the oil investment contracts are evidenced by the obligation of the HS to refund all expenses incurred by the foreign company to implement oil operations, as well as the obligation of the state to pay production profits to the investing company according to the agreement in the oil contract, whether these profits are in cash or in-kind (Shaima, 2012, pp.6).

4- **The host state's commitment to resort to legal means to settle disputes:**

It is evident in the event of the implementation of oil operations, or because of the interpretation of the terms of the contract, or when one of the parties fails to

implement its contractual obligations, legal or technical disputes arise between the contracting parties, so the HS must commit itself not to resort to illegal means to settle the dispute (Salih et al., 2015. pp. 171).

3.2.2. Rights and Obligations of International Oil Company

The implementation of the contract requires granting the investing company rights to be able to implement the obligations incumbent upon it, according to the contract, so those rights and duties must be clear and specified in the contract. And the most important of these rights and obligations are:

3.2.2.1. Rights of the International Oil Company

Oil contracts grant foreign companies multiple rights, including:

1- The right to research explores and produces:

This right falls under an obligation on the producing countries, by granting exclusive rights to invested oil companies, and this obligation is that the producing state abstains from every contractual process with another company on the one hand and controls the scope of the exclusive license for each invested company on the other hand. The first concession contracts granted these rights concurrently and exclusively to the concessionaire company. As for the joint venture and service contracts, they gave this right to companies in two phases, the first; it is the stage of exploration and drilling, which is relatively short, and the other; it will be for a longer period, which is the stage of oil production and starts from the date of commercial discovery (Fulbright, 2015).

In Iraq, the contracts that grant the contractor the rights to explore, develop and produce have followed the same approach, including the IFMO contract with China for the year 1997, whereby under this right, the contractor is authorized to explore for oil within the area of the contract for a period of three years starting from the date of implementation of the contract, It is extendable for a period of two years upon the contractor’s request with the approval of the Ministry. This is the first phase and the second phase: it is the development and production phase, and its duration is 20 years, during which the contractor is authorized to

produce, process and pump oil to the areas specified by the Ministry. This is stipulated in Article (2) of the contract of the Chinese company and Iraq for the year 1997 (Watkins, 2008, pp.32).

Most of the current Iraqi oil contracts included this system, and as the Iraqi Oil and Gas Draft Law in (2007) indicated a distinction between the exploration and drilling phase and the production phase in Article (13) (See; Art.13 of the Iraqi Oil and Gas draft Law of 2007).

2- The right to employ foreigners:

The petroleum agreements included provisions that empowered foreign companies the right to employ foreign persons to carry out petroleum operations committed to their performance in their contract with the host states. However, it is noted that this right is not absolute, rather it has been defined and its extent defined by the contractual requirements themselves or through national legislation in addition to custom and behavior. International law guarantees the right of host states to establish laws and rules that regulate the employment of foreigners (Ahmed, 1975, pp. 183), and the Universal Declaration of Human Rights issued in 1948 made clear that the freedom of work advocated by individuals must be exercised following the limits stated in the laws. Interior requires the maintenance of public order and morals (Art. 23/1, art 29/1, Universal Declaration of Human Rights, 1948).

Article (29) of the contract concluded between the Iraqi government and the Turkish Oil Company in 1925 stipulated that “the employees of the company in Iraq should be citizens of the government, while managers, engineers, technicians, diggers, foremen, mechanics, and other technical workers and clerks can be brought in from Outside Iraq, if people are not compatible with these types in Iraq …” (Ayman, 2019, pp. 229.).

3- The right to enjoy customs exemptions:

Foreign contracting companies need equipment, machines, devices and other materials necessary to carry out the various petroleum operations, so they resort to importing those things from abroad and this is a guaranteed right for

them stipulated in most of the various oil contracts, noting that these equipment, machines, etc. are completely exempt from taxes and customs fees. In addition, companies have the right to re-export these things with exemption from any export duties of any kind, and these contracts also permit the sale of these things within the territory of the host state unless they have been sold to another company that enjoys this exemption (Essam, 2017, pp. 127).

The Iraqi federal oil and gas draft did not reference foreign or even local companies enjoying tax or customs exemptions. On the contrary, the law subjected these companies in Article (33) thereof “the INOC, its subsidiaries and holders of exploration and production licenses, whether they are Individuals or groups” (Art. 33/A, Iraqi Oil and Gas Draft Law, 2007) to a set of financial obligations related to taxes on the transfer of property, real estate revenues, income, and other local and municipal taxes due, in addition to the payment of customs duties and rent (property rights) to the HS.

Based on the preceding, the right to exempt from customs duties and taxes came within the framework of the policy pursued by the producing countries, most of them are from developing countries, to encourage foreign investment, as these advantages are a temptation for the foreign investor to come and invest his money in the lands of those countries.

4- The right to waive and terminate the contract:

Among the rights guaranteed by the petroleum contracts to the foreign company is its right – in principle – to assign all or some of its rights and obligations arising from the contract to another company, whether independent of it or affiliated with it. We note that companies are keen to include this clause in the texts of oil agreements to avoid risks and waste their money in a project that may prove ineffective, and that the success rate is low and that the oil explored is not sufficient for commercial exploitation. Hence, they resort to this right to avoid their commitment to the implementation of the contract, which inevitably leads to a heavy loss for them (Radon, 2005, pp. 79).

Siraj indicated that the contracting companies have the right to totally or partially assign their rights and obligations arising from the contract to another company, whether independent from it or affiliated with it, after obtaining written approval from the government and commitment to some other conditions stipulated in the contract, such as asking the contracting company to fulfill all its obligations arising from the contract in the best way until the date of the assignment request, and that the assigning party provides evidence to the government of its enjoyment of financial capacity, and that the latter adheres to all the terms and conditions contained in the contract (Siraj, 1998, pp. 99).

However, Alan distinguished between two cases: the case of assignment in favor of a subsidiary of the competing company and assignment to an independent company. In the first case, the operating company is entitled, under the terms of the contract, to assign all or some of its rights and obligations to one or more of its subsidiaries that it supervises itself, without the need to obtain prior approval from the host country. As for the second case, when the investing company waives all or some of its investments in favor of an independent company, the oil agreements necessitate the host country's approval for the waiver. This approval requires the commitment of the concessional company and the assignor to some conditions in favor of the state, such as the state’s right to ensuring the financial and technical status of the transferred company and the necessity for the first company to fulfill its contractual obligations and obtain a declaration of this from the host country and others (Alan, 2016, pp. 256).

The Iraqi oil and gas draft law dealt with the case of unilaterally terminating the assignment of exploration and production license owners without clarifying or specifying the reasons that lead to terminating the assignment or contract. It did not stipulate for that except to submit an application to the Federal Oil and Gas Council and that it take place at least two years before the end of the planned production. The law obligated the parties concerned (the Iraqi National Oil Company, license holders) in the exploration and production license to submit a

plan to leave the costs to the Ministry at least two years before the planned completion of the production (See. Art 14, Iraqi Oil and Gas Draft Law, 2007).

The researcher believes that the contracting companies have the right to assign their rights and obligations to a subsidiary or independent company after obtaining the approval of the host government and that the assigning party provides evidence to the government of its financial capacity.

3.2.2.2. Obligations of the International Oil Company

The obligations that oil contracts entail varying among its parties according to the concluded contract model, but this difference does not change the existence of common general obligations among all types of oil contracts by the investing company, and the most important of these obligations are:

1- **Executing oil operations according to the best prevailing technical standards:**

The foreign company is obligated to carry out its work according to the best technical and geological rules applicable in oil operations. It is also committed to using the latest types of technology in drilling oil wells, extracting crude oil from them and then storing it.

2- **The commitment of the foreign company to the minimum investment:**

The host state's condition may come on the foreign party that it is necessary to make specific investments, which is set within a certain period, and the parties agree upon it. The main objective behind setting this condition is to ensure the effectiveness of the investment and the foreign company's seriousness in undertaking the oil exploration process.

3- **Training local labor and allocating funds for human development:**

The host state imposes on foreign companies to use its nationals in the implementation of oil operations, to train local technicians and engineers, and to teach them the modern oil industry, so that the host state can then perpetuate

its economic projects with its national cadres, to be a substitute for foreigners brought by the oil company after the end of the contract period or nationalization the project. The host state also requires foreign oil companies to deposit an annual amount in the training, technology and scholarships fund to send government employees abroad to participate in educational courses or obtain higher degrees in the field of the oil industry, and these amounts should not be calculated from the cost of oil, which is not refundable (HAMAD, 2017, pp.32).

4- Environmental protection during the implementation of oil operations:

Public awareness has increased about the importance of protecting the environment and preserving the safety of human life from the dangers of oil because oil is of high risk due to the emission of gases from it upon evaporation, or the decomposition of spilled oil particles, as well as because crude oil contains deadly gases, as oil affects It harms marine and terrestrial life, causing it to be poisoned and ultimately killed, in addition to the occurrence of explosions at the time of drilling the oil well, which is one of the most dangers to the environment and the lives of drilling workers, due to the risk of fire and the burning of large quantities of crude oil and gases (Radon, 2005, pp. 77).

The Iraqi legislature has stipulated in Investment Law for the Liquidation of Iraqi Crude Oil stipulates that “investing companies are bound to observe environmental laws and regulations and industrial safety…” (Art. 15, law no. 64, 2007).

