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ALTERNATIVE SOLUTIONS TO THE DISPUTE IN THE KURDISTAN OIL AND GAS LAW

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***Abstract*— This study analyses the alternative dispute resolution in oil contract which have been awarded within the modern global petroleum industry, and its great role in disputes resolution, the study focused on the concept of "oil contract" and on its main characteristics, and non- existence of clear settlements on that led to appear the differences and contradictory about the oil disputes settlements also.**

After that, the study argued the necessary alternative resolutions in Oil contract can be concluded between governments and foreign company as it can be concluded between the companies themselves

The study analyzed the main two types of the Alternative Dispute Settlement, ADS, which are the direct and indirect ADR, such as negotiation, contract fairness…etc.

The study came to find out that, the Kurdistan Oil and Gas Law No. (22) of (2007) has depended on two of the A Alternative Dispute Settlement, ADS, mechanisms which are the "contract fairness " and "Negotiation" only and it is recommended to adopt the other alternative dispute resolutions such as: Reconciliation and expertise.

***Index Terms*— Oil and Gas Law; Oil Contract; Iraqi Constitution.**

I. INTRODUCTION

It's obvious to all, the oil contract, is regard as one of the most important contracts in the field of natural resources , as well as its one of the most famous contracts which concluded between a Contracting State, and a private sector company, or between the public institutions or bodies, and a foreign oil company, for the purpose of searching for oil, prospecting and exploration, and then producing or developing oil fields to reach the highest Production capacity, in certain places, and for a specified period in the contract, for an agreed wage.

Now, the most famous oil contracts are Production sharing contract (PSC) and service contract (SC) for best exploitation of oil wealth.

And the advantages of service contracts, is that the Contracting State is the only owner of the produced oil, and that the role of the foreign company limited only in carry out the oil operations which agreed on it before in favor of the contracted country, the latter is only be abolished to pay a the amount of money or the sum that both parties has agreed on it before.

However, the above type of contract may be useful for the countries which have a good history in the sector of oil and gas and have a large amount of oil and it can easy to bring it out, like: Iraq, Kuwait and UAE. But, for those countries which just get started to produce oil and gas and it's hard to find out the oil and gas in it, either due to non- experience in this field or because of the structure of the oil and gas in it, or because of the difficulties relating with the exploration and finding out oil in it, like: Kurdistan, (PSC) is the best choose for them, where the state holds the lion's share in production, which ranges between 60% to 80% of the proceeds of oil production and Share of the company from (20-40%) as agreed on it before.

Problem of Study

For that, we see that Kurdistan did depend on the second type of oil contract as it has been regulated in Article (37) of the Kurdistan Oil and Gas Law No. (22) of (2007).Whatever the type of contract, there is a fact which is: the oil contract in its starting date till the ending of it, it faces a lot of problems relating to the proses of: getting licenses from the government, the establishment of the oil field and starting its works including: the proses of exploring for oil, finding it, drilling for it, and all other oil proses, which frankly, needs a clear vision about the suitable mechanisms for solving all of the above issues, here a question arises itself which is: according to the Kurdistan Oil and Gas Law No. (22) of (2007), haw the legislator solved these issues? What type of mechanisms do he depended on it? What are the main critics which can be written here about it? What about the point of view of other comparative oil laws?

II. OBJECTIVES OF STUDY

The study aims to achieve the following objectives:

1. Determining the Alternative Dispute Settlements, ADS, in Oil Contract;
2. Indirect ADS in Oil Contracts
3. The Direct (ADS.) in Oil Contracts
4. Scope of Study

The research will focus on the geographical scope of Iraq and the Kurdistan Region.

