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THE POSSIBILITY OF APPLYING THE NEW YORK CONVENTION TO RECOGNISE NAD ENFORCE THE FOREIGN ARBITRATION AWARDS IN PETROLEUM DISPUTES IN IRAQ

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ABSTRACT

Objective: This study seeks to analyse how the New York Convention for the Recognition and Enforcement of Foreign Arbitration Awards can be applied to the recognition and enforcement of foreign arbitration awards in petroleum disputes in Iraq.

Theoretical framework: Iraq acceded to the New York Convention in 2021. Iraq placed the commercial reservation, meaning that the Convention applies only to differences considered commercial under Iraqi laws. There is a great jurisprudential difference in determining the legal nature of petroleum contracts in Iraq. Thus, the Convention may not apply to these differences resulting from the petroleum contracts in Iraq. So, several studies from the literature have been used as a theoretical basis for this research.

Method: This study is based on the doctrinal legal research methodology. Both primary and secondary data are used.

Results and conclusion: The results indicate no specific rule in determining the nature of petroleum contracts. It is concluded that the Convention may not be applied to enforcing international arbitration awards in petroleum disputes in Iraq. Thus, it is necessary to reconsider the commercial reservation set by Iraq.

Research implications: This study will help international oil companies know the extent of applying the New York Convention to the enforcement of international arbitration awards in Iraq.

Originality/value: Improving the legal system for enforcing arbitration awards will create a friendly environment for arbitration in Iraq, which will help attract investment in the oil field.

Keywords: Arbitration in Iraq, Recognition and Enforcement, Petroleum Disputes, New York Convention.

A POSSIBILIDADE DE APLICAR A CONVENÇÃO DE NOVA YORK PARA RECONHECER E EXECUTAR AS SENTENÇAS ARBITRAIS ESTRANGEIRAS EM DISPUTAS PETROLÍFERAS NO IRAQUE

RESUMO

Objetivo: Este estudo busca analisar como a Convenção de Nova York para o Reconhecimento e Execução de Sentenças Arbitrais Estrangeiras pode ser aplicada ao reconhecimento e execução de sentenças arbitrais estrangeiras em disputas petrolíferas no Iraque.

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Estrutura teórica: O Iraque aderiu à Convenção de Nova York em 2021. O Iraque colocou a reserva comercial, o que significa que a Convenção se aplica apenas a diferenças consideradas comerciais de acordo com as leis iraquianas. Há uma grande diferença jurisprudencial na determinação da natureza jurídica dos contratos de petróleo no Iraque. Portanto, a Convenção pode não se aplicar a essas diferenças resultantes dos contratos de petróleo no Iraque. Portanto, vários estudos da literatura foram usados como base teórica para esta pesquisa.

Método: Este estudo é baseado na metodologia de pesquisa jurídica doutrinária. São usados dados primários e secundários.

Resultados e conclusão: Os resultados indicam que não há regra específica para determinar a natureza dos contratos de petróleo. Conclui-se que a Convenção não pode ser aplicada para a execução de sentenças arbitrais internacionais em disputas de petróleo no Iraque. Portanto, é necessário reconsiderar a reserva comercial estabelecida pelo Iraque.

Implicações para a pesquisa: Este estudo ajudará as empresas petrolíferas internacionais a conhecer a extensão da aplicação da Convenção de Nova York para a execução de sentenças arbitrais internacionais no Iraque.

Originalidade/valor: O aprimoramento do sistema jurídico para a execução de sentenças arbitrais criará um ambiente favorável à arbitragem no Iraque, o que ajudará a atrair investimentos no campo petrolífero.

Palavras-chave: Arbitragem no Iraque, Reconhecimento e Execução, Disputas Petrolíferas, Convenção de Nova York.