The international community has also alerted the phenomenon of pollution and the establishment of a rule of international responsibility through the agreements that have in turn arranged for the responsibility for states in whose territory the damage occurs, whether for the activities carried out by themselves or the companies invested in them, and this was confirmed by the United Nations Environment Conference held in Stockholm in 1972 in Article (21) thereof, which stipulates that states are responsible for damages to other

countries, whenever this is due to investment activities that are subject to their national sovereignty (Ayman, 2019, pp. 237).

Based on the foregoing, there has become an international rule that states and foreign-invested companies are committed to preserving the environment, especially concerning petroleum waste, as it should be disposed of according to precise practical plans, and the domestic laws of oil-producing countries and the texts of oil contracts that these countries conclude with the licensed oil production companies have required it has the responsibility of researching and producing petroleum, preserving the environment and protecting it from pollution

CHAPTER FOUR:

OIL CONTRACT DISPUTES IN IRAQ:

4.1. The Dispute between the Iraqi Federal Government (IFG) and the Kurdistan Regional Government (KRG) over Oil Contracts

Iraq is the second-largest OPEC oil producer, producing 4.5 million bpd. Its proven oil reserves are estimated at 150 billion barrels, including the Kurdistan regional proven oil. OPEC estimated that the Kurdistan regional proven oil is 43.7 billion barrels (ALI, 2018, pp. 3). Kurdistan oil makes up 30% of all Iraq-proven oil, and its gas accounts for 89% of all proven gas in Iraq. Based on the current figures regarding the Kurdistan regional reserves of proven oil and gas, Kurdistan is expected to be one of the world's top petroleum-producing regions in the future. Therefore, petroleum production will play an effective role in the region's political future. Accordingly, the current dispute between the KRG and the IFG was expected to be legally and politically complex. Any future

settlement over oil and gas management between these two governments would not be easy. Compromise over the country's primary economic resource is the most difficult task for both disputing parties, as the oil and gas disputes are associated with complex constitutional issues and long-standing political conflict. Therefore, any attempts to understand the current dispute between the KRG and the IFG over oil and gas management requires thorough knowledge and understanding of the historical background of oil and gas operations in Iraq and the political conflict between the Kurds and the Iraqi government. And this chapter illustrated the ownership and management of oil and gas in Iraq, and the disputes between Iraq and the international oil company.

4.1.1. Oil and Gas Ownership and Management under the Iraqi Federal Constitution (2005)

The KRG was formed following a general election in 1992 (Radpey, 2016). The former Iraqi regime had no direct constitutional control over the KRG area. The KRG had full effective control and acted as a sovereign state over all matters concerning the KRG, including oil and gas. The KRG had its government, parliament, and judiciary. The circumstances changed after the invasion. The KRG agreed to participate in the new Iraqi government and establish a formal relationship between governments regulated by the Constitution. An agreement was reached in principle, and the Constitution was elected and became effective in 2006. Practically, the relationship between the KRG and central government has been through many difficulties due to disagreement over several issues. Oil and gas was the most controversial issue between them. The KRG had been exercising full control and managing oil and gas within its territories since 1991. Oil was first extracted in 1994 from the Taq Taq oil field (Zedalis, 2012). Although the former Iraqi regime had no direct control over the KRG's affairs, the KRG was still part of Iraq and did not formally recognize the central government. The KRG extracted oil and sold it to the neighboring countries between 1992 and 2003, which was not disputed by the former Iraqi regime. The silence of the former Iraqi regime on the KRG's oil operations did

not confirm the KRG's exclusive right to manage oil and gas, nor KRG's ownership of oil and gas within its territory.

The circumstances changed after 2005. The Constitution recognized the KRG as a regional government and Iraq as a federal state (see; Art. 1, Iraqi Constitution, 2005) for the first time since the establishment of Iraq in 1920. The KRG gained formal recognition, and the Constitution now regulates its relationship with the central government (see; Art. 117/1, Iraqi Constitution, 2005). The KRG and central government must act following the provisions of the Constitution. The central government claims that the KRG's PSCs with IOCs are not constitutional. The Constitution does not grant the KRG an exclusive right to manage oil and gas within its territories and claims the KRG does not have the constitutional right to form or enter or sign contracts with IOCs without prior approval from the central government. The KRG has denied any wrongdoing regarding its oil and gas contracts with IOCs and confirms its PSCs with IOCs comply with the Constitution.

Article (111) of the 2005 Constitution states that "*Oil and gas are owned by all the people of Iraq in all the regions and governorates*." This is compatible with the direction of international law on oil and gas ownership, which confirms that the natural wealth and resources are the peoples' property. A state is only a tool for management, distribution, and development. The state has to manage the natural resources in the best interests of the people. A reference was made to the UN resolution 1803 of 14 December 1962, which confirms the right of people and nations to permanent sovereignty over their natural resources. The people and nation's rights to the natural wealth and resources must be respected by other nations and must be managed by their governments in the interest of their national development and the well-being of the people. People should not be deprived of their own means of subsistence and well-being under any circumstances (Kadirgolam, 2020. pp. 86).

Articles 111 and 112 deal directly with the ownership and management of oil and gas operations in Iraq. The interpretation of these articles is the main cause

of the legal dispute between the IFG and the KRG. Article 111 vests the ownership of oil and gas in the Iraqi people. The Iraqi central government argues that Article 111 vests oil and gas ownership in the central government to represent all Iraqi people, including the KRG. The KRG argues that Article 111 does not deny the KRG ownership rights over oil and gas within its territories; rather, the KRG is a constitutionally recognized regional government and represents the people within its territories. The KRG relies on the legal opinion of Professor Crawford in exercising its ownership rights in managing oil and gas operations under article 111 of the Constitution. This causes practical difficulties; it is unclear how the Iraqi people could exercise ownership rights over oil and gas. The Constitution does not grant ownership rights to a specific authority in Iraq. It may be argued that Article 112 provides the federal and regional authorities with oil and gas ownership. This cannot be right because article 112 concerns the management of oil and gas, not ownership rights (Wahab, 2014, pp. 14.). The concept of ownership is wider than mere management. Article 112 states that:

First: the federal government manages the oil and gas extracted from the current fields with the governments of the producing regions and governorates, provided that their imports are distributed equitably with the population distribution throughout the country, with a specific quota set for the affected regions, which were denied them unfairly by the previous regime and which were subsequently damaged. In a way that secures the balanced development of the country's different regions, this shall be regulated by law.
Second: The federal government and the governments of the producing regions and governorates formulate the strategic policies necessary to develop oil and gas wealth to achieve the highest benefit to the Iraqi people, adopting the latest market principles and encouraging investment.

And there is also a constitutional dispute between KRG and IFG about the first part of Article 112, which is only referred to the current or existing fields and does not refer to the future fields. Following Article 112, the IFG and the producing governorates and regional governments undertake the management

of oil and gas extracted from the present fields. The management of the present fields must be conducted by the IFG and the producing governorates and regional governments, and they must agree on the distribution of oil and gas revenue from the present fields (Zedalis, 2009, pp. 38). However, the argument here is that the cooperation between the KRG and IFG in managing oil and gas is confined to the current producing field. It does not encompass future fields. This would grant the regional government, i.e., the KRG, greater power to manage future fields within its territories. This argument is considered as a contradiction between articles 111 and 112. Crawford believes the current fields under Article 112 are those in operation and producing oil and gas before the enforcement of the Constitution. Therefore, the fields discovered after the enforcement of the Constitution are not covered by Article 112. The fields discovered after the enforcement of the Constitution are called “future fields.” The KRG strongly defends its right to manage the petroleum resources within its territories under the definition of the “present fields” in Article 112. Therefore, the KRG has exclusive rights to manage petroleum operations from the “future fields” (Crawford, 2008).

The distinction between the “present fields” and “future fields” is the most significant point in interpreting article 112. Crawford argues that there is no conflict between articles 111 and 112 and the KRG’s claim of its right to managing petroleum operations within its territories. He argues that the management of petroleum operations by the IFG or the KRG are both the management by the Iraqi people in terms of article 111. The IFG is required by article 112(1) to cooperate with the producing regions and governorates across Iraq to manage the petroleum operations and fairly distribute oil and gas revenue among all Iraqi people (Crawford, 2008).

It is important to note that article 112 does not grant an exclusive right to the IFG to manage the petroleum operations within the producing regions and governorates. The second part of Article 112 imposes on the IFG to cooperate and work together with the producing regions and governorates in managing oil and gas extracted from the “present fields” only. The language of Article 112

cannot be overlooked. It must be accepted that the wording of articles 111 and 112 are vaguely drafted, which has caused legal difficulties in interpreting these articles on how oil and gas operations should be managed in the producing regions and governorates. The current legal dispute between the KRG and the IFG stems from the language defects in these articles (Romano, 2014, pp. 189-209). It is clear from all the literature that there is no single or definite interpretation of Articles 111 and 112.

As for the oil and gas contracts signed by the KRG before the constitution came into effect in 1992, they revolved around conducting exploration and evaluation operations and possibly future production, in reality. These contracts are valid and enforceable following Article 141 of the constitution, which stipulates that (laws continue to be enforced which have been legislated in the Kurdistan region since 1992, and decisions taken by the Kurdistan Regional Government - including court decisions and contracts - are considered effective, unless they are amended or canceled according to the laws of the Kurdistan region, by the competent authority in it, and unless they violate this the Constitution). In reality, it does not violate the provisions of the constitution.

