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Conflict of Laws in International Oil Contracts

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Abstract

The contract which is signed between different nationalities is called international agreement. International agreements are slightly more complex than domestic contracts. Because we are dealing with more than one rule and in addition, the existence of principles of international rules cannot be ignored. Nationality difference is the first case that is investigated in international contracts. The second factor is the domicile of the parties that is a communication element in international contracts. The third factor is the place of contract performance and the forth factor states the contracts between two sides. What is the main purpose of this article is the subject and purpose of the international oil conventions that investigates the governing principles over them, the governing law example of the contract and also provides solutions to adopt a law which has been proposed.

Keywords: contract, international, oil, and law

Introduction

Distinction between domestic contracts and international agreements

The contract which is concluded between people of different nationalities is called an international agreement. Although the contract is signed by one of the parties in the country of origin, the citizenship element is organized by two or more countries in this context; the question is “which law is applicable to contractual disputes?” When a country other than the country of origin is used to conclude the contract, the domestic contract will be changed into an international agreement. The place where the contract is performed is another factor that changes the contract into an international agreement. For example, if a contract between an Iranian and a Frenchman is signed in Germany for the construction of a petrochemical plant in Libya, the contract will be adapted to the contract law of the place in which they have decided to sign the contract and these two sides are going to fallow their contractual obligations. In connection with the execution of the contract this contract is considered an international agreement. In this case, the important thing is that what is required by law in certain disputes over contracts. Also the will of the two sides of the contract is helpful in the development of international agreements (Dokht Namini et al., 2014).

Conflict of Laws

The conflict concept of laws: The conflict of Laws is the most important issues of private international law.it is proposed when this privacy law relationship is made by the interference of "foreign agent" or two or more countries. In such cases, it should be recognized which of Foreign agent of the property may be traded or acted as outside legal event or a document in a foreign country and May also be of foreign nationality or outside their home. Also, it should be noted that sometimes an external factor involved in the issue. And sometimes several external factors, that the more external factors are involved in a legal relationship, the problem will be more complex. The solution of conflict laws which are involved in this topic means finding the law that would be applicable to the legal relationship that will be more difficult. Note again that the issue of conflict of laws arises only at the stage of implementation and logically the question of having the right accessories (Capacity of enjoyment) is related to this issue. The issue of capacity as well as 449

enjoyment is logically preceded by nationality, so if a person of international relations is deprived of the enjoyment right, the issue of conflict will not arise, because the conflict of laws arises when a person has a right to be in international life and it is our desire to determine the applicable law. It should be noted that there are two methods for determining the competent law in the issue of conflict laws. In fact, it represents two different schools. One way is dogmatic principles and legal or the choice of another method which is called Onesab. The method of choice of law or rule of the competency will be applied to the conflict of two sides of the contract.

Appearance of Conflict of Laws: The first factor is the development of international trade and relations which bring out the conflict of laws related to a legal relationship between two or more countries. The second factor is the ignorance of the national legislation and the possibility of foreign law performance. If the national legislator and the governor deems only the rule of their country, the question of conflict of laws, will not be considered. The third factor is the difference between civil laws of countries, this means that if in a legal issue, different countries don't have different orders and their solutions are the same, there will be no conflict of laws (Nikbakht, 2007).

Legislative authority and jurisdiction: In law conflict competence, the purpose of legislative authority is the legal recognition that conflict of law used to arbitrate a specific issue. The purpose of jurisdiction authority is to recognize the jurisdiction of the court which has jurisdiction to certain issue. Jurisdiction will affect the legislative. Because the judge must solve the problem of court conflicts, before resolving the issue of conflict of laws and should comment about his competency or incompetency.

Conflict resolution rules and regulations of the material: Rules or rules of laws conflict are rules to determine which law should govern a particular issue they do not solve the problem which are arising directly. Material or basic rules are the rules that are relevant to the case to resolve contentious issues, resolve differences and solve disputes directly without having to refer to another law. Unlike conflict rules, material rules are considered national law rules.

Categories of relation

Since the issues rose in international relations and conflict resolution rules governing the general concepts are clear and specific, thus the conflict of laws to correct the problems and find proper solutions they divide the different legal relations into categories of relation. For example, concepts such as personal affairs, property and contracts are called categories of relation. The judge can solve the problem correctly if he puts every problem in the categories in order to determine the law governing it. Determination of whether a specific legal relationship is included in which relation categories is called description.