1 INTRODUCTION

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), (hereafter NY Convention), is considered the most important international convention on the recognition and enforcement of non-domestic arbitral awards.[4] The convention seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards (Gaillard & Siino, 2021). 172 countries have joined this convention by 2023. The reasons for its placement are the desire to search for the development of international legal rules that facilitate the recognition and implementation of foreign arbitral awards (Born, 2018). The initiative came from the International Chamber of Commerce in 1953 when it submitted a draft agreement containing new rules, called the Enforcement of International Arbitration Awards (Grion & Zanelato, 2021). After studying the project, the Economic and Social Council of the United Nations made amendments to the project submitted by the International Chamber of Commerce. This draft convention on the recognition and enforcement of foreign arbitral awards was drawn up and presented for discussion at a United Nations conference held at its headquarters in New York from May 30 to June 10, 1958. This resulted in the NY Convention.

Despite the great importance of the NY Convention, Iraq had a hostile position to international arbitration in general, and to join the NY Convention in particular. In 1973, the Committee of Pursuance for Oil Affairs, and Implementation of Agreements (Resolution No. 920 on 9/12/1973) confirms that which states:

[4] The term "non-domestic" refers to awards made in the state where they will be enforced but are considered "foreign" under its laws due to the involvement of a foreign element in the proceedings. This could mean that procedural laws of another state were applied during the proceedings, which could classify the award as foreign.

> "The condition of international arbitration means transgressing the principle of sovereignty and undermining the value of Iraqi courts and laws."

The decision of the Iraqi Codification Bureau (later the State Council) 1978 (The decision of the State Shura Council no.122/1978), also affirmed its position on Iraq's accession to the New York Convention, which states:

> "International commercial arbitration may include a foreign element because it may be outside of the country and may be entrusted to foreign arbitrators who may apply foreign law in terms of substantive rules or the rules of procedure. Consequently, enforcing foreign arbitral awards within the Republic of Iraq would create legal and sovereign barriers. In addition, joining the New York Convention of 1958 regarding the recognition and enforcement of foreign arbitration awards necessitates taking the opinion of the higher authorities that plan the general economic policy. Because in that accession, political and practical aspects must be taken into account and studied. And that accession requires a review and amendment of Iraqi laws."

Between 1925 and 2003, Iraq's political and economic situations significantly impacted Iraq's position on international arbitration in the oil sector and on joining the New York Convention. The most important events that affected Iraq's position on petroleum arbitration can be summarized as follows:

a) 1925-1972 (47 years) a period of concession and monopoly contracts for Iraqi oil by the major oil companies (Odell, 1968).
b) 1972-1980 (8 years) The nationalization process began, and several national companies were established and relied upon almost entirely in the Iraqi oil industry (Joumayle, 2017).
c) 1980-1988 (8 years) was Iraq's war with Iran, during which oil production was greatly affected (EL-Azhary, 2011).
d) 1988-1990 (2 years) to recover and try to compensate for the significant losses of the war.
e) 1990-2003 (13 years) The second Gulf War, in which the coalition forces destroyed what remained of the oil facility and imposed economic sanctions, brought Iraq into complete isolation from the world.

After 2003, things changed, and several laws stipulated the possibility of referring disputes that occur as a result of contracts concluded by the Iraqi government to international arbitration. Examples are the Iraqi Investment Law, No.13 of 2006, the Iraq Instructions for The Implementation of Government Contracts No.2 of 2014, and most petroleum contracts concluded by Iraq recently based on the arbitration clause. Moreover, Iraq has previously signed a set of international conventions governing the international arbitration and enforcement of its awards: the Geneva Protocol on Arbitration of 1923 which Iraq joined in 1928; the Convention of Enforcement of Judgments between the League of Arab States, 1952; the Unified Agreement for the Investment of Arab Capital in the Arab States, 1981, joined in 1990, the Riyadh Arab Convention on Judicial Cooperation 1983, joined in 1983 and the Oman Arab Convention on Arbitration of 1988, participated in in 1988. There are also bilateral agreements on the application of arbitration decisions, such as the bilateral agreement between Iraq and Egypt in 1964 and the Treaty on Judicial Cooperation between Iraq and the USSR in 1973 (repealed). Recently, Iraq has joined the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (hereafter ICSID Convention), the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration of 2014 and the NY Convention of 1958. It's worth to notes that Iraq still suffering from the lack of specific arbitration law or oil

and gas federal law and Iraq is still not a member of the World Trade Organization WTO (Almashhadani, 2023).