5. Plan of Study

The study was divided into two sections, as follows

Section One: Definition of Oil Contract and its Characteristics

Section Two: The Alternative Dispute Settlements, ADS, in Oil Contract

III. Section One: Definition of Oil Contract and its Characteristics

In this section we will talk about the concept of oil contract according to the point of view of both juries and legislations, by define it in the first section, then showing its main characteristics as below:

A. Legal Definition of the Oil Contract

We can argue that, the juries and legislations had not agreed on one specific definition for oil contract, because, of the nature of this type of contract in one hand and the economic and political importance of it in another hand. That's why; we clearly can see that there was a lot direction on it, first the law of oil wealth of the Democratic Republic of Sudan, which stated that: "The oil agreement is the agreement between governmental institutions and companies...".(Article 3 of the Sudanic Temporary Oil Wealth Law Number 9 in 1998.)

While Article (1) of the Kurdistan Oil and Gas Law No. (22) of (2007) of the Sultanate of Oman states that: the oil agreement is the: "contract concluded by the government or its representative with second parties for the purpose of independency in the exploration, discovery, development and exploitation of petroleum resources or any of these activities".(The oil and gas law of Sultanate of Oman number 8 in 2011)

And, Para (1) of the Article (27) of Kurdistan Oil and Gas Law No. (22) of (2007) stipulates that: "the oil contract: is any contract which concluded, license, permit or any leave granted under Article 24 of this law".(Kurdistan Oil and Gas Law No. (22) of (2007)

By comparing the above articles , we can conclude that: the oil contract has – at least- two parties , one of them is government or its foundations – ministry of natural resources – or ministry of oil and gas- and the companies which works in the field of oil and gas either they are domestic companies or foreign one. And we can conclude that, the oil contract can include all the proses of the oil production form the proses of getting licenses for oil production, till the proses of marketing of it.

In addition to that, the Juries had its point of view about the definition of the oil contract. Some of them had defined it as: "A Contract which concluded between a developing country and a foreign private enterprise whose purpose is to exploit natural wealth or establish industrial facilities aimed at long-term development".(نيدلا فـرش، ص8)

The Others had defined the oil contract as: "A contract which concluded by the State with a person of foreign private law relating to the initiation of activities which fall within the framework of the country's economic development plans:(دبع نمحرلا: 22)

The previous definitions, have just gave more analysis or elaboration of the legislative definitions that we have mentioned them in advance, and the juries have focused on the parties to the contract, and their aims without mentioning some of its essential elements, namely: the mechanism for concluding such contracts and the dispute resolution mechanism, which will be discussed later.

Hence, the definition which presented by the French Court of Cassation, and was adopted by the majority of the jurisprudence, may be better, which defined these contracts as contracts of an international character relating to an important sector of the economic state, should be defined as: "a contract that transcends the internal economic framework and includes in its contents a transfer of funds Goods and services across countries' geographical boundaries". (نوبزح: 2006، ص ص 285-288)

Anyway, the Oil contract has a lot of specific characteristics as we will research them in the two sections as below.

B. Characteristics of the Oil Contract

1) Argue about the Locality or Internationality of Oil Contract

The jurisprudence has attempted a lot to determine the legal description of the oil contract in general, and the role of foreign legal persons in it, because majority of the foreign companies has its international dimensions , so they argued a lot about the impact of that on the contract itself.

In principle, it is possible to say that one of the most special features of the international contract which is different a lot from other local contracts is the idea of its independence with an international legal system governing the relations of the parties. Consequently, the foreign project in this contract enjoys a legal personality that is not subject to any political mandate of the state.(مامشه: ص525)

From this point of view, we can ask the following question: Is the international character of a foreign person will apply on the oil contract that he or she concludes it with the State as a party, or is it reduced to the foreign person only without having an extension over the other parties to the contract? What are the criteria under which the international legal description of this contract can be determined?

There was a wide variety of views between juries, to determine the characteristics of oil contract to select whether its regarded as local or international contract, generally, the juries has been divided to three main groups as below:

1. The contracts which were concluded by moral persons of international law are governed by international law;
2. The Contracts which concluded by ordinary persons among themselves, in the community governed by national law;(مامشه: ص526)
3. Contracts concluded by a person of public international law "the State" with foreign individuals or bodies, which it called "quasi-international contracts", as the oil contracts under the present study, the legal issues will arise because the international person will use rules of international law to enjoy

all the international rights, which makes it eligible to acquire rights and assume international obligations. (هللا عطيّة: 1978، ص27)

Meaning that the juries of this view were adopted to determine the international character of the contract on the availability of a foreign element in the nodal bond, irrespective of the importance of this element and its role in the establishment of the contract. (هللا عطيّة: 1978، ص27)

But, this direction had been criticized on the ground, because that this criterion is not sufficient alone to determine or internationalize the contract, Moreover, the idea of diplomatic protection on which the leaders of this trend have relied is not intended to give international status to these contracts, since they are no longer merely a discretionary power of the State.