The researcher believes that the KRG distinction between “current fields” and “future fields” is valid and cannot be overlooked. In the absence of a clear legal provision preventing the KRG from managing oil and gas operations from future fields, IFG is unlikely to succeed in its attempt to deny the KRG's right to manage petroleum operations based on constitutional provisions. The basis for that is what follows: That the constitution specified in Article 110 the exclusive authorities of the federal government, which was devoid of any reference to the issue of oil and gas management in it, and if the constitutional legislator wanted that, this jurisdiction would have been included within it (see: Art. 110, Iraqi Constitution, 2005). As well as that there was no reference in Article 114 of the Constitution regarding the regulation of joint competencies between the federal and regional authorities, any reference to this issue, and the same saying is said regarding the previous basis. If the legislator wanted to make oil and gas

management within the joint competencies, it would have been stipulated in this article (see: Art. 114, Iraqi Constitution, 2005).

4.1.2. The Federal Supreme Court (FSC) and the Dispute between the IFG and the KRG

The Federal Supreme Court is the only authority in Iraq authorized to settle constitutional disputes. The normal process of settling any dispute between the federal and regional governments over constitutional issues is that the parties must first attempt to resolve the dispute through negotiation. If the agreement was not reached, then the matter must be taken to the FSC for determination. The dispute over the management of oil and gas operations between the KRG and the IFG is one such dispute involving serious constitutional issues, which has been going on for nearly 15 years and has adversely affected the relationship between the IFG and the KRG and the stability of the political system in Iraq. Given the seriousness of this matter which directly affects the country's economy, it should have been referred to the FSC for determination.

Article 93 of the Constitution states:

The Federal Supreme Court shall have jurisdiction over the following:
First: Overseeing the constitutionality of laws and regulations in effect.

Second: Interpretation of the texts of the constitution.

Third: Settling issues that arise from the application of federal laws, decisions, regulations, and instructions, and the procedures issued by the federal authority and the law guarantees the right of both the cabinet and the family, the matter of individuals and others has the right to appeal directly to the court.

Fourthly: Settling disputes that arise between the federal government and the governments of the regions and governorates, and municipalities and local administrations.

Fifthly: Settling disputes that arise between the governments of the regions or governorates.

Sixthly: Settling charges against the President of the Republic, the Prime Minister and the Ministers, which shall be regulated by law.

Seventh: Ratification of the final results of the general elections for membership in the House of Representatives.

Eighth:

i. *Settling jurisdiction disputes between the federal judiciary and the judicial bodies of the regions and governorates Irregular in the territory.*
ii. *Settling jurisdiction disputes between judicial bodies for regions or governorates that are not organized in a region.*

Article 93 grants the FSC the exclusive right to interpret the Constitution. Although the constitutional provisions concerning oil and gas management have been interpreted by the IFG, the KRG, and different legal scholars, none of the above has jurisdiction or legal authority to interpret the Constitution. The right to interpret Articles 111 and 112 is reserved for the FSC. The disputed parties have tried various means to settle this matter and to reach an agreement, including ongoing negotiations since 2004, threatening the IOCs to blacklist them if they do not stop investing in the KRG oil and gas by the IFG (Asharq Al-Awsat. Iraq nullifies Kurdish oil deals. 2007), urging foreign countries to refrain from petroleum trading with the KRG, and restricting oil and gas importing with the IFG (Maher Chmaytelli, 2017). The dispute even escalated to military confrontation on different occasions. The dispute further escalated to the extent that the KRG threatened to hold a public referendum over the independence of Kurdistan. On 25 September 2017, over 92% of the Kurdish people, including Kurdish people from the disputed territories, voted yes for independence. This result fuelled the conflict between the two governments. Less than a month after, the IFG engaged in a military offensive on the KRG and regained all territories that the KRG claimed after the Iraqi troops withdrew from them because of the ISIS attacks, including the oil-rich city of Kirkuk, which are disputed areas between the IFG and the KRG (Mills, 2018).

Surprisingly, the parties have been reluctant to settle this long-standing and legally complicated dispute through the FSC. In 2012, the IFG raised a legal action seeking an order from the Federal Supreme Court to stop the KRG from exporting oil and gas independently outside Iraq. The Iraqi Federal Supreme

Court rejected the IFG's claim (Walsh, 2018, pp. 179-217). This confirms that the KRG has the legitimacy to enact energy laws and conclude petroleum contracts. The FSC did not grant the Ministry of Oil the injunction due to a lack of sufficient information regarding the constitutional provisions and domestic legislation concerning the KRG's right to export oil and gas independently. The FSC, in declining to fund such order, stated that [granting such an injunction] would give an impression of a premature decision on the subject matter of the proceedings and the decision that shall be issued by the court' which would contravene the judicial "context/norms" (Florian et al., 2018). Following this decision, the KRG continued exporting its oil and gas independently. In response, the Maliki government cut the KRG's share of the federal budget until the KRG relinquished all petroleum revenue to the IFG. The KRG refused. Since then, the battle between the IFG and the KRG is focused on oil and gas revenue and the KRG's share of the federal budget.

In response to the KRG's stance over oil and gas revenue, the IFG did not send the KRG's share of the federal budget until January 2019, when the federal parliament voted for the federal budget of 2019 (Sangar, 2019). Following the federal budget for 2019, the KRG must hand over or export 250,000 barrels per day through the Sell Oil Market Company (SOMO). The IFG fulfilled its obligations under the 2019 budget and resumed sending the KRG sufficient funds to pay its employees' salaries. The Minister of Oil's Thamer Al-Ghadban confirmed on the state television Al-Iraqiyah that the KRG has not begun exporting the 250,000 bpd oil through SOMO (Mohammed, 2019). This is a temporary agreement between the IFG and the KRG to ease the financial crises the KRG has been through since 2014 until a final agreement is reached between the disputed parties.

On 27 June 2018, the FSC reviewed the case again and postponed the procedural hearing for 14 August 2018. The FSC further delayed the procedural hearing to allow the parties to submit expert reports and further information regarding the dispute. The Court heard the case again on 7 April 2019 and based on the parties' request, and the hearing was adjourned again to allow the

parties to submit further information or reach an agreement on the constitutional issues (FSC delays hearing on KRG oil exports, 2019). The case is still ongoing.

The FSC has difficulties dealing with this matter. The parties' agreement on certain constitutional issues regarding articles 111 and 112 of the Constitution and the IOGDL is required before the court can decide the KRG's right to extract and export oil and gas independently.

4.1.3. The Legality of the KRG's PSC

The disagreement between the IFG and KRG over the legality of the KRG's PSCs began around the same time as the KRG concluded a PSC with the Norwegian Oil company DNO ASA on 25 June 2004. Before its PSC with the DNO ASA, the KRG concluded a PSC with a Turkish oil company GENEL Enerji as on 17 July 2002.18 However, the Iraqi government formally declared its denial to the KRG's right to sign oil and gas contracts with IOCs without the cooperation of the IFG from 2004 and onward, after the KRG concluded the PSC with DNO (Zedalis, 2012, pp. 225).

The IFG argued that under article 112 of the Constitution, the KRG does not have exclusive constitutional rights to manage oil and gas within its territories and it cannot sign oil and gas contracts with IOCs without prior approval from the IFG. The KRG does not agree with the IFG's interpretation of article 112. The KRG argues that both articles 112 and 111 of the Constitution confirm the KRG's right to manage oil and gas operations within its territories, including signing oil and gas contracts with IOCs.

According to Saber, it has been established that the KRG has been able to sign oil and gas PSCs under their own Kurdistan law and the Iraqi constitution. Kurdistan has seen a great development of its natural resources through these contracts within the past few years. The companies that have invested in Kurdistan have predominantly been smaller independents and service companies, all looking to increase their portfolios in a promising oil and gas province (Saber, 2018).

Kadirgolam states that in any potential settlement between the KRG and IFG, it is vital that the KRG's PSC must be recognized for the following reason: The KRG has concluded over 50 PSCs with IOCs. The KRG has always argued that its PSCs are consistent with the Constitution. Therefore, the implications of any potential settlement on the KRG's PSC must be carefully considered to avoid potentially catastrophic legal claims against the KRG or the IFG from IOCs. Accordingly, the KRG's PSC will constitute a large part of any future oil and gas management settlement. This would require prior negotiation and agreement with IOCs regarding the practical implication of any potential settlement on the KRG's PSC (Kadirgolam, 2020, pp. 159).

After reviewing previous studies and opinions, as a result, the researcher concludes that the Kurdistan Regional Government, by entering into contracts for oil exploration and production, is doing so according to what was allowed by the permanent Iraqi constitution of 2005, which was voted on by most of the Iraqi people.

4.2. Arbitration and Iraq's Position on Arbitration to Resolve its Oil Disputes

Anticipating how to resolve the dispute is an important aspect of keeping parties in the business. This is quite necessary for international petroleum since a large amount of capital is invested by the IOC in such an agreement, and, on the other hand, the subject of the oil agreement represents the natural resources of the HS and dominates its economy. Al-Bidery clarifies that the stakes are high for both parties as they try to avoid losing money. Over recent years, businesses have preferred arbitration rather than the courts since arbitration is deemed faster, confidential, neutral and quite good for foreign companies who avoid being disfavored by national courts in the event of a problem between the company and the host state (Al-Bidery, 2014, pp.2).