Iraq acceded to the NY Convention under Iraqi Law No. 14 of 2021 with three reservations, which were based on Article 1 (3) and Article 10 (1) of the NY Convention, which gives the right to any country to join the Convention, but according to whichever reservations it chooses. Indeed, Iraq joined the Convention with three reservations which are:

a) the provisions of the Convention shall not be applicable to the Republic of Iraq with respect to arbitral awards made before the law enters into force, its known also the principle of retroactively (Kryvoi, 2023).
b) The NY convention shall be applicable with respect to the recognition and enforcement of awards made in the territory of another Contracting State only on the basis of reciprocity (Robert, 1986).
c) The NY Convention shall be applicable to the Republic of Iraq only with respect to differences arising from contractual legal relations which are considered commercial under Iraqi law, this reservation is known as the "commercial reservation".

According to the commercial reservation, the NY Convention does not apply to all contractual legal relations, only commercial ones (Gaillard & Siino, 2021). To simplify, if an award is not related to a commercial contract, it cannot be enforced under the rules of the NY Convention. Instead, the enforcement of the arbitral award will be subject to the national law of the relevant jurisdiction. In other word, the NY Convention cannot be applied to transactions that are not considered commercial according to Iraqi laws in force such as administrative, personal or criminal. The question arises here, whether petroleum contracts are considered commercial under Iraqi laws.

According to the foregoing, this study's main objective is to determine the extent to which the NY Convention applies to the enforcement of international arbitration awards in petroleum disputes inside Iraq. Therefore, it will be discussed through two sections. The first section an overview of the provisions of recognition and enforcement in the NY Convention and their compatibility with the Iraqi national laws in force. The second section will discuss Iraq's reservations to the NY Convention, the jurisprudential views and opinions on the nature of petroleum contracts, and the extent to which the commercial reservation applies to oil contracts in Iraq.

2 METHODOLOGY

This article is based on the doctrinal legal research methodology (Vibhute & Aynalem). Both primary and secondary data are used. Besides that, the data were collected using the library-based approach. Specifically, the primary data were collected from Acts and Laws, whilst the secondary data were sourced from books, legal documents, and articles from journals and online resources. Both primary and secondary data were critically and analytically examined and interpreted using the content analysis approach (Hox, & Boeije, 2005).

3 RESULTS AND DISCUSSION

3.1 Recognition and Enforcement Rules Under the New York Convention

The NY Convention came with provisions for recognising and enforcing foreign arbitration awards. These provisions can be summarised as follows:

1- Setting a criterion to differentiate between the national and foreign arbitration award, which is the place of the award. Article (1/1) of the Convention states that the award is considered foreign if it was issued in the territory of a country other than the country

from which recognition and enforcement of the award are requested (Pangarkar, 2021). Moreover, the Convention applies in a Contracting State to arbitrator awards issued in the territory of another Contracting State when they arise from disputes between natural or legal persons. Thus, the convention can be applied to petroleum disputes that arise between host countries and foreign oil companies. The Iraqi Code of Civil Procedures no.80 of 1969 (CCP) does not distinguish between national and international arbitration. CCP provisions do not address international arbitration in general or specify whether the CCP provisions apply to enforcing international arbitration awards (Al-Jubouri, 2018).