These criticisms, were effected in the appearance of another trend whose supporters went to say that the idea of quasi-international contracts was denied, on the basis that, contracts which concluded by the State with the domestic persons, are subject to the rules of the national law of the Contracting State, That's because the subject matter of international law is only States and international organizations, therefore to say that the application of the provisions of international law to this contract means that the State as a part of the oil contract will obey the international related provisions without the second party " the company" and cannot be subject ,only to the provisions agreed upon in the contract or provisions National law.(ماشه: ص526)

2) Argue About Commerciality of the Oil Contract

Generally, there is two main type of oil contract, first one: those oil contracts which made between the governments in one side and the foreign companies in the other side, and the second one: is the oil contract between the oil companies them self.

There is no doubt, about the commerciality of the second type of oil contract, because, it normally will be between the commercial companies in the oil sector and with high professional standards and with the intention to get more and more profit at the end of the contract, we can support our idea with the article five of the "Iraqi Commercial Law No. (30) of (1984) which states that: "The following works are regarded as commercial works: Four: The industry and the extraction of raw materials".

According to the above article, any works related with the industry– including the oil- it's regarded as commercial work, of course with having the commercial intention.

But, what about the first type of oil contract? The oil contract between the government and the foreign companies is it regarded as a commercial one or not?

For answering the above question, we can say that: the majority of juries went to that all type of oil contracts are commercial contract, regardless to the capacity of its parties, because it is clear from the above article that contracts involving the extraction of raw materials are commercial contracts and since the oil contracts focus on the extraction of oil from the ground, they are accordingly prepared commercial contracts. The licensing process approved by the Ministry of Oil and natural resources and it opens up a wide range of entry for a large number of competing oil companies and ensures that invitations to tender have been limited to oil companies that have sufficient financial and technical and technological capabilities to enable them to execute contracts successfully.(ماشه: ص526)

In addition to that, the Contracting State aims to achieve economic and social development through the development of its oil fields, increasing its production capacity, etc., which contributes to the development of the national economy. Foreign companies are often motivated by the desire to put more of their capital and profit in return for developing the country's economy.

Wile, some of juries went in contrary direction, they said that: it's true that the oil contracts are commercial contracts for the oil companies, but it's not for the government, because the government do obligate its self to conclude this type of contact for the benefit of society and for civil intention not commercial one, that's means even the government get benefit from the oil contract, it will use it for the people and it just do that to achieve its civil goals not more.(قبيش: 1992، ص162-130)

In this point we can say the oil contracts which included by government it will regard as commercial one, because:

The contract is one of the commercial works which had been mentioned in article 5 of Iraqi commercial law.

The government as any other moral person, has its personality and when it include an oil contract it will do that as a part of it not more and there should be a kind of equivalent or the equality between the both parties of the contract.

The article (7) of the Iraqi Commercial Law states that: "Regarded as trader any natural or moral person which practice commercial work under his name and his account".(Iraqi Commercial Law No. 30 of 1984).

3) The Oil Contracts are Administrative or Civil Contract?

It is well known, that the adaptation of any contract le ADR. to the knowledge of the law applicable to it, especially since the contract under study is one of the contracts in which the foreign status of the investor's nationality is distinguished, regardless of whether it is a natural or moral person. Article (17/1) of the Iraqi Civil Law to the issue of adaptation, which stated that: "Iraqi law is the reference in the adaptation of relations when asked to determine the type of these relations in a case where the conflict of laws to determine the law to be applied between them".