Legal principles governing international oil contracts

Sovereignty of government over natural resources: By the appearance of different movements in favor of liberty, anti-colonist activities in different states of the world, and autonomy of many of them, especially after World War II, and the Cold War, Developing states sought to apply the principle of permanent sovereignty over natural resources as one of the principles of customary international law in order to create balance and equality in international relations. "The permanent sovereignty over natural resources are not developed in a vacuum alone but is used as a tool or as a reaction to the international political events Which includes the nationalization and as in the case of Anglo-Iranian Oil Company (1951), the canal company, Sweden (1956), Chile's copper industry (1972) and of the Libyan oil industry (1976) ".

The principle of contract freedom (rule will): In most countries regarding civil law, the principle of contractual freedom is respected while controlled by the limiting factor, and its territory

is to the point as far as the freedom of others and social rights unharmed. The principle of contract freedom is not in the sense of being infinite in drafting and signing of the contract that will not determine the effects and conditions. In order to prevent chaos and disruption of social order and to maintain social needs some of the legislators have set some limitation for them with considering respect. People are free in that limitation and they are free to sign their contract within that limitation therefore the authentic freedom is not absolute.

The principle of good faith : Law choice must be combined with good faith but not artificial. In another word there should be a relationship between the established law and the contract. The parties should not use inconvenient use from the right principle which has been considered to freedom of intention. Proponents of limited jurisdiction can explain properly the weak link between contract and the rights of a country and choice of law governing the rights of a country. Good faith in contract means no scheming and planning and scheming against the contract. On the basis of good faith, good faith is one of the tools to judge the factors that help to determine the commitment of the parties to the contract, because both sides of the agreement were committed to ensure their goodwill. They have accepted the obligations and they should be loyal to their obligations and none of the parties don't have the permission to take advantage from existing goodwill and goodwill has been recognized in various legal systems and has been recognized in civil laws of some countries and we can explicitly express that having good faith is the determinants of contractual obligations and the principle and contracts must be justified according to the measure of good faith. The principle of the good faith has been accepted according to the context of religious legal rules And there are many great traditions that emphasized Muslims to do their deeds with good faith and in any case to which the goodwill is attributable to certain religious and legal rights of individuals, and does not hurt any ones right it is valued

The principle of confidence and secrecy of information: In fact, this principle is known as the origin of other international commercial principles and this confidence is required to establish the contract. It's necessary to state that two sides of the contract must consider the conditions of the contract thoroughly and this complete confidence is based on some of the customary factors such as good reputation of the opposite side, the amount of diffusion of the government in diplomatic support and the background of the opposite side's company and appropriate guarantee such as, paving the way to transfer the subject of the transaction, or appropriate insurance cover, bank guarantees and LCD. The international insurance contract is allocated to a direct correlation to external factors. Privacy and security protection, including an international agreement is considered. Since both sides of a different nationality in international agreements with the law and condition are distinct, and the contract is signed in accordance with the international principles and the possibility that the parties have not mastered the basics so the role of the mediator is to keep important information. If disclosure of such information contains information such as the economic interests which is in favor of one of the parties and will cause the failure of the other party so keeping this principle in international trade agreement is very important.

Principle of contract Relativity: Article 10 of the Civil Code is signified as "Private contracts to those who have signed it." By virtue of this principle the effect of this contract was limited to those who have signed it and others are alien in exceptional cases against Covenant and neither benefit nor harm suffered to be held. According to the authors investigated this issue in international law as well as other aspects of civil rights is a shared origin, because they both have a common goal. In civil law systems, rules and principles are relevant to the policy of a country and Legislative and judicial authorities of the country having their determination to address this issue while the above is different from the international that requires greater clarity expression that has been introduced in

Openly accessible at other chapters. Thus answering the above question in the "field of international commercial contract intended to be examined from two perspectives:

1. Ability to invoke absolute legal phenomena
2. The ability to rely on legal issues

Legal phenomena have limited Origin or are defined as a contract between two or more individual events or like a stone property just return to the status of a person.

The principle of contract requirement: This principle is one of the most important legal rules governing the transactions and contracts and means that any contract or agreement entered correctly and there would be a about as to ensure that the contract is required or permitted, In such a case, the necessity principle dictates that the contract is considered to be irrevocable and the parties are required to follow the terms and obligations. According to common sense When they signed an agreement they are bound to keep it and they have to trust the loyalty of the opposite side and unlike some of great Jurists opinion, social and economic interest are backing the necessary contracts because individuals on the basis that the other party will be bound by its obligations, they will regulate their economic relations and if you do not believe in the principle of necessity, strength of the contract which is of great social interest will disappear and economic insecurity will shed light on the society. No businessmen, hoping to obtain commercial credit and bear the costs of not acting and not accepting the commitment.