Alternative dispute resolution means solving matters away from court. There are several alternative dispute resolutions: mediation, negotiation, litigation or arbitration. The fact that arbitration is legally binding, just as the judgment in

court has been the favorite option in resolving disputes in commercial matters. Nevertheless, only international oil companies like arbitration since it protects them better. Most states, including Iraq, are suspicious of arbitration since they think that submitting a petroleum dispute to arbitration is a violation of sovereignty; we are made to understand that developing countries should take a tough stance and protect themselves from the powerful economic power of the rich international oil companies. This is because arbitration centers, in particular, do not apply the national laws of the HS, and these arbitration chambers tend to adjudicate in the interest of the petroleum companies. Because of this reasoning, many HSs have empowered their national court with exclusive authority to resolve cases arising from petroleum contracts. This researcher encourages the international arbitration method of settling disputes as a vital tool for attracting foreign investors, especially in a complicated situation such as the one faced by Iraq. It should be considered one of the most important guarantees given by HS to attract foreign investors, particularly in post-conflict states in which investors will be mindful of the type of forum that they will take to settle oil disputes.

Despite the increasing importance of arbitration globally, Iraq has not enacted specific legislation regulating international commercial arbitration in general and petroleum arbitration in particular. Although the IOGDL of 2007 refers to resolving petroleum dispute provides that: “If the dispute cannot be resolved by agreement, the matter shall be referred to the Minister to resolve through discussions with senior officers of the holders of rights concerned. Failing resolution through these discussions the matter of dispute may be submitted to arbitration or the competent judicial authority” (Art. 39/B, Iraqi Oil and Gas Draft Law, 2007), the Representative Council of Iraq did not approve it. Iraq should emulate the many developing countries now enacting and modernizing their international commercial arbitration (Al-Bidery, 2014, pp.5).

Since its establishment, the ruling system in Iraq has been affected by its nationalist ideas and the absolute sovereignty of the state and considered its submission to other than its national jurisdiction as a diminution of its

sovereignty and interference in its internal affairs and this is why Iraq has not joined the international conventions and treaties on arbitration. In addition, the oil industry sector was managed directly by the central authority (see; Article 13 of the 1970 interim constitution of Iraq), without the help of any foreign party, especially after the nationalization of foreign companies.

However, the Civil Procedure Law referred to the general rules of arbitration and devoted twenty-six articles from Chapter Two to organize it without distinguishing between the two types of arbitration: international or internal, and the role of arbitration can be deduced as follows:

4.2.1. The Role of National Arbitration in Settling Oil Disputes

Arbitration is considered internal: when the judgment is issued by one of the arbitration bodies inside the Iraqi territories, and according to the national legislation of Iraq, even if one of the parties to the dispute is a foreign company (Bahjat, 2014, pp. 93). The following conditions must be met to be able to resort to arbitration in Iraq:

1- **That the arbitration agreement is in writing or that the litigants agree upon it during the judicial proceedings:**

The Civil Procedure Law stipulates that: "The agreement on arbitration is not proven except in writing, and it may be agreed upon during the pleading, and if it is proven to the court that there is an agreement on arbitration, or if the parties agree on it, during the pleadings, then it is decided to consider the case as a delay until the arbitration decision is issued." (Art, 252, Civil Procedure Law, No. 83, 1969). This means: that the arbitration agreement in Iraq may only be proven in writing, whether in the original contract or in a subsequent agreement. The law also permits the parties to the dispute to resort to arbitration even after the dispute is submitted to the judiciary, provided that this agreement is proven in the pleading minutes before the court, after which the court decides to consider the case as late until the arbitration decision is issued (Bahjat, 2014, pp. 93).

The wording in which the arbitration contract is presented must be clear and specific, so as not to provoke different interpretations by the arbitration board and the litigants, and in this way lead to preventing the courts from considering the case, as the first paragraph of Article 253 of the Civil Procedure Law stipulates that: “If it is agreed litigants to arbitrate in a dispute, it is not permissible to file a lawsuit before the courts except after the arbitration path has been exhausted."

2- Arbitration is only permissible in matters that are amenable to reconciliation:

Conciliation: It is a contract that raises the dispute and ends the litigation, and with it, the two parties settle an ongoing dispute or prevent a potential conflict by each of them giving up part of his claim by mutual consent (Alessandra et al., 2004).

The Iraqi Civil Law No. 40 of 1951 restricted to Article 704 of it the cases in which reconciliation is permissible (see; art 704 of Iraqi Civil Law No. 40 of 1951), and it stipulated that the interests on it are from what the allowance may be taken in exchange for, that is, it is possible to reconcile in financial or technical matters related to oil operations, but it is not It is necessary for the reconciliation contract to settle all the disputed issues. The composition may address some of these issues and settle them, leaving the rest to the arbitration board (Abdul Rahman, 1990, pp. 434-435). Hence, the following question arises: Is it permissible to apply foreign law by the Iraqi arbitration bodies, especially if one of the parties to the dispute is a foreign oil company?

To answer, we say that the civil law settled this issue, as it linked the application of foreign legislation by Iraqi arbitration bodies to not violating public order and public morals in Iraq. In other words: the arbitration panel may apply foreign law if one of the parties to the dispute is a foreign person, provided that the provisions of the law applicable to public order and public morals in Iraq are not violated, as Article 32 of the Civil Law stipulates that: "The provisions of a

foreign law determined by previous texts may not be applied if these provisions are contrary to public order or public morals in Iraq" (Art. 32, no.41, 1951).

4.2.2. The Role of International Arbitration in Resolving Iraqi Oil Contract Disputes

International arbitration centers and international institutions that countries or foreign-invested companies resort to settle legal disputes arising from the implementation or interpretation of their contracts (Bantekas, 2015, pp. 4).

Iraq has not joined the international agreements and treaties that regulate international arbitration procedures, which led to a decline in the desire of foreign oil companies to invest in the Iraqi oil field until 2003, and after the opening of the investment policy in Iraq, and its accession to several international treaties on the settlement of foreign investment disputes, including Iraq joined the Washington Convention for the Settlement of Foreign Investment Disputes in 2012 under Law No. 64 of 2012. After that, many giant oil companies in the world submitted their offers to search and to drill for oil in Iraq, whether it was to develop and increase the production of the current oil fields located in the south and center or to search and to drill for oil in the Kurdistan region, and the arbitration clause was included in all Iraqi oil contracts, but in different ways (Bahjat, 2014, pp. 95). These methods can be summarized as follows:

1- **The international arbitration clause in service contracts for the Federal Government:**

The fourth paragraph of Article 37 of the service contract for the development of the oil field in Badra in central Iraq stipulates that: “All disputes arising out of, or related to, this contract must be finally settled according to the arbitration rules of the International Chamber of Commerce by three arbitrators in accordance with those rules.”

Under the arbitration rules of the International Chamber of Commerce (ICC), arbitration procedures begin. When the plaintiff submits his request to the General Secretariat, this means that membership in the Chamber is not required

to enable recourse to it to request arbitration, but only conditional is the payment of the legal fees payable in accordance with its rules. Paragraph 4 of Article 4 states the following: “The plaintiff shall pay the fees for filing a lawsuit which is established and in effect on the day the request was submitted.” (Bahjat, 2014, pp. 96).

After the case fulfills all the legal conditions, the Secretary-General registers the request and notifies the parties to the dispute about it, and then sends it to the arbitration panel, to initiate the investigation and adjudication of the case, as the time of the Secretary-General’s receipt of the request is considered the date for the start of arbitration procedures (see; Art. 4, The Arbitration Rules of the International Chamber of Commerce, 1998)

2- The international arbitration clause in the production-sharing contracts of the Kurdistan Regional Government:

The second paragraph of Article 50 of the Kurdistan Region’s Oil and Gas Law No. 22 of 2007 stipulates the mechanisms for settling disputes that may arise between the regional government and the oil companies authorized to explore and produce oil in the region (see; Art. 50, Kurdistan Region’s Oil and Gas Law No. 22 of 2007).

Since Iraq ratified the Washington Convention for the Settlement of Foreign Investment Disputes of 1965, this means that the Iraqi state has the requirements of the first paragraph of Article 25 of the Washington Agreement to present its oil disputes with contracting companies to the International Center (see; Art. 25 of Washington Convention for the Settlement of Foreign Investment Disputes, 1965). Here, the following question arises: What is the position of the International Center on the settlement of oil disputes between oil companies operating in the Kurdistan region and a regional government, in light of the legal differences between the federal government and the regional government about the latter's right to conclude oil contracts, because Article 25 of the Agreement Require the approval of the investing state before resorting to the center if it is presented to the center?

To answer this question, we say that: It is known that the state of Iraq, since 2005, has become a federal state, and it consists of the federal government and the KRG, where each of them exercises its competencies following the constitution, and administrative powers have been distributed between them according to a permanent constitution, which is the constitution of 2005 in force, by Article 110 of it specifies the powers of the federal government therein exclusively (see; Art 110 of the permanent constitution of Iraq, 2005), and indicated in the section on the powers of the regions, which is in Article 115 to “what is not stipulated in the exclusive powers of the federal authorities, it is within the powers of the regions.” This means that the Kurdistan region in Iraq has a constitutional mandate that authorizes it to appear before the International Center and benefit from its services, under Article 25, as well as the rules for additional facilities approved by the Board of Directors for the Center, for oil companies that carry the nationality to the country that is not joining to the agreement, and without referring to the federal government to obtain its approval before submitting his legal disputes with oil companies operating in the region to the center.