This aspect of the jurisprudence in adapting the oil contracts as administrative contracts is based on the similarity between them and the administrative contracts, as they meet the criteria or conditions characteristic of the administrative contract. These conditions are:

1. The administration shall be a party to the contract;
2. Communication of the contract with the activity of a public facility;
3. The contract shall contain exceptional conditions not customary in private law.

(الحلي: 2006، ص15)

With regard to the first condition, is that the administration is a party to the contract, there is no doubt to achieve in oil investment contracts as the administration is always one of its parties, the State may intervene directly by the government to conclude the contract or interfere indirectly by the existence of one of its organs or public bodies to conclude the contract Iraqi commercial law number 30 in 1984. (قداصلا: 2016، ص ص 37-38)

The second condition is the connection of the oil contracts to a public utility. This is evident through the oil investment contracts that enjoy the features of the public facility, which requires the approval of the state on the oil project and its authorization for it, subject to constant monitoring by the state and its auditing by its agencies. Some of the privileges of the public authority and its exemption from taxes, duties and other features of the General Facility.(قداصلا: 2016، ص ص 37-38)

Others see the connection of oil contracts to a public facility, although its outward appearance suggests profits for the foreign party but primarily aims at facilitating a public facility. As well as the state's enjoyment of a number of regulatory authorities that deal with the organization of the oil investment project in all stages related to exploration, production and development, and the issuance of regulations for that project.(قداصلا: 2016، ص39)

But, about the third condition, the requirements of the foreign company include certain characteristics of the public authority such as the right of the company to occupy the land and the use of foreign workers and the establishment of railways and other means of transport, on the one hand, On the other hand, the management of the oil investment contracts enjoyed certain privileges such as the right to inspect the company's activity, check its records and books, its right to terminate the contract in specific cases, the prohibition of waiving the contract without its consent, and other unusual conditions in private law.(قداصلا: 2016، ص40)

In this view, the administration of oil investment contracts should be governed by the unity of the legal rules governing disputes arising out of the implementation of the contract and affecting its legality, in particular when interpreting or determining the legality of administrative decisions of the State or of public moral persons relating to the conclusion The termination of the contract or the search for the limits of its discretion on the privileges of the foreign party, the extent of its respect and implementation of the terms of the contract.

In spite of the merits of the arguments based on the jurisprudential trend in favor of the administration of oil investment contracts, but criticized by a large part of jurisprudence and before the arbitral tribunals, and the most prominent arguments on which the jurisprudence was based on his rejection of administrative oil contracts are:

1. That this theory was developed for the purpose of distinguishing between contracts of domestic law and was not designed for the implementation of international contracts of great importance such as oil investment contracts, and the absence of specialized international administrative jurisdiction, this type of contracts are considered if the consideration of oil investment contracts;
2. This result led to the description of oil contracts by the description of administrative contracts, but this result is critical, as there is no connection between the idea of sovereignty of the producing countries and their nature as administrative contracts There is nothing to prevent the adaptation of the oil investment contract as a civil contract, the application of the law of the producing state, and the notion of state sovereignty is counterproductive, since there is no authority over the idea of sovereignty for producing countries outside the borders of its territory;
3. Logical considerations require that a State exercise its sovereignty within the borders of its territory and its nationals, and that such sovereignty may not be exercised outside the borders of its territory. The State stands in a position of equality with the foreign contractor. And thus the State has no exceptional powers over foreign companies, except to the extent permitted by contractual terms;
4. The existence of the administration represented by the State or a public body affiliated to the oil investment contracts is not a sufficient reason for considering such contracts to be administrative. The State or its representative may exist when contracting with foreign companies, whether they are administrative contracts or civil contracts;
5. Oil contracts do not include the characteristics of the General Facility, namely, the increase and regularity in order to perform public services to the public. Oil contracts do not include the obligation of foreign companies to benefit the public from the oil produced. To which the General Facility is subject. The most important of these are the equality of individuals in the use of the General Facility;
6. The absence of the requirement of exceptional conditions unusual in oil investment contracts, as these contracts include conditions restricted to the administration represented by the State or its representative, and absolute to the foreign companies contracting with them, and these conditions are the right of the contracting company to terminate or waive the contract, And the State's exercise of the right of supervision and control shall be for the purpose of ascertaining the good performance of the contracting company and shall therefore not be considered as exceptional conditions known in administrative law.(قداصلا: 2016، ص40)

It is also possible to say that these exceptional conditions of the administration's right to terminate the contract by unilateral will are unusual in civil contracts, saying that such conditions can be included in contracts between individuals, such as a sale contract. With its own will, such conditions may be present in administrative and civil contracts, although they lead to contractual imbalances.

