

Fundamental Issues of early Oil Concession Contracts in Iraq until 1950

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Abstract—This paper will focus on early oil concession contracts in Iraq until 1950. These contracts are strongly influenced by the political and economic conditions of oil-consuming and oil producing countries, variations in these. In Iraq, the divergent political and economic circumstances have had an impact upon of the oil contracts and this was reflected in the oil contracts. This paper provides an overview of early oil concession contracts and other types of oil contracts will be examined in upcoming research papers. This paper focuses on oil concession contracts from a legal and historical point of view. The contract is one of the most important forms of legal act. It is a legal expression in which one conducts bilateral legal transactions at both the domestic and international level. Since the twentieth century states have interfered more in various areas of transaction such as economic, commercial and civil transactions are that at the domestic or international level.

The following topics are discussed: definition of concession and oil concession contracts, emergence of the early or traditional oil concession contract, advantages and disadvantages of early concession contracts in Iraq.

Keywords— Iraq, traditional oil concession contracts, International oil companies, oil producing countries.

I. INTRODUCTION

THIS early oil concession contract is one type of oil contract and is the oldest form of oil contracts. This contract started to appear at the beginning of the twentieth century[1]. The concession contract formed the basis of oil contracts. These led to the emergence of other types of oil contracts for example developing oil concession contracts, an oil joint venture contract, oil production sharing contracts and oil service contracts. Oil contracts are the states' contracts because the state is always a signatory to these contracts. Oil producing countries generally sign oil contracts with foreign natural persons and foreign companies. This contract is characterized by the parties not having a relationship of parity in their capacities. The oil contract is signed by the state as a subject of public law (or any corporation related to the government) and with a foreign natural person or foreign artificial person that are subjects to private law.

II. DEFINITION OF CONCESSION AND OIL CONCESSION CONTRACTS

A. Concession contracts

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B. Definition Of Oil Concession Contracts

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III. EMERGENCE OF THE EARLY OR TRADITIONAL OIL CONCESSION CONTRACT

The first concession right to oil was used in the United States in 1859 between Colonel Edwin, Darke, Titusville and Pennsylvania Oil[10]. The concession right then became very popular from the first quarter of the 20th century when developing countries were ruled by the old colonialism, particularly in the Middle East[11]. The first concessions were given to British and French oil companies, due to the fact that most of oil producing countries in the Middle East was colonised by France and Great Britain at that time[12].

During this time oil concession contracts were intrinsically linked to political, economical, social circumstances. In particular those contracts which were signed between colonised countries and big petroleum companies between the two world wars. Colonisers intervened to support their companies by using power and putting pressure on oil producing countries forcing them to accept all of the contractual conditions[13]. After the collapsing of the Ottoman Empire in 1918, Iraq was awarded to the British Empire in 1920 by the League of Nations. Therefore, Iraqi national resources – including oil – became controlled by the British Empire[14], so Iraq was under military and political control of the British Empire till 1932[15]. This was most obvious when the British government, in 1925 used pressure to force the Iraqi government to sign an oil concession contract with the Turkish Petroleum Company (TPC) concerning the oil field of Baba Gargar for 75 years. They also concluded two other concession oil contracts with the Mosul and Basra oil companies in 1932 and 1938[16]. The reason for the British

supporting the TPC was that Great Britain gained a 50% share of the national bank of Turkey and according to rule of the TPC the concession was held by the British, in order to obtain oil concession contract from Mesopotamia (which is now known as Iraq). Later these three companies were united into one company which was called the Iraqi Petroleum Company. A Iraqi Petroleum Company covered the oil production for the whole Iraqi territory[17]. The contract stipulated that, the foreign oil company had to pay only 4 shillings[18] for each ton of exported crude oil to the Iraqi government (each ton equals more than seven barrels of crude oil)[19]. In order to get Iraq to sign these contracts the British government used threats. One of these threats was that the British would separate the Iraqi city (Mosul) from Iraq and would annex it to Turkey, if the government of Iraq did not agree to sign the traditional oil concession contract with a Turkish oil company[20]. The reason for this move was because the company was controlled by the British at the time of Ottoman Empire[21]. It is also important to mention that oil producing countries did not have a system of law to apply to all various and complicated aspects of the oil industry at that time. All of these combined factors contributed to the emergence of oil concession contracts[22].

IV. SOME ADVANTAGES OF EARLY OIL CONCESSION CONTRACTS

Firstly, a concession contract helps oil producing countries to discover the oil for the first time. For example in Iran 1908 and Iraq 1923 the oil has been discovered by IOCs and despite of many criticisms on the content of the contracts (imbalance of the rights and obligations of the contractors) these countries have been gotten many benefits later on. Also almost all OPCs in the Middle East were not able to do the discovery by themselves without any help from IOCs because of many reasons such as, the OPCs had poor financial and professional conditions and most importantly, they did not have the power to explore the oil since they were colonials[23].

Secondly, International oil companies pay high taxes and bring technology into the host countries[24]. Also in a concession contract, international oil companies help the host countries economically through pay in cash sometimes. Thus, in financial crisis, the private sector helps the host countries to invest[25].

Thirdly, The government of the host country easily gets its revenue from an international oil company in an oil concession contract just directly after the production or selling and it is a fixed profit without any risk[26]

V. THE CRITICISMS ON EARLY OIL CONCESSION CONTRACTS

Firstly, the decision of developing oil fields and discovery, exploration, production and selling were the exclusive rights of foreign oil companies. These companies controlled many oil fields in oil producing countries. As mentioned above in the case of Iraq, the oil fields of an entire state would be under the control of foreign oil companies. Secondly, these contracts

were concluded for a very long period of time, sometimes for more than 75 years. For example the oil concession contract between the King of Iran and the British millionaire (William Knox Darcy) in 29 March 1901 gave concession rights to William Knox Darcy's company to conduct exploration, exploitation, transportation and selling, these rights continued for sixty years[27].

Secondly, there was no pressure or punishment on the foreign oil companies by oil producing countries, if they did not develop the oil field or did not produce oil at all. This was due to the fact that there were no such contractual obligations on international oil companies. Therefore, sometimes international oil companies did not produce oil at all because at that time the oil price in the world market was not high as it currently is[28]. (At that time one barrel was sold for only two US dollars or less[29], while in 2014 one barrel was sold for more than 100 US dollars)[30]. Therefore, at that time foreign oil companies did not work very hard to develop an oil field and produce oil. Despite this, oil producing countries only had the right to receive a very limited amount of money for each ton of oil produced by foreign oil companies[31]. In addition, the foreign oil companies were the owners of the production of crude oil. Therefore, the foreign companies had divorce rights on the production[32].

VI. CONCLUSION

Oil contracts in general are considered to be important contracts because they are states' contracts. Additionally, oil contracts are of high interest for the whole population of oil producing countries due to the fact that sometimes it is the only revenue available for them such as in Iraq. Therefore, oil contracts are essential from a strategic point of view and thus, face many difficulties. History shows that oil concession contracts are in favour of the foreign oil companies because these are long term contracts and foreign oil companies become the owners of the oil field and the production. The reason behind this contract is that most of the oil producing countries at the time of the discovery of oil were colonies. It is for this reason that the type of oil contract served the foreign oil companies' interest. At this time most of the foreign oil companies working in the Middle East belonged to the colonise countries. According to the research, it is found that oil concession contracts are normal contracts like other oil contracts but when Iraq signed its early oil concession contracts for the first time these countries were colonials so they were weak and had no power to negotiate the contracts for their countries' interest[33].

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