Factors influencing the jury's approach to the legal principles governing the contract

Factors outside the contract: Fans of international oil contracts in order to prove themselves argue that firstly:

It is to the credit of the parties that try to improve the position of transnational oil contracts as a function of international law Second, the nature of the credit agreement with the theory of economic development agreements, international agreements are counted must be placed under international law.

Contract factors

First Article: -condition for stability

One of the measures that oil companies contracted to do, is to minimize the risk of the control on the contract. Because the exploration and exploitation of oil resources, Oil Company in the business of the foreign country is quite complex .The government owns the resources with international oil companies, in which the source of volatility, risk and earnings is very tolerant, linking together. An important issue in oil contracts from the perspective of contracting companies has set the security, questions about the security of oil transactions, the nature and amount of the risk that is on the way of investments. Sources of energy, such as exploration and extraction of oil projects with long life compared to short-term projects require a more stable and sustainable financial firms to evade the legal state of limbo, are constantly seeking to provide stability to the status quo.

Section II: forms of stable condition:

Stability condition, which is a special obligation on the foreign country cannot legislate the provisions of the contract or any other means, without the consent of the other party change.By accepting the condition for stability, foreign governments have the right to unilaterally change the obligations laid aside, and the confidence of foreign oil companies. This requirement will apply to both direct and indirect forms. Stability condition specified directly via investment treaties commitment to non-expropriation and nationalization of property rights of citizens of the parties in the field of investment or by insertion of text contract government not to change the conditions of

the contract. Indirect or intangible stability provided by the national law of the host country is out of contract. The relevance of the exercise is not in agreement with subsequent agreements. Another kind of condition is stable condition stipulated in the contract, which must be carried out with the intention of understanding good faith. However, they all have one goal and that is to protect the sovereignty of the state of the privatization contract.

Section III: The interpretation of the terms of stability

When conflicts occur between the host government and foreign oil companies, especially in the choice of the applicable law relating to the validity condition, stability is important. Stability interpreted as a prerequisite in the international agreement, could involve a chain of reasoning of public international law, national law and convention business is probably right, the results are the most complex issues of law in international business.

Section IV: The condition of stability in oil contracts

The requirement is that the public contracts stipulated after the conclusion of the contract, subsequent changes in the law of the host State and later will not affect the contract.

Section V: stable condition, according to the votes of the judges

A: The international oil companies Safayr National Iranian Oil Company

The stability condition contract follows: a-no statute, rule, administrative of any kind, whether by governments or public authorities in each of the National Iranian Oil Company issued, cannot render a contract void, or change its content or hinder its implementation. They are no delay or cancellation, modification and changes cannot be made except in cases where the parties agree to do it together. Beyond jury issued the following referees ignoring the condition of stability, the government had violated the conditions independence foreign companies pay compensation.

B: File B.P

The company was the case involves a concession contract. This contract was signed between Libya companies Nelson Hunt bunker. Stable condition under which included the release of the Libyan government in the concession contract termination by unilateral action is limited, unless proof Changes in the public interest, it really happened. However, the referee considers that a breach of contract national advantage because terminate the contract(Sarir,2007).

Documents and Contracts

Annotation believed that legal actions both in nature and in terms of appearance are subject to local law. After the rule was led by Charles Dvmvln and gradually into the national law and the jurisdiction of the parties was accepted, generally follow the rule of law at the conclusion of the contract was missing and set. As a result, the issues of substantive contract setting out the scope of the law.

Regulatory Documents: It comes in two different documents: One other problem is how to regulate the content of the document or external shape of each of these two issues is subject to its own law.

The implementation of the principle of the rule of law and the regulation of the conditions of the document:

The base for the performance of the rules

The rule of law is justified in terms of the setting of the document in respect of interest and other government document in respect of private interests.

1. The expediency of the government deemed the document

Discretionary acts and legal relations more than anything in the form of interest, the interest of the security and of the reliability and the government has prepared a document on its territory,

takes more advantages than the opposite country. Therefore, applying this rule is obvious benefits in terms of public interest, what if for foreign nationals in accordance with the law of the country where the document cannot be adjusted Commerce and transactions between people and undermine critical international trade to occur.

2 . Private interests

The daily requirement of this rule requires everyone to stay in the country, including their own country or state to do things in your life that requires adjustment and exchange their documents. If this principle were to be accepted that foreign nationals are required to document their residence in their home state law to regulate, many problems arose. Iranian lawmakers in Article 969 of the Civil Code regulates the rule of law has to accept the document about the implementation of the rule in the form prescribed in the form of foreign rule or regulation relating to the construction of the document is not any other form of written language, such as stamp duty and whether it should be attached or not, the rule should be applied the conditions for performance of the rules.