IV. Section Two: The Alternative Dispute Settlements, ADS, in Oil Contract

Historically, customs and traditions in ancient societies imposed the resort to friendly means before the courts arose. These methods appeared in different and different names.

Some referred to them as non-formal courts, conventional courts or friendly courts. However, the more commonly used term is ADR, Alternative dispute resolution.(بدحألا: 2008، ص745)

Professor "Jarrosson" defined it as "a specific set of procedures for resolving disputes, often through third-party intervention aimed at finding a non-judicial solution to this dispute". (بدحألا: 2008، ص746)

However, they are friendly, and they do not rely on resorting to the judiciary to resolve disputes and disputes between the parties, away from formal procedures and complex formalities, usually directly through the execution of the contract in good faith or indirectly through Negotiations, conciliation or mediation with a view to resolving the dispute and reaching a result satisfactory to all.(لي دنق: 2005، ص29)

From here, we will look for these direct and indirect means through two requirements:

A. The Direct Alternative Dispute Settlements, ADS, in Oil Contracts

These alternative means are called direct means, because they are directly related to the contract between the parties. They are also related to the parties to the contract so that there is no third party until another solution is offered to the parties. These means are usually limited to the execution of the contract in good faith or the secretariat. Between the two parties in order to reach a solution on the dispute arising on the contract and its terms, and here we will look for these two means as follows:

1) Fairness or Good Faith as Direct Dispute Settlement in Oil Contract

Attempts to define the principle of good faith in the implementation of contracts did not amount to a clear and specific meaning of the principle of good faith in the execution of contracts, which was not precise and specific in the development of a legal definition of good faith, using general and ethical expressions such as truthfulness and honesty. There are those who believe that the good will is "to deal with honesty, integrity and honor with others, so that the exercise of the right remains within the beneficial and fair purpose for which it was established and the commitment of both parties to the contract so that this practice does not cause harm to others without a legitimate justification, Rightfully to his right". (يجوعلا: 1995، ص115)

Or to know that good faith is "a commitment to vigilance, sincerity and purity from all cheating or harming others." Or "integrity and integrity, and taking into account what must be faithful to the implementation of the obligation of the contractor".(سقرم: 1999، ص ص24-28)

There is also a well-known person as "a portrayal of those intentions that are free of rigor and violence, and that sober trend associated with moderation and compassion, all of which are envisaged by the contractor, which he intends to implement. "to deal with honesty, integrity and honor with others, so that the exercise of the right remains within the beneficial and fair purpose for which it was established and the commitment of both parties to the contract so that this practice does not cause harm to others without a legitimate justification. Rightfully to his right".(سقرم: 1999، ص ص24-28)

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In fact, such definitions are problematic, as I have pointed out, using glaring, unclear and precise general terms, which do not give a specific meaning to the principle of good faith. It also refers to the implications of the obligation of the contractor to the principle of good faith, without specifying the meaning or meaning of this principle itself.

Since oil contracts involve numerous, complex and multiple transactions, there are times when there is disagreement between the parties about the implementation of certain clauses of the contract so that such good faith is required to be implemented so that one party cannot pay the contract in good faith unless it is justified, The counterparty shall execute the contract in good faith.

For example: Article (1) of Article (26) of the Technical Service of "Al-Zubayr" Field (2010) stated that: "Without prejudice to the right of the Contractor and the operator to choose and employ any number of workers deemed necessary to carry out oil operations in a safe and cost-effective manner, As far as possible, as well as Iraqi nationals with the requisite qualifications and experience, as well as subcontractors".