2- Article III of the NY Convention stipulates that all contracting states recognise and enforce the non-domestic arbitral awards. Accordingly, the foreign arbitral awards must be enforced under the procedural rules followed in the state where enforcement is requested. Thus, the NY Convention under Article III has referred to enforcing foreign arbitration awards to the rules of the procedure followed in the country of implementation, taking the most accessible procedures and not be imposed substantially more onerous conditions or higher fees or charges. In addition, the provisions of the NY Convention do not affect the validity of the treaties concluded by the Contracting States (multiple or bilateral) relating to the recognition and enforcement of arbitration awards (Article 7 (1) of NY Convention), and do not deprive any party of the right to benefit from any arbitration provision permitted by the Law of the Contracting State or international treaties to which the State is a party (Daradkeh, 2018). Its worthily to note that in Iraq, arbitration generally is regulated under The Iraqi Code of Civil Procedures no.80 of 1969 (CCP), in Articles (251-276, Chapter II, the Arbitration). There are no other laws or regulations governing the enforcement of international arbitration awards in Iraq. Besides that, the Iraqi Enforcement of Foreign Court Judgments Law No. 30 of 1928, and the Iraqi Enforcement Law No.45 of 1980 does not address the enforcement of arbitral awards. However, the enforcement of foreign arbitration awards in Iraq is subject to international conventions to which Iraq has already acceded under the applicable procedural rules in CCP. However, the CCP suffers from weaknesses in the provisions regulating the recognition and enforcement of arbitration awards (Al-Rubaie & AL-Janabi, 2015).

3- Under the NY Convention, each state, when signing, ratifying, or acceding to the convention, has the right to declare based on reciprocity that the convention will limit the application of the convention to the recognition and enforcement of arbitral awards made in the territory of another contracting state (Furner, 2018). In addition, the convention allows each state to declare that it will limit the convention on disputes arising from contractual or non-contractual law ties that are considered commercial under its national Law, it's called also the commercial reservations. Article 5 of the Convention defines exclusively the cases in which recognition and enforcement of a foreign arbitral award can be refused (Alfalahi & Al-Shibli, 2023).

3.2 Iraq's Reservations on the New York Convention

Iraq acceded New York Convention under Iraqi Law No. 14 of 2021 with three reservations, these reservations are:

d) the provisions of the Convention shall not be applicable to the Republic of Iraq with respect to arbitral awards made before the law enters into force, (the principle of retroactively). This reservation is embodied in the principle of non-retroactivity, which means the legal principle that laws do not apply retroactively, whether in international laws such as treaties or criminal law (Grandino, 1973). In another word, the Convention

will not apply to the enforcement of international arbitration awards issued before 2021, meaning that all arbitration cases that Iraq lost before Iraq signed the Convention (1959-2021) will not be enforceable by relying on the NY Convention in Iraq (Khalaf & Al Dabbagh, and Saad, 2021).

e) The NY convention shall be applicable with respect to the recognition and enforcement of awards made in the territory of another Contracting State only on the basis of reciprocity (Robert, 1986). Under the New York Convention Reciprocity simply means that a Contracting State to the NY Convention may choose to recognise and enforce only arbitral awards made in arbitrations with other contracting states (Joon Mok 1989).

f) The NY Convention shall be applicable to the Republic of Iraq only with respect to differences arising from contractual legal relations which are considered commercial under Iraqi law, this reservation known as the "commercial reservation". According to this reservation, the Convention does not apply to all contractual legal relations, only commercial ones. To simplify, if an award is not related to a commercial contract, it cannot be enforced under the rules of the NY Convention. Instead, the enforcement of the arbitral award will be subject to the national law of the relevant jurisdiction. that is, it cannot be applied to administrative, personal or criminal transactions (Nadim, 2022), transactions that are not considered commercial according to the Iraqi laws in force (Gaillard & Siino, 2021). The question arises whether petroleum contracts are considered commercial under Iraqi laws?

There is a major jurisprudence conflict in determining the legal nature of the petroleum contract concluded between the Iraqi government and foreign petroleum companies (Sawadi & Al-Radam, 2019), whether it is an administrative contract, an international agreement subject to public Law, or a commercial contract. If it is subject to private law, is it a mixed contract between public and private law, or is the petroleum contract a special type of contract? Each of these opinions has its arguments and evidence in determining the nature of the petroleum contract (see table 1).