Because of the ease of the London Court of International Arbitration (LCIA) procedures, the regional government took this method and agreed with foreign companies to resort to it in a legal dispute between them. The second clause of the first paragraph of Article 42 of the production sharing contract of the American company Hunt Oil states: "If The dispute is not settled within 120 days from the date of notification: the dispute is finally settled following the arbitration rules of the London Court of International Arbitration." (Art 2/1, of Production-sharing contract between the Kurdistan Regional Government and the American Hunt Oil Company, 2007).

The Federal government of Iraq equally has to protect the Iraqi people's wealth and take their interests into account. So the government has to synchronize the interest of all Iraqi people, and foreign investors should be encouraged to invest by providing them with a legal safeguard to preserve their rights. One of the

important ways to entice foreign investors to invest in Iraq is arbitration, especially concerning disputes arising from the petroleum agreement.

From the above, the following question comes to mind: How was the determination of the applicable law in Iraq dealt with? This will be discussed in the next section.

4.2.3. Law Applicable to Iraqi Oil Contract Disputes

The parties to the dispute before the arbitration tribunal have the right to choose the law that governs their dispute, and the purpose of that is to allow a measure of freedom for litigants to determine the appropriate legal framework through which to settle their dispute (Born, 2020, pp. 426). The selection of the governing law is considered one of the important matters and procedures in settling disputes because once the applicable law is defined and known, the rules according to which the trial procedures will proceed, and accordingly, the body responsible can adjudicating the dispute and settling the case.

The arbitration rule of ICC grants the parties the right to choose the applicable law to the subject of their dispute in the arbitration agreement. If the parties couldn’t determine the law, the arbitration tribunal shall determine it, and then decide on the dispute before it accordingly, and the chosen law may be a law the state party to the dispute, or the law of the seat of arbitration (Croff, 1982, pp. 623).

Professor Dupuy, the sole arbitrator in Texaco v. Libya case (Texaco Overseas Petroleum Company v. the Libyan Arab Republic (1979) 53 ILR 389), stated that when the parties have not determined the applicable law of arbitration proceedings, the arbitrator should determine it. He held that there are two options when choosing the law to govern the arbitration procedures. The first option is to apply the national law, specifically the law of the seat of arbitration. The second option is to apply public international law. The arbitrator chose to apply public international law and follow the ARAMCO case award under the principle of state sovereignty. He justified his choice of international law as the applicable law of arbitration procedures by stating: "the fact that, in the present

dispute, the parties had agreed to have recourse, if need be, to the President of the International Court of Justice implies that they intended that this arbitration should come under the aegis of the United Nations and, therefore, that the system of law governing this arbitration should be international law" (Texaco Overseas Petroleum Company v. Libyan Arab Republic (1979) 53 ILR 389).

On this issue, the reasoning of the arbitrator was unsatisfactory. He supposes that the parties consented to apply public international law merely because they were willing to be subject to the judgment of the President of the ICJ. He makes this the foundation stone of his argument, but he attributes it to the parties' intentions which in reality may not exist. The choice of the President of the ICJ does not necessarily reflect the parties' desire to be subject to the arbitration procedures of public international law. If it were the case that the parties chose a French arbitrator would it imply willingness for the arbitral procedures to be subject to the national law of France?

The established principle in general international law is: Giving priority to the law chosen by the parties to the dispute, because it is considered more relevant or appropriate for resolving the dispute, and the parties express their will explicitly to choose that law or the will may be implicit and inspired by the minutes of negotiations and preliminary contracts concluded before the contract for oil exploration and production (Al-Bidery, 2014, 141). The ICC rules have been taken into account with this, as the second paragraph of article 21 of the court's rules stipulates that: "The arbitral tribunal shall take into consideration the provisions of the contract concluded between the parties." (Art. 21/2, Arbitration Rules of the International Chamber of Commerce)

In this regard, the Federal Ministry of Oil left the matter of choosing the law applicable to the service contracts it concluded with the contracting companies to the arbitration committee, as it stipulated in the second part of the fourth paragraph of Article 37 of the contract for the development of the Al-Garraf field in southern Iraq that: "All disputes are under the Arbitration Rules of the International Chamber of Commerce" (Bahjat, 2014, 104).

The arbitral tribunal shall determine the law applicable to the dispute, according to the first paragraph of Article 21 of the rules on arbitration by the International Chamber of Commerce, which stipulates that: “In the absence of the agreement of the parties, the arbitral tribunal shall apply the rules of the law that it considers appropriate.” (Art. 21/1, Arbitration Rules of the International Chamber of Commerce) In this case, it is advisable for the arbitration panel to prefer the application of Iraqi legislation to all other legal rules, because the judgment it will issue is executed in Iraqi territories, so this ruling should not be in violation of the public order and morals in Iraq, unless the arbitrators find that there is a legal deficiency in Iraqi law which prevents its application. (Bahjat, 2014, 104). As well as, United Nations General Assembly Resolution No. 3281 of December 12, 1974 affirmed the necessity of applying domestic law to these disputes, as it stipulates that: “The dispute must be settled according to the domestic legislation of the nationalized state.” (Art. 2/2(C), United Nations General Assembly Resolution No. 3281, 1974)

However, the researcher believes that the direction taken by the Federal Ministry of Oil is contrary to what was stated in the first paragraph of Article 25 of the Iraqi Civil Law No. 40 of 1951, which states: "The law of the country in which the contract took place shall apply to contractual obligations." In addition to that, the IOGDL requires the application of Iraqi law to oil disputes, as the fourth paragraph of Article 44 stipulates that: “Iraqi law shall be applied in arbitration between the competent authority and foreign investors, in terms of the subject matter.”

The arbitration rules of the London Court of International Arbitration (LCIA) required the arbitral tribunal to apply the law of the seat of arbitration to settle the issue of the dispute, and it stipulated in the first part of the third paragraph of Article sixteen that: “The law applicable to arbitration shall be the law of the seat of arbitration.” (Art. 16/3, arbitration rules of the London Court of International Arbitration). However, it is restricted by one condition, which is that the law of the seat of arbitration does not object to that agreement, as the article mentioned above stated that: “The parties agree explicitly and in writing to apply

another law and to the extent that this agreement is not considered prohibited by the law of the seat of arbitration.” (Art. 16/1, arbitration rules of the London Court of International Arbitration).

In the PSCs concluded by the KRG with international oil companies, it agreed to apply the substantive rules of British law by the court when legal disputes with these companies arise (Bahjat, 2014, 108), as the first paragraph of article 43 of the production sharing contract with the American Hunt Oil Company in 2007 stipulated that: "All disputes related to this contract, or because of it, shall be settled according to British law, except for the legal rules related to conflict of laws."

It is noted that the Kurdish legislature did not make arbitration binding according to Iraqi laws or those in force in the region.

CONCLUSION:

Through this in-depth study of the legal analysis of Iraqi oil contracts, I reached a set of findings and recommendations as follows:

Findings:

The legal system for oil investment contracts has passed through different stages, depending on the political, social and economic conditions of the oil-owning countries. At the beginning of the discovery of oil, these contracts took the form of oil concessions, as the investing companies were able to impose unfair conditions on the countries that granted the concession, with the support of their countries. Accordingly, these agreements remained the prevailing pattern for organizing legal relations between producing countries and companies, until the beginning of the second half of the twentieth century. After that, the concession donor countries decided to reconsider this system, using the political changes that occurred in international relations, in addition to the important role played by the United Nations in this regard, by encouraging countries to invest in their natural resources, and to create a new contract system under which protects Legal and economic rights of producing countries. With this, the new system of oil contracts included different types and forms of contracts, the most important of which are: the production-sharing contract, the joint venture, and the oil service contract. Under the new system, the contract period and the area of concession areas were reduced, as well as granting the right to producing countries to participate in oil operations; to form national expertise so that it can receive oil projects after the end of the contract period, which contributes to increasing financial returns of the host country increased.

The study findings that adoption of the licensing rounds method by the Federal Ministry of Oil to select foreign oil companies, to negotiate with them with the aim of concluding a service contract for exploration, development and production, has no legal basis, because it is not stipulated in Iraqi legislation. Also, these contracts were not ratified by law; rather, the Federal Council of

Ministers approved them according to its powers vested in it as an executive authority.

The issue of determining the legal nature of oil exploration, development and production contracts has raised a doctrinal controversy. Some jurists argued that they are international treaties and agreements, considering that one of its parties is a sovereign state, and the other party is the foreign oil company, and he sees a second trend: the oil investment contracts concluded by the state with foreign persons are considered a legal contract, and it fulfills the conditions of the three administrative contracts, while the third opinion holders believe that the exploration and production contracts concluded by the state are private law contracts, based on appropriate knowledge of the idea of an administrative contract to adapt to the legal nature of those contracts, in addition to that the conditions for administrative contracts are not available therein, as claimed by the owners of the second opinion. The fourth opinion holds that oil investment contracts are of a special mixed nature, with combined characteristics of public law and private law, and are subject to both of these laws, as they reflect the presence of elements belonging to public law and private law on the one hand, and contain internal and international elements on the other hand, and also includes aspects of usual equality in private law, and known expressions of authority in public law.