(رداق: 2013، ص236)

Here we find that the paragraph emphasizes the commitment of the parties to implement the contract in good faith, and not only that, but the text refers to the commitment of subcontractors to do so as well.

The parties to the oil contract only to implement the contract in good faith in order to avoid problems and conflict, so that if all parties committed to the implementation of the contract in good faith, this means that there are no problems and therefore walk the contract as originally planned.

As a rule, it is expected that the terms of the oil contracts will not be implemented in good faith. Therefore, the parties to the contract may refer to other alternative means. If there is disagreement over the method of implementation of the contract, both parties to the contract will have to resort to other stages that are more advanced than the negotiation stage.

According to article (15) and (16) of the KRI Oil and Gas Law No. (22) of (2007) has states about the fairness or good faith in oil contract as it states in article (15) para Fifth: as states; Until such time as the conditions of Article 19 of this Law are implemented, "KOTO" shall maintain two accounts: one for Revenues from Petroleum Operations in respect of Current Fields "the Current Fields Account"; and one for Revenues from Petroleum Operations in respect of Future

Fields "the Future Fields Account". Both accounts shall be part of the general revenue of the Region and shall be subject to monitoring of the Parliament".

And article 16 of it stats that: "The functions of KOTO shall be regulated by law for the purpose of managing those revenues and their distribution consistent with the highest international standards of transparency and responsibility".

2) Negotiation as Direct Alternative Dispute Settlements, ADS, in Oil Contracts

The negotiations are an effective means of friendship in the field of oil investment contracts, and they are always resorted to by the parties when the differences do not reach to the extent that it can be said that it has become very difficult and need a third party mediator between the parties.

Negotiations have been defined as "dialogue, discussion and exchange of views and ideas in interaction between the parties, with a view to reaching a certain agreement on the interest or solution of a problem…".(لي‌دنق: 2005، ص97)

Negotiation is a dialogue between two or more people or parties intended to reach a beneficial outcome over one or more issues where a conflict exists with respect to at least one of these issues.

This beneficial outcome can be for all of the parties involved, or just for one or some of them.it is aimed to resolve points of difference, to gain advantage for an individual or collective, or to craft outcomes to satisfy various interests. It is often conducted by putting forward a position and making small concessions to achieve an agreement.

The degree to which the negotiating parties trust each other to implement the negotiated solution is a major factor in determining whether negotiations are successful. In many cases, negotiation is not a zero-sum game, allowing for cooperation to improve the results of the negotiation. People negotiate daily, often without considering it a negotiation.(Roger: 1984, P333)

However, it is necessary to say that Negotiation has a great role to play in resolving the differences between the parties to the oil contracts, and usually they are resorted to by stipulating in these contracts, as stipulated in section (a) of paragraph (1) of Article (42) The Kurdistan Production Sharing Agreement (Burdhrach Field) concluded between the KRG and the KOMENT GROUP on June 20, 2008 states that: "(a) The parties to the dispute shall first request the settlement of the dispute by negotiation between the senior representatives, which means: The authority to negotiate the settlement of the dispute on behalf of the party to the dispute, which for the Government means to the Minister of Natural Resources within such time Yen (30) days after the date of notification of the arrival of the conflict / the representatives of the senior who represent the parties to the conflict must receive time in history and time have accepted for the exchange of relevant information an attempt to resolve the dispute…"(رداق: 2013، ص ص141-142).

It is clear from the above text, the importance of negotiations for oil investment contracts, and their use as a means of constraint, as stated in the above text "the parties to the conflict must..." which means that the parties to the conflict must resort to negotiations, Shows the importance of negotiations in such contracts.

Moreover, paragraph (ii) of Article (50) of the Kurdistan Oil and Gas Law No. (22) of (2007) stipulates that: "(1) If there is a dispute regarding the interpretation or application of the terms of the license or both between the authorized person and the Minister, the Parties shall endeavor to resolve that dispute by Negotiations".