3.3 The Legal Nature of Petroleum Contracts

There is a major jurisprudence conflict in determining the legal nature of the petroleum contract concluded between the Iraqi government and foreign petroleum companies. Another issue concerns whether petroleum contracts are subject to private Law, are they mixed contracts between public and private Law, or is a petroleum contract a special type of contract (Mohamed & Abdul Mutalib, 2018). The followings explains the different opinions about determining the nature of oil contracts.

3.3.1 Is the petroleum contract administrative?

From the jurisprudence perspective, a petroleum contract is an administrative contract, and they argue that the terms of the administrative contract are available (Shabib, 2020). These conditions are that the administration (the State) is a party to the petroleum contract, and the petroleum contract is related to the management of a public utility. In addition, the petroleum contract includes exceptional and unfamiliar conditions in Private Law, and they are the same conditions of the administrative contract (Shabib, 2020).

1- The Administration (the State) is a Party to the Petroleum Contract

It is clear that the petroleum contract is administrative because the administrative element always exists in the Petroleum contract under the Iraqi Constitution, Article 112. The State may enter as a party to the Petroleum contract in Iraq, directly through the Ministry of Petroleum or through one of its national companies (Saeed, 2019).

2- The Petroleum Contract Is Related to the Management of a Public Utility
petroleum investment contracts have the features of a public utility (Trebing 1984), such as the requirement of the State's approval of petroleum projects, granting a license to a foreign company, subjecting the contract to the control of the host State, enjoying the privileges of a public authority, exempting the petroleum project from taxes and fees, and the goal of the petroleum contract for the State being the public benefit and the achievement of progress and economic development (Shabib, 2020).

3- The Petroleum Contract Includes Exceptional and Unfamiliar Conditions in Private Law
This is reflected in the fact that petroleum contracts include exceptional conditions that are not available in civil contracts, such as the State enjoying some privileges, such as the right to inspect the company's activity and examine its records and books, and its right to terminate the contract in many cases and prevent the contract from being waived without its consent (Al-Ardi, 2020). Foreign companies enjoy some privileges such as the right to occupy public lands, the employment of foreign workers and the establishment of railways and other facilities. Nevertheless, all of these conditions are considered exceptional and are not mentioned in civil contracts.

Specifically, (Atta (2020) believes that all national petroleum institutions have a public juristic personality regardless of their legal form. They are public administrative institutions specialized in managing the State's petroleum projects, and are wholly owned by the State and work in the name of the State and for its account Also, such institutions are authorized to manage the petroleum facility on the State's behalf, and that makes it difficult to separate petroleum institutions from the State that established them because the State covers all their capital and they operate under its control despite being legally independent. Therefore, all contracts concluded by these institutions are considered administrative contracts.

The petroleum corporations in Iraq are also considered part of the State entity. They are established by the central authority and this gives it the public moral right to manage the petroleum facilities, with the State sharing the authority (George, 2014). Moreover, the corporations enjoy the privileges stipulated in the administrative law, including expropriation for the public benefit, and its funds are public funds subject to administrative protection. All of the above reasons make a petroleum contract an administrative contract.

From a practical perspective, the case of *BP Exploration Company (Libya) Limited v. Government of the Libyan Arab Republic* states that a petroleum contract is an administrative contract under Libyan National Law (Mehren & Kourides, 1981). The same provision applies to the arbitration award in *Aminoil v. Kuwait.*

On the other hand, petroleum contracts are not seen as administrative contracts based on some alternative arguments. These arguments contend that the sovereignty of the State and the administration cannot be extended outside its territory (Atwan & Hassan, 2017) and therefore the State will be in a position of equality with foreign petroleum companies in the contracts it concludes. There is no preference for it except to the extent permitted by the contractual terms. In addition to jurisprudence, some arbitral bodies also went into arbitration cases in not considering petroleum contracts as administrative contracts, such as the arbitration case between ARAMCO and the Saudi government and the arbitration case *Libyan American Oil Company (LIAMCO) v The Libyan Arab Republic*. The presence of the State as a party to the petroleum contract is not sufficient to be a reason to consider that the contract is administrative. Another aspect of jurisprudence argues that petroleum facilities do not provide a direct benefit to the public and therefore cannot be considered a public utility because one of the characteristics of a public utility is the provision of direct services to people (Al-Ajili, 2016).

