

“Verily, ALLAH enjoins justice, and the doing of good to others; and giving like kindred; and forbids indecency and manifest evil and transgression. HE admonishes you that you may take heed.”

Qur'an (16:90)



الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
وَتَشْرِيفَتِي إِسْلَامًا أَبْنَاءَ رَجَائِنَا مُلْكِيْنَا

SETTLEMENT OF PETROLEUM DISPUTES
THROUGH ARBITRATION IN SAUDI ARABIA
AND THE OTHER ARAB GULF COUNTRIES:
PROBLEMS AND PROSPECTS

BY

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A thesis submitted in fulfilment of the requirements for
the degree of Master of Comparative Laws

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International Islamic University
Malaysia

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ABSTRACT

This study is an attempt to explore the circumstances under which petroleum disputes settlement through arbitration had been provided for in the petroleum concession agreements in the Arab Gulf Co-operation Countries. The evolution of the arbitration clauses and agreements contained in those concessions had been discussed and compared with the reasons and dubious interpretations often given by the Western arbitrators sitting in arbitral tribunals to determine petroleum-related disputes involving not only the Gulf Countries but also different other oil producing countries. The study showed how the biased opinions of the arbitrators in petroleum disputes gave rise to the rejection of the arbitration mechanism in favour of other means of dispute settlement such as unilateral actions and collective renegotiations of the concession contracts, which eventually afforded the Gulf countries to achieve control of their petroleum industry in the middle of the 1970s. It has been found nevertheless that as a result of the confrontation between the developed and developing countries over the control of natural resources, arbitration of State contract-related disputes, along with the other traditional standards of investment protection and compensation have been brought back in an unprecedented vigour under institutional systems of arbitration such as International Centre for the Settlement of Investment Disputes (ICSID).

APPROVAL PAGE

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Jemal Hamoudy Agatt

Signature

Date

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**SETTLEMENT OF PETROLEUM DISPUTES THROUGH ARBITRATION IN
SAUDI ARABIA AND THE OTHER ARAB GULF COUNTRIES:
PROBLEMS AND PROSPECTS**

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DEDICATION

To the memory of my father who passed away on 1st September 2007 before this work so cherished by him could be achieved. May Allah SWT recompense him by the bliss of Paradise. Amen.

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2. *BP Exploration Company (Libya) Limited (BP) v. Government of the Libyan Arab Republic* [1977] 53 I.L.R. 297.
3. *Deutsche Schachtbau und Tiefbohrgesellschaft mbH (DST) (FR Germ.) et al. v. R'as al-Khaimah Oil Company (Rakoil) [DST v. Rakoil]*, (1982) Collection of ICC Awards 1986-1990, pp. 154-165.
4. *Elf Aquitaine Iran v. National Iranian Oil Co.* [1986] 11 Yearbook of Commercial Arbitration 96. 13.
5. *International Marine Oil Company Ltd. v. Ruler of Qatar* [1953] 20 I.L.R.34.
6. *Libyan American Oil Co. (Liamco) v. Libya* [1981] 62 I.L.R 140.
7. *Petroleum Development Ltd. v. Sheikh of Abu Dhabi* [1951] 18 I.L.R. 144.
8. *Petroleum Development (Qatar) Ltd. v. Ruler of Qatar* [1951] 18 I.L.R. 161.
9. *Sapphire International Petroleum Ltd. v. National Iranian Oil Co.* [1963] 35 I.L.R. 136.
10. *Texaco Overseas Petroleum Co. (TOPCO) and California Asiatic Oil Co. v. Libya* (Preliminary Award, 1975; Merits 1977) 53 I.L.R. 389.
11. *The Government of Kuwait v. American Independent Oil Company (Aminoil)* [1982] 66 I.L.R. 519.
12. *Wintershall A.G. (Germ), International Ocean Resources, Inc. (Formerly Koch Qatar, Inc.) (US), Verba Oel A.G. (Germ), Deutsche Schachtbau- und Tiefbohrgesellschaft mbH (Germ), and Gulfstream Resources Canada Ltd. (Canada) v. Government of Qatar* [1990] 15 Yearbook Commercial Arbitration 30.