And the result of the text, that the Kurdistan legislature has relied on the mechanism of negotiations as a means to resolve the contingencies in the oil contracts in a friendly and direct, and notes that the text did not force the parties to resort to the means of negotiations, but only suggest it and in a way that the parties can resort to other means, Arbitration, for example.

We prefer to make the text compulsory, as we noted in the contract between the Ministry of Natural Resources in the Kurdistan Region and KOMENT GROUP on the products of the "Bardhrach" oil field in Kurdistan.

While the draft law of Iraqi oil and gas, whose legal procedures were completed by the Iraqi Council of Ministers on 26/2/2007. And referred to the Iraqi Council of Representatives, mentioned in the second section on the resolution of disputes and specifically in Article 43 thereof: (1)- Disputes arising on the interpretation and application of this law or the regulations issued thereunder shall be resolved through negotiations between the parties concerned and the principle of good faith.

If the dispute is not resolved by agreement, the matter shall be referred to the Council in consultation with the relevant licensees. 3. If it is not possible to reach a solution in good faith, the dispute shall be referred to arbitration or to the competent judicial authorities in accordance with the agreement.(www.OGDraftLaw.com, Last Visited 25/7/2018).

Its reliance on both direct and direct means of negotiation- the execution of the contract in good faith and negotiation - that it has used both means to indicate that "... through negotiations between the parties concerned and the tendency of the principle of good faith...". This means that the parties have to rely on both means without the importance of one of them when they arise during the two of them on the item of the contract concluded, and this is good and we would prefer that the composition of the text is similar to or close to the meaning of the Iraqi text - draft - because the Kurdish text has adopted On negotiations only without relying on the principle of implementing the contract in good faith as well Para.2 in article 50 in Kurdistan Oil and Gas Law No. (22) of (2007).

Wile, the UK energy legislation in Section 24 of it has mentioned that: "Power of the OGA to acquire information":
1. The OGA may require a relevant party to a dispute to provide it with such information as may be required by the OGA for the purposes of-

a. deciding whether to reject, adjourn or accept a reference of the dispute under section 21(1);

b. setting a timetable in respect of an adjournment of a reference of the dispute under section 21(5);

c. assessing progress of further negotiations during such an adjournment;

d. Making a decision under section 22(1) to consider the dispute on its own initiative, or (e) considering the dispute and making a recommendation under section 23. (UK energy legislation 2016, www.legislation.gov.uk, Last Visited 25/7/2018)

B. Indirect Alternative Dispute Settlements, ADS, in Oil Contracts

Naturally, when the disagreement between the parties on the oil contracts is large, so that both parties do not come down on their confirms principles, and they just stay in moving forward with the implementation of the contract.

The parties to resort to a third person to resolve their deep differences, usually this person is so neutral that it should not be referred to one of the parties to the contract In other words, this person is an intermediary between the two parties. Therefore, he shall act as mediator between them or he must be in the form of a conciliation committee to resolve the dispute between the two parties or he must be an expert so that he has a good proportion of experience to qualify for such work, so for these three ways of being free.

1) Mediation as Indirect ADR in Oil Contracts

The term "mediation" broadly refers to any instance in which a third party helps others reach agreement. More specifically, mediation has a structure, timetable and dynamics that "ordinary" negotiation lacks. The process is private and confidential, possibly enforced by law. Participation is typically voluntary. The mediator acts as a neutral third party and facilitates rather than directs the process. Mediation is becoming a more peaceful and internationally accepted solution in order to end conflict. Mediation can be used to resolve disputes of any magnitude.(Trenczek: 2016, PP.177–192)

The American Arbitration Association and the American Bar Association, the Dispute Resolution Section, have proposed a definition of mediation, stating that "mediation is a process in which a neutral third party facilitates the resolution of the dispute by encouraging access to a voluntary agreement by the parties to the dispute. Promote understanding and focus on the interests of the parties and seek the best solutions to the conflict to enable the parties to reach an agreement.