The tax exemption granted to contracting companies under service contracts with the Iraqi government coincides with imposing financial burdens on the state and public funds and contributes to increasing the profits of oil-producing companies on its territory.

Iraq's accession to international agreements and treaties on the settlement of disputes and foreign investment, commensurate with the new Iraq, and in light of the system of globalization and political change that took place in the system of government after the approval of the permanent constitution in 2005, as Iraq transformed from a central system to a federal democratic system. It consists of the federal government and the regional government, and a constitution defines

their powers, as granting the right to producing regions and governorates to participate in investing oil wealth in the current and productive fields with the federal government, as well as granting producing regions and governorates the right to invest future fields on their own, provided that their imports are distributed equitably among all spectrums the Iraqi people under the constitution.

With the aim of encouraging the giant oil companies in the world to invest in the Iraqi oil sector, the federal government committed itself to resorting to the International Court of Arbitration of the International Chamber of Commerce to settle its legal disputes with the contracting oil companies, while the Kurdistan Regional Government chose the London courts for international arbitration in order to present its legal disputes to it. Disputes that arise with oil companies operating in the region, according to Article 50 of the Kurdistan Region Oil and Gas Law No. 22 of 2007.

Iraq has not ratified international treaties and conventions related to the organization of international arbitration affairs, on the basis that the state's submission to other than its national jurisdiction is a diminution of its national sovereignty, while we are now seeing the change in government policy, especially after Iraq's accession in 2012 to the Washington Treaty for the Settlement of Foreign Investment Disputes (1965).

Despite all the political differences between the Kurdistan Regional Government and the federal government regarding the region's right to conclude oil contracts and manage oil operations, we believe that the Kurdistan Regional Government has the right to sign oil contracts with international oil companies, in accordance with article 112 and 111 of the permanent constitution, and in that Economic benefit by increasing its financial revenues, and thus benefit all spectrums of the Iraqi people.

The study found that the production sharing contracts concluded by the regional government in northern Iraq and the oil-producing companies from the viewpoint of the researcher and previous studies (Ruba Husari (2010), Bahjat (2014)),

due to their economic and financial returns, which amount to 85% of the profits. It contributes to preserving the state's ownership of oil reserves, as the partnership contract includes production only and obliges investing companies to bear the costs of exploration and production and their risks.

Recommendations:

I call on the Iraqi state to conclude bilateral or collective agreements, with the aim of encouraging respected international oil companies to invest in Iraq, and to join the New York Convention on the recognition and implementation of foreign arbitration provisions of 1958.

I believe that the House of Representatives in the Iraqi Parliament must approve the Federal Oil and Gas draft of 2007, in order to regulate the affairs related to concluding oil contracts.

I call on the federal government and the Kurdistan Regional Government to draft a law on international arbitration, to be an incentive for legal rights and their dedication in Iraq, as well as to encourage foreign oil companies to invest in possible and just terms in the Iraqi oil fields.

I recommend the Ministry of Natural Resources of the Kurdistan Regional Government to urgently form the National Oil Company, whose name is included in the production sharing contracts, for the purpose of entering into with the contracting companies as a partner in their profits.

I propose to the federal government and the Kurdistan Regional Government to add a "re-negotiation" clause when concluding oil investment contracts in the future, in order to guarantee and protect the rights of the Iraqi people in the event of changing the circumstances under which these contracts were concluded.

I suggest adopting comprehensive and accurate legal definitions in the Federal Oil and Gas Draft for the year 2007, because many of them are unclear and

incomplete in meaning, or inaccurate content, for example: The definition of oil contracts has not been addressed.

I recommend deducting an amount from the profits of oil companies operating in Iraq, and placing it in a special fund to protect the environment, because oil operations and crude oil extraction necessarily lead to environmental pollution in the region.

I propose to the executive authority in Iraq to draw up a draft law regulating matters of oil contract bidding, because these contracts are the future of the Iraqi people and they must be dealt with precision, caution and seriousness.

Remaining steps forward: in order for Iraq to effectively reach full operating capacity, Iraq must ultimately improve the vastly deteriorating security situation and strengthen counterterrorism efforts to stop the spread of violence and boost investor confidence.

Limitation of the study:

Some of the difficulties encountered by the researcher in the course of the study are:

1) Limited time
2) Limited source of information. The sensitive nature of oil contracts makes it difficult for the officials to disclose all details to the public.

Further research:

The researcher is motivated to carry further research into the entire conflict between the federal government of Iraq and the Kurdistan Regional government.

BIBLIOGRAPHY

Books:

Abdul Rahman Al-Allam, (1990), Explanation of the Civil Procedure Law, Part Four, Al-Zahraa Press, Baghdad.

Abdul-Jabbar Abboud Al-Halfi, Nabil Jaafar Abdul Redha, (2013). Iraq Oil..from concession contracts to licensing rounds, dar and mektebet Al besaer - Beirut-Lebanon, 1st Edition.

Ahmed Helmy Khalil Hindi, (2013). Petroleum Concession Contracts and the Method for Resolving Their Disputes, Dar Al-Fath for Printing and Publishing, Alexandria - Egypt.

Ahrari, M. E. (2014). *OPEC:* The Failing Giant. University Press of Kentucky.

Alnasrawi, A. (1994). The economy of Iraq: Oil, wars, destruction of development and prospects, 1950-2010 (No. 154). ABC-CLIO.

Ayman Nasser Al-Nasiri, (2019), Legal Regulation for the Granting of Oil and Gas Concession Contracts (A Comparative Study), dar elgamaa elgadida, Alexandria.

Bantekas, I. (2015). An introduction to international arbitration. Cambridge University Press.

Basman Nawaf Fathi Hassein Al-Rashidi, (2014). The Legal System for Foreign Oil Investments, 1st Edition, Dar Al Fikr University, Alexandria.

Bini, E., Garavini, G., & Romero, F. (Eds.). (2016). Oil shock: The 1973 crisis and its economic legacy. Bloomsbury Publishing.

Born, G. B. (2020). International commercial arbitration. Kluwer Law International BV.

Brown, L. N., Bell, J., & Galabert, J. M. (1998). French administrative law. Oxford University Press.

Cotula, L. (2010). Investment Contracts and Sustainable Development; How to make contracts for fairer and more sustainable natural resource investment (First ed.). London, United Kingdom: International Institute for Environment and Development IIED—).

Essam Farag Allah Mohsen Ibrahim, (2017). The Legal Nature of International Petroleum Contracts, Dar Al-Fikr Al-Jami'ya – Alexandria.

Jalal Husayn Anz, (2012). Investment Contracts and the Law Applicable to them, Journal of the College of Law for Legal and Political Sciences, issued by the College of Law, University of Kirkuk, Volume One, Issue Two.

Kholoud Khaled Al-Sadiq Bayoud, (2012). The Oil Concession Contract and its Applications, maktab al- jamaa Alhadith, Tripoli.

Miller, A. D. (2017). Search for security: Saudi Arabian oil and American foreign policy. UNC Press Books.

Mills, R. (2018). A rocky road: Kurdish oil and independence, Iraq Energy Institute.

Muhammad Abdulaziz Ali Bakr, (2010). The Legal System of Contracts Between Foreign Countries and Persons, The Modern Library for Publishing and Distribution, Cairo.

Muttitt, G. (2011). Fuel on the fire: oil and politics in occupied Iraq. Random House.

Rahim Kazem Al-Sharaa and Ali Neama Muhammad, (2018). Oil Investments in Iraq (License Contracts - Partnership Contracts), Dar Al-Sanhouri, Beirut-Lebanon.

Schrijver, N. (1997). Sovereignty over natural resources: balancing rights and duties (No. 4). Cambridge University Press.

Sejad Khaled Abdulrahman Al-Lami, (2019). Changing Circumstances and Its Impact on Oil Investment Contracts, First Edition, Comparative Law Library, Baghdad, Iraq.

Shwadran, B. (2019). Middle East oil crises since 1973. Routledge.

Smolansky, O. M., & Smolansky, B. M. (1991). The USSR and Iraq: The soviet quest for influence. Duke University Press.

Wilson, S., Carlson, A., & Szeman, I. (Eds.). (2017). Petrocultures: Oil, politics, culture. McGill-Queen's Press-MQUP.

Winegard, T. C. (2018). The first world oil war. University of Toronto Press.

Zahir Majeed Qadir, (2013). Legislative and Judicial Competence in Oil Contracts (Comparative Study), 1st Edition, Zain legal Publications, Lebanon.

Zedalis, R. J. (2012). Oil and Gas in the Disputed Kurdish Territories: Jurisprudence, regional minorities and natural resources in a federal system. Routledge.

Zedalis, R. J. (2009). The legal dimensions of oil and gas in Iraq: Current reality and future prospects. Cambridge University Press.

Articles

Abdelrehim, N., Maltby, J., & Toms, S. (2011). Corporate Social Responsibility and Corporate Control: The Anglo-Iranian Oil Company, 1933—1951. Enterprise & Society.

Al Faruque, A. (2008). Renegotiation and Adaptation of Petroleum Contracts: The Quest for Equilibrium and Stability. The Journal of World Investment & Trade.

Al-Marashi, I. (2018). Iraq: State, Society and the Evolution of the Petroleum Sector. In Public Brainpower . Palgrave Macmillan, Cham.