In particular, (Al-Khafaji 2019) argues that petroleum activity constitutes the main resource for most petroleum-producing countries' budgets. Therefore, it entails a public benefit for citizens and entails achieving a public benefit indirectly or directly when the licensee is

committed to securing the local market need for petroleum products through refining and marketing the extracted petroleum locally, and therefore, to say that there is no public benefit from petroleum contracts is not correct.

3.3.2 Is the petroleum contract an international treaty?

Some jurisprudence considers petroleum contracts to be international treaties because of the international character of these contracts represented in contracts with international companies. Some of them are national companies belonging to other countries. Therefore, this argument was relied on, considering the petroleum contract as a treaty agreement.

However, this view is criticised because of the requirement to conclude treaties between States among themselves and not between a company and a State, even if the company belongs to a State. This was confirmed by the Vienna Convention on the Law of Treaties 1980 in article II (a). Where it states that "treaty" means the international agreement concluded between States. Moreover, the view which considers the petroleum contract to be an international treaty was rejected by the International Court of Justice in the case of the nationalization of the Anglo-Iranian Petroleum Company in 1952, (*United Kingdom v. Iran*.) The case consists of a concession contract between the government and the company and a treaty between the two governments. The decision concluded that Britain is not a party to the contract, and the purpose of the contract is to regulate the relationship between the Iranian government and the company and does not regulate the relationship between the two governments.

3.3.3 Is the petroleum contract a commercial contract?

Some scholars argue that a petroleum contract is a commercial contract and that the petroleum activity is a commercial activity, based on Article 5 (4) of the Iraqi Commercial Law no. 30 of 1980, which considers the extraction of raw materials as a commercial business if it is practiced with the aim of profit.

The Iraqi Commercial Law defines commercial business as exclusive. It considers that whoever practices these businesses with the intention of profit is practising a commercial business, which entails being considered a merchant and bears all the legal obligations of the merchant. Therefore Article 5 (4) has indicated that extracting raw materials, if practiced with the aim of profit, is considered a commercial business. Based on this argument, the petroleum contract is considered a commercial contract because it performs one of the acts mentioned in Article 5.

Some participants see that Article 5 of the Trade Law, which defines commercial businesses, does not apply to petroleum contracts because it stipulates that these businesses be practiced with the aim of profit. However, there is no doubt that the country does not aim at profit but rather the public benefit. In addition, Article 7 of the Trade Law has considered everyone who practices the business mentioned in Article 5 as a merchant and the State cannot be a merchant. Still, the state's role is to achieve economic development through petroleum contracts (Amana & Abu Amana, 2013) The petroleum contract cannot be considered a commercial contract for many reasons:

1- According to Iraqi commercial law, commercial business has been clearly defined as a necessity for the merchant to practice this business with the intention of making a profit. Therefore, the State cannot be described as a merchant. Moreover, the State does not always seek profit; rather, it may seek economic development through the petroleum contracts it concludes.
2- Although investment is considered the most common commercial practice, the oil contract changed from being an investment contract under the Iraqi Investment Law.

3- In addition, the state cannot fully subject the petroleum contract to private law because of its paramount importance in the economy and development. This will restrict its authority in managing petroleum wealth.

It was also confirmed that petroleum transactions are not considered commercial, according to the testimony of the Chargé d' at the Iraqi Embassy in London, Mr Mohiuddin Abdullah, when he gave testimony in a lawsuit filed regarding the enforcement of the arbitration award in the *Taurus Petroleum Ltd V State Oil Marketing Co SOMO* case before the High Court of Justice of England and Wales (Section 46 of The Judgment of the High Court of Justice of England and Wales), where he said:

> "I certify on behalf of the Republic of Iraq that...[A]ll payments received pursuant to oil sales contracts between a third party and SOMO are for the government purposes of the Republic of Iraq and not for commercial purposes."