LIST OF ABBREVIATIONS

AAA:	American Arbitration Association
AALCC:	Asian-African Legal Consultative Committee (also AALCO)
AALCO:	Asian-African Legal Consultative Organisation (also AALCC)
ABA:	American Bar Association
AIOC:	Anglo-Iranian Oil Company (also APOC)
AJIL:	American Journal of International Law
AMINOIL:	American Independent Oil Company
APOC:	Anglo-Persian Oil Company (also AIOC)
ARAMCO:	Arabian American Oil Company
BP:	British Petroleum
BIT:	Bilateral Investment Treaty
CASOC:	California-Arabian Standard Oil Company
CERDS:	Charter of Economic Rights and Duties of States
FDI:	Foreign Direct Investment
GATT:	General Agreement on Tariffs and Trade
GCC:	Gulf Co-operation Council
GCC:	Gulf Co-operation Council
IBA:	International Bar Association
ICC:	International Chamber of Commerce
ICJ:	International Court of Justice
ICSID:	International Centre for the Settlement of Investment Disputes
IUMLJ:	International Islamic University Malaysia Law Journal
IPC:	Iraq Petroleum Company (also Turkish Petroleum Company)
KOC:	Kuwait Oil Company
LCIA:	London Court of International Arbitration
LDC:	Least Developed Countries
LIAMCO:	Libyan American Oil Company
MECLR:	Middle East Commercial Law Review
MIGA:	Multilateral Investment Guarantee Agency
NAFTA:	North American Free Trade Agreement
NIEO:	New International Economic Order
NIOC:	National Iranian Oil Company
OAPEC:	Organisation of Arab Petroleum Exporting Countries
OECD:	Organisation for Economic Co-operation and Development
OPEC:	Organisation of Petroleum Exporting Countries
OPIC:	Overseas Private Investment Corporation
P. D. Q.:	Petroleum Development (Qatar)
PBUH:	Peace Be Upon Him
RAKOIL:	Ras al-Khaimah Oil Company
SOCAL:	Standard Oil Company of California
SWT:	Suḥanahu Wa Ta`ala
TPC:	Turkish Petroleum Company (also Iraq Petroleum Company)
TOPCO:	Texaco Overseas Petroleum Company
UNCITRAL:	United Nations Commission on International Trade Law
WTO:	World Trade Organization

TABLE OF ARABIC CHARACTERS TRANSLITERATION

ء	'
ا	a
ب	b
ت	t
ث	th
ج	J
ح	h
خ	kh
د	d
ذ	dh
ر	r
ز	z
س	s
ش	sh
ص	s
ض	d
ط	t
ظ	z
ع	'
غ	gh
ف	f
ق	q
ك	k
ل	l
م	m
ن	n
ه	h
و	w
ي	y

Short vowels	
َ	A
ِ	I
ُ	U
Long vowels	
آ	Ā
إي	Ī
أو	Ū
Diphtongs	
أو	Aw
أَي	Ay
Doubled	
أو	Uww
أَي	Iyy

CHAPTER ONE: INTRODUCTION

It is interesting to explore the emergence and evolution of arbitration as an established method of dispute settlement in the oil industry, particularly in Saudi Arabia and the other Arab Gulf States which are among the leading oil producing countries in the world. These States were involved in oil concessions agreements with companies from the industrialized countries. The concession agreements provided for arbitration as a principal mechanism for dispute resolution. Several disputes arose in one country or another, and they were all submitted to arbitration for settlement. However arbitration, in almost all cases, yielded but frustration and disappointment for the concerned countries. A closer look at this situation is necessary to determine the real causes that led to it, to explore its implications and appraise the remedial measures that had been taken by the concerned countries. Studying these developments is endeavoured in the present research for its significant benefit to the parties connected with the oil industry in general, and the Arab Gulf countries in particular.