Al-Saeed, M. (2002). Legal protection of economic development agreements. Arab Law Quarterly.

Al-Wathiq Atta Al-Manan Muhammad Ahmad, (2020). Legal adjustment of the oil investment contract, The Arab Journal of Literature and Human Studies, Issue 15.

Anderson Jr, I. H. (2014). Aramco, the United States, and Saudi Arabia: A study of the dynamics of foreign oil policy, 1933-1950. Princeton University Press.

Birdsall, N., & Subramanian, A. (2004). Saving Iraq from its oil. Foreign Affairs.

Cedeno, H. (2008). The Development of the Iraqi Oil Production After the Nationalization, 1972-2003.

Crawford, J. (2008). The authority of the Kurdistan regional government over oil and gas under the constitution of Iraq. Oil, Gas & Energy Law Journal (OGEL), 6(3).

Croff, C. (1982). The Applicable Law in an International Commercial Arbitration: Is It Still a Conflict of Laws Problem?. The International Lawyer.

Curtis, C. T. (1988). Legal Security of Economic Development Agreements, The. Harv. Int'l. LJ.

Gassan Rabah, (2008). The International Commercial Contract, Beirut.

Ghadas, A., Ariff, Z., & Karim, S. (2014). Types and Features of International Petroluem Contracts. South East Asian Journal of Contemporary Business, Economics and Law.

Ghandi, A., & Lin Lawell, C. Y. C. (2014). Economic Efficiency and Optimal Contractual Design of Iraq's Oil Service Contracts. USAEE Research Paper Series.

Ghandi, A., & Lin, C. Y. C. (2014). Oil and gas service contracts around the world: A review. Energy Strategy Reviews.

Guirauden, D. (2004). Legal, fiscal and contractual framework. oil and gas exploration and production.

Johns, L., & Wellhausen, R. L. (2016). Under one roof: Supply chains and the protection of foreign investment. American Political Science Review.

Mikdashi, Z. M. (1966). A financial analysis of Middle Eastern oil concessions, 1901-65. FA Praeger. New York.

Radon, J. (2005). The ABCs of petroleum contracts: license-concession agreements, joint ventures, and production-sharing agreements. Covering Oil. A Reporter's Guide to Energy and Development.

Radon, J., & Logan, S. (2016, December). National Oil Companies in the Middle East and North Africa: Remaining Relevant in a Changing World. In Economic Research Forum Working Papers (No. 1072).

Radpey, L. (2016). Kurdish regional self-rule administration in Syria: a new model of statehood and its status in international law compared to the Kurdistan Regional Government (KRG) in Iraq. Japanese Journal of Political Science.

Romano, D. (2014). The Iraqi Kurdish view on federalism: Not just for the Kurds. In Conflict, Democratization, and the Kurds in the Middle East. Palgrave Macmillan, New York.

Rutledge, I. (2004). The Sakhalin II PSA–a Production 'Non-Sharing' Agreement. Sheffield Energy Information Services (SERIS).

Saber, K. D. (2018). Kurdistan's Politics Issues Regarding Production Sharing Contract with Iraqi Central Government and Analyses Whether This Contract Best Suits Kurdistan or Iraq as Whole.

Salih, M. S., & Salih, R. S. (2015). Strategy of Oil Contract Negotiation. International Journal of Business and Social Science, 6(9).

Salmana, A. A., Majeedb, H. S., & Ameen, H. (2019). Analysis and Measurement of the Impact of Oil Revenues on Economic Variables in Iraq from 2003 to 2016. International Journal of Innovation, Creativity and Change.

Saul, S. (2007). Masterly Inactivity as Brinkmanship: The Iraq Petroleum Company's Route to Nationalization, 1958–1972. The International History Review, 29(4).

Seerden, R. J., Seerden, R., & Stroink, F. A. M. (Eds.). (2002). Administrative law of the European Union, its member states and the United States: a comparative analysis (Vol. 39). Intersentia nv..

Soloveytchik, V. (1993). New Perspectives for Concession Agreements: A Comparison of Hungarian Law and the Draft Laws of Belarus, Kazakhstan, and Russia. Hous. J. Int'l L., 16, 261.

Stevens, P. (2008). National oil companies and international oil companies in the Middle East: Under the shadow of government and the resource nationalism cycle. Journal of World Energy Law & Business.

Wahab, B. (2014). Iraq and KRG Energy Policies: Actors, Challenges and Opportunities. The Institute of Regional and International Studies.

Wali, A. A. (2013) Geographical history of exploration and drilling for oil in Iraq.

Walsh, D. (2018). Iraq: Iraqi Kurdistan, Unresolved Issues, and Changing International Priorities. In Territorial Self-Government as a Conflict Management Tool. Palgrave Macmillan, Cham.

Watkins, E. (2008). CNPC to develop Ahdab oil field in Iraq. Oil & gas journal, 106(34).

Weaver, J. L., & Asmus, D. F. (2006). Unitizing oil and gas fields around the world: A comparative analysis of national laws and private contracts. Hous. J. Int'l L.

Thesis

Aalan Jamal Muhammad, (2016). Legal Guarantees for Foreign Investment - A Comparative Study on Oil Contracts, Master Thesis, Faculty of Law - Mansoura University.

Abdullah Al-Saadi Al-Sousi, (2015). Mechanisms for Settling Petroleum Contracts Disputes in Libyan Private International Law, Master Thesis, Faculty of Law, Jumaa Mansoura.

Ahmed Ashoush, (1975). The Legal System for Petroleum Agreements in the Arab Countries, PhD Thesis, Faculty of Law - Cairo University.

Ahmed Jassim Jaber Al-Yasiri, (2009). Oil and the Future of Development in Iraq, Master Thesis submitted to the College of Administration and Economics - University of Kufa.

Al-Bidery, S. A. (2014). Modernising Iraq: a vision for a comprehensive petroleum arbitration regime in Iraq. Bangor University (United Kingdom).

ALI, Z. S. A. (2018). Political Economy of Oil Production in Iraq during 2006-2016 (Master's thesis, Siirt Üniversitesi).

Bahjat Ali Ahmed, (2014). Settlement of Iraqi Oil Contracts Disputes in the Light of International Law, Master Thesis, Beirut Arab University, Beirut.

Ghandi, A. (2013). Economic Efficiency and Optimal Contractual Design of Oil Service Contracts: The Cases of Iran and Iraq. University of California, Davis.

Hadi, H. A. L. A. H. (2017). Regulating the oil and gas sector in Iraq (Doctoral dissertation, Thesis or dissertation).

HAMAD, S. A. (2017) Renegotiation Clauses in International Petroleum Ccontracts. Near East University.

Kadirgolam, B. (2020). An investigation into the oil and gas contractual and legal relationship between the Kurdistan Regional Government (KRG) and the Iraq Federal Government (IFG) (Doctoral dissertation).

Kawa Omar Mirza Fattah, (2010). Oil and its Exploitation Contract Disputes - A Comparative Analytical Study, Master Thesis submitted to the College of Law - University of San Clements.

Mona Gabr Ali Mustafa, (2010). Political and Legal Aspects of Petroleum Agreements, The Case of Egypt, Master Thesis, Faculty of Economics and Political Science, Cairo University.

Ruslan Sulaimanov, 'Balancing State and Investor Interests in International Petroleum Contracts: Renegotiation Clause' (25 March 2011) CEU master thesis.

Shaima Iskandar Dagher Al-Fawadi, (2012). Oil Service Contract, and Master Thesis submitted to the College of Law - University of Baghdad.

Silva, C. A. P. (2010). Production Sharing Contracts and Concessions in the Brazilian Subsalt Region: A Comparative Analysis (Master's thesis).

Siraj Hussein Muhammad Abu Zaid, (1998). Arbitration in Petroleum Contracts, Doctoral Thesis, Faculty of Law, Ain Shams University.

SSALI EDWARD, (2015), Production sharing or concession agreement: Which is optimal for the exploitation of Ugandan oil and gas resources.

Yacoub, L. (2015). Reconstructing the Governance of Iraqi Oil (2003-2013)–Distribution of Oil Revenues among Kurdistan and Iraq's Provinces (Doctoral dissertation, University of Sheffield).

Yasser Amer Hassan, (2017). Legal Effects of the Oil Service Contract (for Development and Production) for the Foreign Invested Company, Master's Thesis, Middle East University.

Cases

Anglo-Iranian Oil Co (UK v. Iran) [1952] ICJ Rep 93.

Libyan American Oil Company (LIAMCO) v. Libyan Arab Republic (1977) 62 ILR 140.

Sapphire International Petroleum Ltd. v. National Iranian Oil Company (1963) 35 ILR 136.

Texaco Overseas Petroleum Company v. Libyan Arab Republic (1979) 53 ILR 389.

Legislation and Constitutions

Civil Procedure Law, no. 83, 1969.

Investment Law for the Liquidation of Iraqi Crude Oil No. 64 of 2007.

Iraqi Civil Law No. 40 of 1951.

Iraqi Constitution of 2005.

Iraqi oil and gas draft law, 2007.

Kurdistan Region's Oil and Gas Law no. 22, 2007.

Law No. 70, 1973, Published in the Iraqi Official Gazette No. 2283 dated 7/10/1973.

Law No. 97 of 1967 published in Al-Wagayeh Al-Iraqiyeh.