(الصليبي: 2010، ص ص61-62)

The term "mediation", however, due to language as well as national legal standards and regulations is not identical in content in all countries but rather has specific connotations and there are quite some differences between Anglo-Saxon definitions and other countries, especially countries with a civil, statutory law tradition like Germany or Austria.(Trenczek: 2016, PP.177–192)

The actions of the mediator can be summarized in the following points:

1. Mitigate the dispute between the parties by transferring to both sides of the conflict their point of view to reach common ground between them;
2. Initiate discussion by the parties on matters related to the dispute but not previously raised by them;
3. To convey the views and proposals of each party to the other in a simplified and justified manner, without prejudice to the confidence of the parties;
4. Working to reduce the gap of disagreement between the conflicting parties;
5. Trying to find solutions to achieve the objectives of the parties to the conflict with the presentation of what can be presented alternatives to achieve this;
6. Work on a draft comprehensive and integrated settlement of the existing dispute and try to make it adequate to meet the needs of future parties.(الصليبي: 2010، ص ص61-62)

By looking to the provisions of the UK energy act and Kurdistan Oil and Gas Law No. (22) of (2007) we did not find any article or paragraph which depends on the Mediation as one of the oil dispute settlements.(*)

2) Conciliation as Indirect ADR in Oil Contracts

The Model Law on International Commercial Conciliation defines conciliation as "a process in which the parties require a third person or other persons to assist them in their quest for an amicable settlement of their dispute arising out of a contractual or non-contractual relationship or dispute relating to that relationship.

(الفقرة 2 من المادة 1 من قانون الأونسيترال النموذجي للتوفيق التجاري الدولي الصادر من الجمعية العامة للأمم المتحدة بقراره المرقم 57/18 في نيويورك، 2004, Http://www.un.org

By observing the Kurdistan Oil and Gas Law No. (22) of (2007) and UK energy act, its seems like both acts did not use conciliation as one of the indirect dispute settlements at all. Which we recommend in the next amendments in the Kurdistan Oil and Gas Law No. (22) of (2007) to be depending on it in the future.

3) Expertise as Indirect ADR in Oil Contracts

Expertise: It’s a “technical opinion is given by experts in a field of science on the occasion of the existence of a specific dispute between the parties to the contract, at the request of either party to the contract or both”.(والي: 2007، ص ص21-40)

The expertise can be used.

when the above alternative ways did not solve the oil dispute.

With the above alternative ways for solving the oil disputes, by writing it down in the contract terms it can be recommended to be taking it by the Kurdistan Oil and Gas Law No. (22) of (2007) in the next amendments.

V. Conclusions

1. There is argue on the concept of “oil contract” and on its main characteristics, and non- existence of clear settlements on that led to appear the differences and contradictory about the oil disputes settlements also;
2. Oil contract can be concluded between governments and foreign company as it can be concluded between the companies themselves;

3. Oil contract can be differ from other contracts, that its – according to majority of views- a quasi- international contract, and it can be concluded for commercial or civil purposes, and in majority of them the government plays a vital role in it;
4. The Alternative Dispute Settlements, ADS, are the most active mechanisms which can be useful for solving the oil issues in friendly non- violent ways between the governments and foreign oil companies. The Kurdistan Oil and Gas Law No. (22) of (2007) has depended on two of the Alternative Dispute Settlements, ADS, mechanisms which are the “contract fairness” and “ Negotiation”.

VI. Recommendations

It's better to Kurdistan Oil and Gas Law No. (22) of (2007) to take beside the direct disputes resolutions to take also by the indirect disputes resolutions in the oil cases; because: this make the Package perfect; and the dispute led to badly end for the government as we saw it , in the previous KRG oil contracts such as” Dana Gas case ,because of non- depending on the ADR.

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Abbreviations

ADS……….. Alternative Dispute Settlement
BP…………. British Petroleum
D.A.D.S…… Direct Alternative Dispute Settlements
E&P………... Exploration and Production
I.A.D.S……... Indirect Alternative Dispute Settlements
IPC…………. Iraq Petroleum Company
KRG………... Kurdistan Region Government
PSC………… Production Sharing Contract
SC………….. Service Contracts