In proceedings under Article 969 of the documents set in foreign countries, the credit will have, Documents that have been set in accordance with the laws of the country where there is constitutional that:

First, above articles document the cause of the legal causes of the credit is taken.

Second, their provisions relating to public order or morality violation of Iran.

Third- country where the documents are regulated by the rules set out in the document conventions also recognize valid.

Contracts

The contract must first consider the problem of determining the law governing the contract, then the governing law of the contract rights of our study.

Law governing the contract in Iran: Law to the parties cannot rule on all matters relating to the contract for some topics, such as capacity dealers necessarily, furthermore, it should be added that it is logically or voluntary regulation of conflict of interest on an optional relevant substantive law. Note that, as in every legal system and laws in an arbitrary divide the conflict that has been established for each of the categories of legal relations of the relevant substantive law it must follow. Therefore, adherence to the rule of conflict of laws concern substantive contractual obligations.

The governing law of the contract creating Civil law obligations arising from contracts where the contract is the law.... We can see that the law governing contracts mandated obligations but the law governing the creation and development of the basic conditions of the contract agreement does not mention anything. The rule of law at the conclusion of the contract terms should be considered exceptions. The exception is the recognition of qualification dealers, as already mentioned, the government is their capacity for dealers another point about the legitimacy of the transaction.

The law governing contractual obligations, It seems that Article 968 Iran involves the familiar rules of international Private international law is derived from French Under the old rules of conflict of laws in France as a function of the conclusion of the contract unless the parties have a different law. However, given the fact that the rule contained in Article 968 unlike the legal logic and creates problems in international relations. . Including conflict resolution, the rule will be applicable only in the case of contracts in Iran. In addition to being subject to the law of the place of signing such contracts in height will not necessarily state the citizens of Iran, according to the logic of this Article shall be entitled. Obligations arising from contract law in Iran. To solve such problems, there is no choice but to believe in the idea that Article 968. The optional nature of the contractual obligations of the parties have the right to choose their own (Ghadiri, 2007).

Determination of the law applicable to oil contracts

Sometimes the parties to an international specify contract law applicable to the agreement when the difference comes in the contract. Phenomenon in the context of government contracts, particularly natural resources realized investment agreements between the government and a foreign private company. They sometimes arise conflicting interests between the parties to the dispute.

Host governments to foreign investors, interested in their national legal system are willing to put off. Because they want to preserve the freedom of the law according to its own national economic policies. The foreign investor who is willing to use the law of the host state. Sometimes for different views of the parties suggests that the choice of law for the time taken to decide a dispute arbitrator. As a result of strict liability in case of a dispute to the arbitrator to determine the governing law the challenge of freedom plays an important role by looking the recent methods of judging and referee experience. To the conclusion that international commercial arbitration, which deals with public companies adhere to the same principles that are used to solve the conflict of laws in international commercial arbitration between private companies is used. In most cases where the minimum investment in the exploitation of minerals or other resources in the territory of the host country all references to the applicability of the law of the host state the law should be applied.

The laws of the scholars of international law as the governing law of international conventions introduced by the following: "The will of the parties, the place of performance of the contract, the law of contract formation, the place of the contract, the law requires that the parties to the arbitration court determined that the law and the contract ..."

Ways to resolve international disputes over oil contracts

There are three main strategies to resolve conflicts in the oil to be used as follows: (a) the judicial procedure, quasi-judicial C-judicial methods

Judicial methods: Judicial methods are procedures for the settlement of international disputes which have legal basis of the nature. In this way, the rules and principles of international law can be used to resolve disputes, Arbitration and judicial settlement of international disputes by peaceful means of international disputes which the parties leave a dispute to an international body composed of independent judges. They are responsible for the settlement of disputes in accordance with international law and issue voting is obligatory for parties, although the courts and the Court of Arbitration of the settlement of disputes by reference to a third party. But the courts have certain features and functions that distinguishes them from the Court of Arbitration. Appeal to an independent judicial committee, which is in force issued its opinion on the characteristics of both methods of settlement dispute. The principle of judicial procedures in international courts to be implemented.