Law No. 200, 1975, Published in the Iraqi Official Gazette No. 1395 dated 8/12/1975.

Oil and Gas Law of the Sultanate of Oman No. 8 of 2011.

The Interim Constitution of Iraq of 1970.

The Law in the Establishment of the Iraqi National Oil Company No. 11 of 1964 published in Iraqi Official Gazette, Issue 912 on 8 February 1964.

The Nationalization Law of the Iraqi Petroleum Company No 69 of 1972. Published in the Iraqi Official Gazette, Issue 2146 on 1st July 1972 428.

The petroleum act of the Republic of Uganda, No (4), 2013.

International Conventions, Treaties and Rules

Arbitration Rules of the International Chamber of Commerce (ICC).

Arbitration Rules of the London Court of International Arbitration (LCIA).

Vienna Treaty of 1969.

Washington Convention for the Settlement of Foreign Investment Disputes, 1965.

International Resolutions and Declarations

Resolution 986 (1995) / adopted by the Security Council at its 3519th meeting, on 14 April 1995.

United Nation Security Council, Security Council resolution 661 (1990) [Iraq-Kuwait], 6 August 1990, S/RES/661 (1990).

United Nation Security Council, Resolution 687(8 April 1991) UN Doc S/RES/687.

United Nation Security Council, Resolution 1483 (22 May 2003).

Universal declaration of human rights, UN, 1948.

United Nations General Assembly Resolution No. 3281 of December 12, 1974.

Contracts

Production-sharing contract between the Kurdistan Regional Government and the American Hunt Oil Company, 2007.

Service contract between the Iraqi National Oil Company and the French ERAP Company, 1968.

Service contract between the South Oil Company and the Malaysian Petronas Karikali Company, 2009.

Website

Alessandra Sgubini, Mara Prieditis & andrea Marighetto, 2004, Arbitration, Mediation and Conciliation: differences and similarities from an International and Italian business perspective, available at: <Arbitration, Mediation and Conciliation: differences and similarities from an International and Italian business perspective (mediate.com)> accessed 7 April 2021.

Antonia Juhasz, Why the war in Iraq was fought for Big Oil, Updated , April 15, 2013 available at <Why the war in Iraq was fought for Big Oil - CNN> accessed 9 April 2021.

Asharq Al-Awsat. Iraq nullifies Kurdish oil deals. 2007. https://eng-archive.aawsat.com/theaawsat/business/iraq-nullifies-kurdish-oil-deals

Central Bank of Russia, Twenty-Fourth Meeting of the IMF Committee on Balance of Payments Statistics Moscow, Russia October 24–26, 2011--<https://www.imf.org/external/pubs/ft/bop/2011/11-17.pdf> accessed 18 December 2020.

Federal Supreme Court delays hearing on KRG oil exports.2019 NTR. Available at: <http://www.nrttv.com/EN/News.aspx?id=11518&MapID=2> accessed 26 February 2021.

Florian Amereller & Dahlia Zamel. “Iraqi Kurdistan”. The Oil and Gas Law Review-Edition 6. 2018. The text available at <https://thelawreviews.co.uk/edition/the-oil-and-gas-law-review-edition-6/1175819/iraqi-kurdistan> accessed 2 March 2021.

Fulbright, N. R. (2015). Oil and Gas Exploration and Production in Myanmar, available at <Oil and gas exploration and production in Myanmar | Global law firm | Norton Rose Fulbright> accessed 23 March 2021.

Irakipedia, (2021). Foreign oil companies available at: <https://ar.irakipedia.org/wiki/> accessed 18 May 2021.

John M. Blair. 1977, “Iraq and the battle for oil. A historical insight”. Excerpt from the Control of Oil. Available at <https://www.globalresearch.ca/iraq-and-the-battle-for-oil-a-historical-insight/24810> accessed 11 November 2020.

Maher Chmaytelli. Iraqi government asks foreign countries to stop oil trade with Kurdistan. World News, September 2017.Reuters. available at: <https://www.reuters.com/article/us-mideast-crisis-kurd-referendum-oil/iraqi-government-asks-foreign-countries-to-stop-oil-trade-with-kurdistan-idUSKCN1BZ0Y0> accessed 1 March 2021.

Metz H C, ed. 1988, Iraq: A country study. Washington: GPO for the Library of Congress. Available at: <http://countrystudies.us/iraq/> accessed 27 December 2020.

Mohammed Rwanduzy. Oil: Iraq highly unlikely to receive 250000 bpd from Kurdistan in 2019. Rudaw. Available at: <http://www.rudaw.net/english/business/26022019> accessed 23 March 2021.

Mustafa Rashid Issa, (2018), (Petroleum Contracts under the Iraqi Law: National and International Perspectives -Law Department, Ishik University, Iraq, available at: <http://www.sciint.com/pdf/636610316796686267.edited%20PAID.pdf> accessed 24 March 2021.

Ruba Husari, interview with Dr. Ashti Hawrami, Minister of Natural Resources in the Kurdistan Regional Government, on 10 August 2010, full text available at: <https://www.iraqoilforum.com/?p=1979> accessed 22 April 2021.

Sangar Ali. Oil and gas disputes with Baghdad to be addressed once new KRG cabinet formed. Kurdistan 24. 23 May 2019. Available at: <https://www.kurdistan24.net/en/news/d227436b-1f58-4cc9-b560-4c8e64843239> accessed 22 March 2021.

World Bank agreement of 1965 establishing the International Center for Settlement of Investment Disputes available at: <International Centre for Settlement of Investment Disputes :: (worldbank.org)> accessed 9 April 2021.

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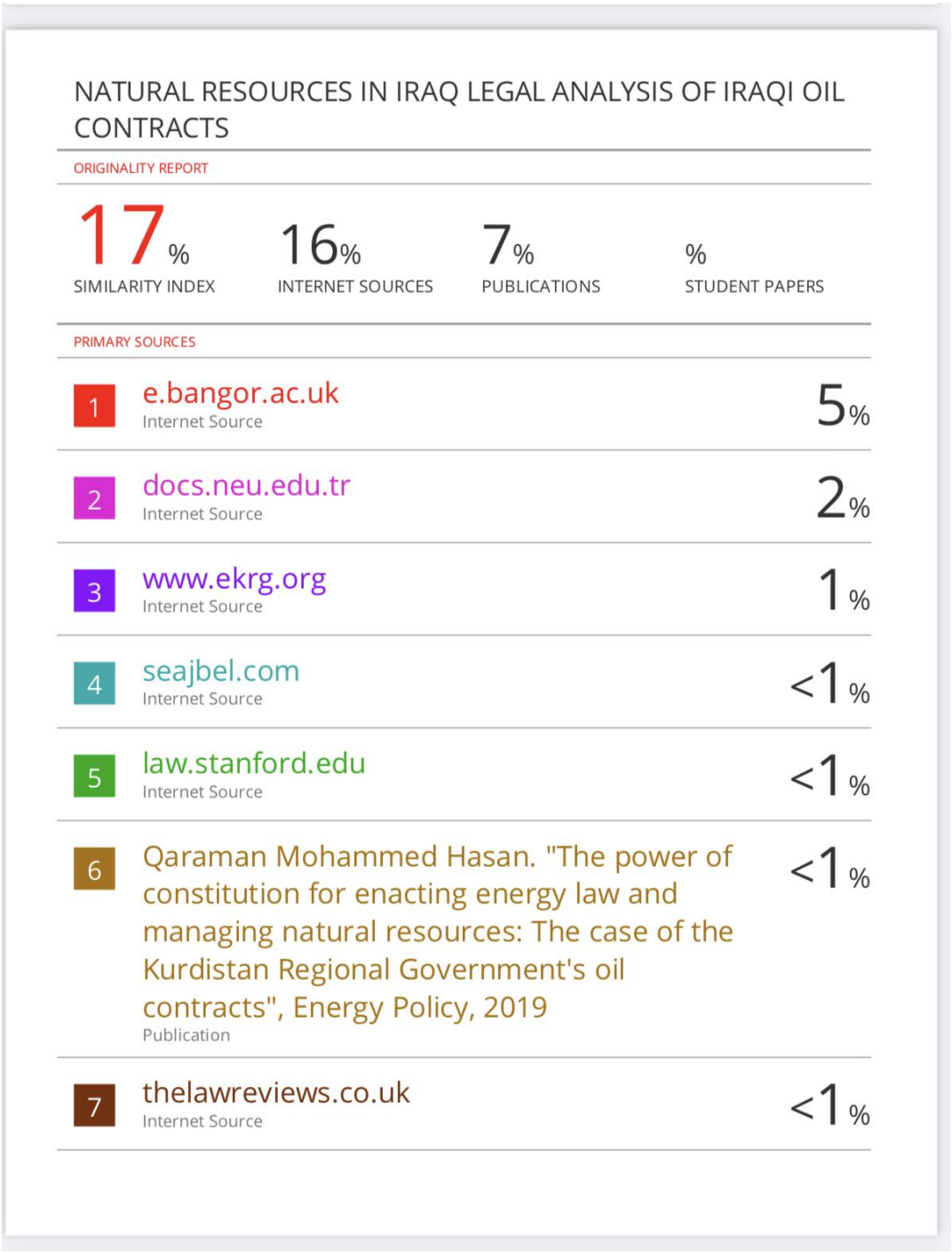

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