SCOPE AND METHODOLOGY

It is not the purpose of this study to give a detailed comparison of the current law and procedures of arbitration in force in the Gulf States. Also, it is not concerned with the trends and developments of arbitration in general in the Gulf States if such trends or developments are not relating to the outcome of petroleum arbitrations that took place before to the end of the second Gulf war in 1991.

That time corresponds with the advent of a new international legal order characterised by the emergence of a single superpower which drastically influenced the then prevailing legal notions and concepts.

On the other hand, this study is not concerned with all the disputes that might involve any oil-related element. Discussion of legal issues relating to petroleum industry is in fact too wide for such a venture to be reasonable. Therefore legal controversies other than those arising from the interpretation or execution of State contracts will not be considered here.

Those contracts known as “concessions” constitute an independent category of legal transactions that has its own specific nature. The current legal literature refers to this category as ‘agreements between States and nationals of other States’ or simply investor-State contracts. The awards handed down in the petroleum disputes of this category are dealt with in this study as highly representative samples of the problems and issues raised by international arbitration in the domain of State contracts disputes.

The project is then to find, comment and analyse the major consequences of such awards on the place of arbitration in the settlement of petroleum disputes within the scope and limits of time and space set forth.

This will be attempted mainly through qualitative research. Here reliance will be on available materials in the library like petroleum agreements and arbitration proceedings. This will include the search of internet websites, online databases and other electronic information facilities.

As qualitative method is adopted the quantitative method will not be employed to reveal the extent and effectiveness of arbitration in resolving petroleum disputes. Accordingly, the other methods like field research, questionnaire, interview,

consultations etc., are not excluded and will not constitute the core of the research process.

LITERATURE REVIEW

There are limited literatures on the topic of arbitration on petroleum disputes in the Arab Gulf States except few books and articles.

Available researches so far conducted by post-graduate students of AIKOL, especially theses written in English language, did not tackle the aspect of arbitration in the petroleum field. The focus of these past researchers was not centred on arbitration of oil disputes but rather on general comparative aspects as indicated by the following titles.

1. Abdul Razak Ibrahim, "The Institution of Arbitration in Islam" (MCL, IIUM). 1992.
2. Ashgar Ali, "Arbitration under the Malaysian Arbitration Act (1952): A general Assessment vis-à-vis Shari'a" (MCL, IIUM). 1992.
3. Osman Yusoff, "International Commercial Dispute Settlement: A Comparative Approach" (MCL, IIUM). 1995.
4. Siddiqullah Bin Ahmadullah, "Arbitration as a Tool in settlement of International Commercial Disputes: A Comparative Study of International Law and Islamic Law and with Reference to Iran and Malaysia" (MCL, IIUM). 1995.
5. Siddiqullah, "Commercial Arbitration in Islam and Civil Law" (PHD, IIUM). 2001.
6. Vincent Smith, "Aspect of Arbitration: Common Law and Shariah Compared" (MCL, IIUM). 1994.

None of these theses contain any significant information regarding the topic of this study.

As regards the other available sources which certainly will serve as indispensable materials for the present study, and due to the suggested focus on the Gulf countries, the titles on Arab Arbitration are expected to provide the most relevant information.

Undoubtedly, the encyclopaedic works of Abdul Hamid Al-Ahdab come in the first place. *Arbitration with the Arab Countries* [1999] is the second edition of his multi-volume and multi-lingual work on Arab Arbitration as a whole.

Saleh, Samir, *Commercial Arbitration in the Arab Middle East* (London: 1984), although popular and of much interest, does not seem particularly relevant to the topic of this study. This book's focus is on the position of the Islamic law regarding arbitration in general, and its relationship with the statutory law in force within the countries covered in it. However, it will certainly be relevant to provide the general Islamic perspective of arbitration.