Based on this argument, it has become clear that Iraq does not consider the transactions resulting from the activities and the petroleum contracts concluded with the Iraqi government as commercial.

3.3.4 Petroleum contracts consist of multiple legal natures

Petroleum contracts are of a multiple legal nature that combines the characteristics of Public Law and Private Law and is governed by both laws (Al-Shammari, 2015). These contracts clarify the element of State power and sovereignty known in Public Law and the element of equality between the contractual parties known in Private Law. It is clear here that the petroleum contract is not a private contract because the sovereign State is one of the parties. Furthermore, it is not a public service contract because it contains Private and Public Law elements.

This opinion was adopted by the arbitrator in *Liamco v. Libya* when he said: "Although the concession contract shares a mixed public-private legal character, it retains a predominantly contractual character." In this regard, Arbitrator Kavin, in *Sapphire v. National Iran Petroleum Company*, indicates that the nature of the Petroleum contract differs from other commercial contracts (Fabri, 1986). Thus, petroleum contracts are a legal act of a dual legal nature. They combine the characteristics of Public and Private Law contracts.

It is clear from the above that there is a huge jurisprudential difference in the extent to which the legal nature of the petroleum contract is determined, and this raises the possibility that the petroleum contract is of a special nature that combines the characteristics of Public and Private Law and varies according to the legislative policy of the State and its policy that governs natural. This difference returns to the issue of Iraq's accession to the New York Convention, with the reservation that the Convention applies only to agreements considered commercial under Iraqi laws and policies. This was clarified by the Chargé D' Affaires at the Embassy of the Republic of Iraq in London, who stated that Iraq does not consider petroleum transactions as commercial. Therefore, the New York Convention may not apply to enforce arbitration awards in petroleum disputes if the petroleum contract is considered non-commercial. Therefore, the Iraqi judiciary will exclude the provisions of this Convention and will not apply them when considering the application for recognition or enforcement of arbitration awards in petroleum disputes.

Table 1: Summary of jurisprudential opinions on determining the nature of the petroleum contract

The type of petroleum contract	Arguments For	Arguments Against
A petroleum contract is an administrative contract.	The state is a party to the petroleum contract, and the petroleum contract is related to the management of a public utility; in addition, the petroleum contract includes exceptional and unfamiliar conditions in private Law, which are the same conditions as the administrative contract.	Petroleum contracts are not administrative because of the State's sovereignty, and the administration cannot be extended outside its territory. Therefore, the State will be in a position of equality with foreign Petroleum companies in the contracts it concludes. There is no preference for it except to the extent permitted by the contractual terms. Moreover, Petroleum facilities do not provide a direct benefit to the public and, therefore, cannot be considered a public utility because one of the conditions of the public utility is the provision of direct services to people.
A petroleum contract is an international treaty	Some jurisprudence considered petroleum contracts international treaties because of the international character of these contracts with foreign countries or with national companies belonging to other countries. Therefore, this argument was relied on, considering the petroleum contract as a treaty agreement.	This view is criticised because of the requirement to conclude treaties between States among themselves and not between a company and a State, even if the company belongs to a State.
A petroleum contract is a commercial contract	Some jurisprudence sees the petroleum contract as a commercial contract and that the petroleum activity is a commercial activity, based on Article 5 (4) of the Iraqi Commercial Law no. 30 of 1980, which considers the extraction of raw materials as commercial businesses if they are conducted with the aim of profit.	This view is criticised because of the requirement to conclude treaties between States among themselves and not between a company and a State, even if the company belongs to a State.
A petroleum contract is a multiple contract	Petroleum contracts are of a multiple nature that combines the characteristics of Public Law and Private Law and is governed by both laws. This contract clarifies the element of State power and sovereignty known in Public Law and the element of equality between the contractual parties known in Private Law. It is clear here that a petroleum contract is not a private contract because the sovereign State is one of the parties. Nor is it a public service contract because it contains Private and Public Law elements.	The petroleum contract cannot be considered a commercial contract for many reasons, including that the commercial business, according to Iraqi Law, has been defined definitively and does not accept jurisprudence, which is the necessity for the merchant to practice this business with the intention of profit. Therefore, the merchant's description cannot be applied to the State. The State does not always seek profit. In addition, a petroleum contract has emerged from being an investment contract under Iraqi investment law. In addition, the State cannot subject this contract to private Law