Litigation procedure: In the event of dispute between the parties concerning the interpretation, interpretation and implementation of obligations, either by reference to domestic courts to take action against the defendant, According to Article 48 of the Civil Procedure Code for the investigation of cases in which the courts need to submit petitions; The above article provides: "The Court of Justice has begun to address the need to submit a petition." After receiving the petition, according to court documents and evidence and to examine and decide the outcome of the vote will, If the court is obliged to execute the condemned is definitive; If the revision is followed according to the law of civil procedure, the final decision ultimately condemned to execution will be required;

The proprietor of a foreign government and his successor as party to a dispute to the Court the present case.

Quasi-judicial (refer the matter to arbitration)

Although the establishment of international tribunals refer disputes between states is a phenomenon of the twentieth century, but I refer the dispute to an international reference for the third pass judgment on the basis of international law is of great antiquity. Examples of which can be found in ancient Greek history. The results of this investigation show the usefulness of the dispute to arbitration, in the following years the number of international disputes were resolved through arbitration. Modification or termination of the concession contract by unilateral action is limited unless they prove it really changes occurred in the public interest. However, the judge commented that the nationalization is a fundamental breach of contract concessions, because it leads to the termination of the contract. One of the best ways of resolving conflicts throughout history and in all religions Arbitration. The root meaning of the arbitration and litigation proceedings to one of the parties and is the methods of peaceful dispute. This is more than ever the world is welcomed. To the extent that they can rarely deal on trade and commercial transactions (domestic and international) found where the settlement of disputes through arbitration is not anticipated benefits of arbitration, as briefly as follows:

1. The speed of resolving of disputes2. For the convenience of the parties with respect to non-adherence to complicated legal formalities3. It is low cost in terms of the costs of the proceedings today, including the cancellation stamp initial petition and appeal, and appeals lawyer and honorarium, etc. Very expensive for most people is intolerable. - Development of arbitration pursuant to the circulation of capital due to the length of judicial proceedings in the form of a large project that is the subject of dispute.

Non-judicial way: Regulations that are "countries to resolve their differences between the methods of their use of the Intergovernmental peaceful settlement of international disputes, nonlegal or diplomatic say. Common non-judicial settlement of the government are: diplomatic negotiations, foot man, mediation, investigation and eventually a compromise.

Compromise: Between the parties at any stage of the proceedings can be issued with a compromise to end their dispute. In national law in accordance with Article 178 of the Civil Procedure Law provides at every stage of the process and each of the parties to the dispute may be periods of civil procedure how to put an end to their dispute settlement. It should be noted that in accordance with Article 180 of the rules and procedures of the judiciary in civil matters, parties may compromise in the court or out of court. In accordance with Article 182 whenever the parties come to a settlement in the court, the order in which the court is located in the written agreement, which is signed by the parties and the court. And in accordance with Article 183 of the said Act if the parties out of court compromise, In the case of informal settlements should be admitted in court that if the written And is signed by the parties and the court; If a bureau official documents adapted to the adjust, (Article 181) copies submitted to the court until the end of the trial court to declare a compromise on it.

Conclusion

What comes from above is to determine the law governing the contract as it is important because In the event of a dispute as to the law that specifies who is guilty and innocent?

According to scholars of international law, the law stated that the law governing international conventions introduced as follows:

"The will of the parties, the place of performance of the contract, the law of contract formation, the law of the contract, the law requires that the parties to the arbitration court determined that the law and government contracts ..." which they see as the case may be. The oil

contracts like other contracts, the first thing to understand the law governing the contract shall be considered, the parties know what law governing the contract. Usually more willing to apply national law of the source itself, But unlike the foreign companies reluctant to issue contracts. The possibility of changing the law in the country in terms of loss exists. Of course, these concerns can be resolved by considering the condition of stability in the contract. But sometimes circumstances arise, the parties do not reach an agreement on the law, In this case, if the arbitration agreement between the parties is a solemn responsibility to determine the applicable law is the responsibility of the referee. It should be noted that the powers of the arbitrator shall be noted in the contract. If it is not possible to determine the arbitrator or the court or arbitrator appointed by the court to resolve the issue. In which case the court may place the contract to extrapolate, (Referring to the agreement between the Commonwealth Court companies Lummus) Or in the case of any other items that are listed. Moreover, since the use of IL or forced in the direction of the Venice Lex mercatoria without regard to the independence of the will of the parties are or replaced as factors. The court also said that if both sides are in Iran. Iranian law and competent court but if Iran and the holder of the privilege is outside the foreign license holder must The petition will be presented to the court In the case of court proceedings under the law without discrimination, but if it is proved that all the way to the preferential rights in the country can under diplomatic support his government's lawsuit in the International Court of Justice. If you do not specify a reference to the law governing the arbitration agreement or compromise can be more desirable to maintain the international reputation of countries and companies to help resolve disputes.

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