Sayed Hassan Amin's *Commercial Arbitration in Islamic and Iranian Law*, (Glasgow: 1988), include comments on some developments of the oil disputes in the Iranian context, some of which are pertinent to the scope of this study.

Other helpful books authored by him include:

S.H. Amin, *Middle East Legal Systems* (Glasgow: Royston, 1985).

S.H. Amin, *The Legal System of Kuwait* (Glasgow: Royston, 1991).

Other resourceful and recent books dealing with Arbitration in general or specific aspects thereof are available also. Some of them are indeed devoted to subjects too much close to the topic of the study and might well be of extreme assistance. Two Arabic books deserve to be mentioned here.

1. The Arabic textbook of Aḥmad Abd al-Ḥamīd Ashūsh and Omar Abū Bakr Bākhashab on the legal regime of petroleum agreements in the GCC countries. (1990).
2. Yūsuf Alwān's Arabic book on the legal regime of petroleum development in the Arab countries (1982).

These two books deal with the legal regime of petroleum agreements in the Arab countries in general and the Gulf countries in particular. Each of them includes a whole chapter on arbitration as provided for in the concessions' agreements. Although those chapters are meant to be descriptive in nature, their dealing with the subject is very informative and relevant to this study.

Articles also remain of invaluable assistance for any research seeking to be up-to-date. Many legal and specialised journals are available for the researchers in the library including online databases such as NexisLexis and Westlaw.

OUTLINE OF THE STUDY

This study is divided into four chapters in addition to an introduction and a conclusion.

Chapter One is designed to give a general backdrop of the circumstances in which the petroleum companies established in the Gulf countries and the subsequent developments that led to the independence of these countries and their eventual control of their national oil resources.

Chapter Two addresses the place of arbitration in the legal systems of the Arab Gulf States and the evolution that characterised the attitude of those legal systems towards arbitration with special focus on the legal systems of Saudi Arabia and Kuwait as representative samples.

Chapter Three is devoted to the study of the arbitration provisions in the petroleum agreements and the interpretation given to them by the arbitral tribunals. It explores the extent to which arbitration as a forum of dispute resolution failed to keep up the confidence in its capability to settle fairly the conflicts inherent in the concession agreements.

Lastly Chapter Four is concerned with the analysis of the general legal issues discussed in the arbitral awards and the consequences that sprang from such awards to international commercial arbitration in general.

CHAPTER TWO: THE GULF STATES AND THE PETROLEUM CONCESSIONS

2.1. GENERAL SETTING OF THE STUDY

2.1.1. Definition of the Gulf Cooperation Countries

Before embarking on the study of the role of international commercial arbitration in the petroleum disputes, it is pertinent to take a brief look at the geopolitics of the petroleum in the Middle East, which is to a great extent reflected by the Gulf countries. Gulf countries consist of eight states, namely Islamic Republic of Iran, Republic of Iraq, the State of Kuwait, the Kingdom of Bahrain, the Kingdom of Saudi Arabia, the State of Qatar, the United Arab Emirates and the Sultanate of Oman. All of these states are oil producing countries and are also members of the Organization of Petroleum Exporting Countries (OPEC) with the exception of Bahrain and Oman.

Islamic Republic of Iran is the only non-Arab country of the Arabian-Persian Gulf. And with the exclusion of Iran and Iraq the remainder is the group of six Arab monarchies that form Arab Gulf Cooperation Council (GCC) established in 1981. These monarchies with Sunni ruling families and mixed population, comprised of a Sunni majority and a relatively important shī`ah population, are the members of that Council.

This study is to examine the evolution of the process of resolution of petroleum concession disputes through international commercial arbitration within the context of the GCC States. The reasons why these States alone are chosen and not the other Gulf or Arab States need a justification.