	because of its paramount importance in the nation's economy and development.

Source: Prepared by the authors (2023).

4 CONCLUSION

The NY Convention of 1958 considered as an international legal basis for recognising and enforcing international arbitration awards; Iraq joined it late, in 2021, after many years of hostile stance toward the Convention. Iraq joined the Convention with three reservations, which are: first, the provisions of the Convention shall not be applied retroactively; Second, the provisions of the Convention shall not be applied only based on reciprocity; Third, the provisions of the Convention shall not be applied only to legal relations which are considered commercial under Iraqi law, this reservation is known as the "commercial reservation".

According to the commercial reservation, the NY Convention may not be applied to recognising and enforcing arbitration awards in petroleum disputes. This is because petroleum contracts and transactions are not considered commercial according to legal jurisprudence in Iraq. In addition, no legal provisions define the legal nature of petroleum contracts. There is a huge jurisprudential difference in the extent to which the legal nature of the petroleum contract is determined. This conflict raises the possibility that the petroleum contract is of a special nature that combines the characteristics of Public and Private Law. Iraq does not consider oil transactions as commercial. This orientation was confirmed by the testimony given by the Chargé affairs at the Iraqi Embassy in London, Mr Mohiuddin Abdullah, to the High Court of Justice of England and Wales in an arbitration case against the Iraqi Oil Marketing Corporation (SOMO) in 2013. The Iraqi side answered that the money comes from petroleum contracts, and the sale of oil revenues is for governmental purposes, not commercial. This testimony confirms that Iraq may not consider petroleum contracts and transactions are commercial, so the NY Convention may not apply to them under the commercial reservation.

According to the findings of this article, the NY convention may not apply to arbitration awards issued in petroleum disputes. Therefore, this article proposes repealing the commercial reservation to avoid non-applicability to petroleum disputes, which Iraq may consider non-commercial. This repeal will make the international arbitration environment in Iraq more friendly and attractive for investment in the petroleum sector. Any country can withdraw all or some of the reservations, many countries have repealed all or some reservations from the NY convention, for example, on 27 November 1989, France withdrew its commercial reservation. Germany also withdrew the reciprocity reservation from the New York Convention in 1998 and Austria withdrew its initial reciprocity reservation in 1988.

The proposal presented in this study helps to remove some of the obstacles that may face the recognition and enforcement of international arbitration awards in petroleum disputes in Iraq. This makes this article of great importance, given that Iraq joined the New York Convention shortly before, and there are no great academic writings on this subject or practical applications from the Iraqi judiciary, which will make this study an essential addition to libraries and legal circles in Iraq. In addition to the practical importance that this study will provide to international companies that wish to invest in the Iraqi oil sector, which will provide sufficient information about the legal situation, and the suggestions presented in the study will improve the legal status of arbitration in Iraq and make it a friendly and attractive environment for investment.

During this study, due to confidentiality, the researchers faced several challenges in accessing data on petroleum contracts and arbitration. In addition, the lack of literature and the lack of judicial decisions from Iraqi courts regarding the application of the NY Convention on the enforcement of petroleum arbitration awards in Iraq. As a future work for researchers

interested in this field, this study recommends expanding the scope of research to include the extent to which the NY Convention applies to commercial disputes in Iraq and the appropriateness of the procedural rules for enforcement of the Convention in general.

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