A Novel Comparative Study on the Legal Principles and Legal Requirements Governing the Upstream, Midstream and Downstream Contracts on Oil and Gas Industries in Iran and United States

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Abstract— The contracts of oil and gas industries are thoroughly technical issue which is closely related to the political, legal, and economical systems of each oil country. Today, various types of contracts have basic rules in the international business world. Regarding the increasingly demands of industries to fossil fuel energy, the importance of oil and gas contracts is doubled. At the other hand, exploration, extraction, production and exploitation of oil require spending a lot of money. Hence, the legal impacts induced by various types of contracts and making motivation for foreign investing in oil and gas industries are of critical importance. In the current research, the legal principles governing the upstream, midstream and downstream contracts on oil and gas industries are studied and through the considering of regulatory and fiscal requirements as well as investigating the various types of upstream, midstream and downstream contracts, it is concluded that despite the variety of contracts, all of them follow the same legal principles and basics. This variety is made to make more motivation and productivity in order to absorb foreign investment with maintaining national possession of oil and gas resources.

Index Terms— Iran, United States, International Trade Law, International Commercial Law, Upstream, Midstream and Downstream Contracts of Oil and Gas Industries, Legal Principles, Concessionary Contract, Consortium, Buy Back Contracts, EPC Contracts, Legal and Fiscal Requirements

1 Introduction

Today, oil industry is encountered to numerous challenges in upstream, midstream and downstream parts such as high demand for increasing oil production, access to new oil resources, managing the decreasing trend of old field resources, maintaining and promoting technology regarding the excessive retirement of experienced work force in the operational fields [1–8]. However, the possibility of maximum exploitation from the available facilities, encouraging, absorbing and supporting foreign investment in upstream, midstream and downstream activities of oil and gas, especially in shared fields and exploration projects, are among the critical goals of government in the context of oil and gas [9, 10]. Hence, in order to maintain oil and gas resources as high as possible and to increase the recovery factor, transferring and applying new technologies on the optimum management and exploitation of oil and gas fields, it is very important to contract so that there is a suitable balance between above-mentioned benefits [11]. In the international oil contracts, there is high fluctuation in the nature of general conditions of contract and tender–owner companies consider independent and different frameworks for some of these conditions [12, 14, 15, and 17]. Therefore, it is necessary to keep moving by technical evaluation of each contract along with comprehensive and correct understanding of general economical policies of the country, especially in the context of oil industry, as well as conditions and requirements of global economy [12–15]. Undoubtedly, foreign investors and companies can make decision that is more correct about cooperating in important oil projects and reduce contract negotiations time, which are practically too long, when general conditions of contracts are explained and clarified and hence, more suitable legal medium can be achieved in this important economic field [16, 17]. As a result, favorite contract is one that is easy to implement. It can be achieved when the contract provides the rights and benefits of the parties and distributes their risks in a balanced and equalized manner [18, 19]. The effective factors for selecting the type of suitable contract for economical development plans, especially in upstream, midstream and downstream oil industries, can be divided into two groups: (a) National (internal) factors: two points should be noted: (1) Legal limitations and requirements (2) Requirements resulted from general economic and fiscal plans of the country hosted the foreign investment; (b) International factors: including international laws and legal principles governing the contracts [20–26]. Now, regarding the noted factors and various types of common contracts in upstream, midstream and downstream industries of oil and gas industries, we aim to answer these questions using desk study: (1)

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Whether various upstream, midstream and downstream contracts of oil and gas follow different principles and rules? (2) What are the reasons for the variety of upstream, midstream and downstream contracts of oil industry? (3) What is the effect of five years development plans requirements and annual fiscal rules on foreign investment in oil industry? To find the answers, various types of upstream, midstream and downstream contracts in oil and gas industries are briefly defined, at first, and then, the legal principles and basics as well as legal and fiscal requirements governing the upstream, midstream and downstream contracts on oil and gas industries in Iran and United States are investigated.

2 Results and Discussion

Before the nationalization of oil industry, Iran has been faced to concessionary contracts since 1901. In the first contract, known as D'Arcy contract, the concession of Iran oil was given to the Briton William Knox D'Arcy. Then, 32 years later, this contract has been extended for more 60 years and immediately, it has been voided and another concessionary contract, known as fifty–fifty, has been replaced but after 1953 coup in Iran, a consortium contract has been replaced for concessionary contracts in which the contribution of Iran was only 40% of benefits resulted from oil sale by a consortium consisted from British, French and American oil companies. After passing the first oil act in Iran, the consortium contracts which have been common after the nationalization of oil industry changed to joint venture contracts and the peak of all–out domination and possession of Iranian nation on oil and gas resources have been emerged in oil act passed. According to this act, all up– and downstream operations in oil industry, from the beginning to the end, were dominated and possessed by Iran National Oil Company. After Islamic Revolution of Iran, adopting constitution laws and dominating the revolutionary atmosphere, foreign investment has been suspiciously considered and the oil act, which in fact was the amendment of oil act, was passed with huge uncertainties. According to this act, contracting agreements which have been mainly agreed in the form of joint venture contracts were the main stream. Numerous uncertainties existed in this act; prohibited foreign investment and impossibility of foreign borrowing due to legal limitations required authorities to approve buy back laws, known as service contracts in oil industr. As a result of this action, foreign investment in this huge and vital industry is widely possible with minimum financial load on our country. Finally, according to article 22 of the second five years development act, administrative agencies such as Ministry of Oil is allowed to implement special administrative plans using buy back methods and financial obligations.

Among the definitions related to research topic, it seems that it is critical to present a definition for the concept of upstream, midstream and downstream industries; since the necessity of distinguishing the up– and downstream contracts from the type and nature of contract topic points of view, especially the law governing them and effective factors for them and their field of activity in the global business society, would be clear and obvious as its definition is presented. Oil industry is usually divided into three categories: upstream, midstream and downstream industries. Midstream operation usually involves the activities of downstream industries. Midstream industries are including the designing, storing, selling and transferring oil goods such as fuel oil, natural gas, liquid gas, ethane, and sulfates. Downstream industries is a concept attributes to crude oil refinement, selling and distributing, natural gas and products from crude oil including natural gas, gasoline, fuels and asphalts, tar and other fuel oils and trading by–products, producing oil derivations and refinement. Downstream industries give thousands of oil production such as gasoline, petrol and so on to consumers. Upstream, midstream and downstream industries are a concept that usually used to note the exploration, exploitation and production of crude oil and natural gas. The upstream, midstream and downstream parts of oil industry, which is known as exploration and production, is including the searching for potential resources of oil and gas, oil excavation and explorations, technical and economical investigations, and large development plans for oil and gas. It should be pointed out that in recent years there is a full scale war for taking more benefits between oil companies, developing companies who have resources and countries due to increasing price of oil and gas markets which in turn, is due to many economical and political reasons in the world. In this regard, having any necessary facilities including technical equipments, skilful workers, transferring technology and wide communication fields in global oil markets are very important and all of these can be obtained through the most appropriate contracts which have the highest economical, technical and political resources.

The legal system governing the development of oil and gas fields in Iran and United States are divided into two categories: (a) legal–concessionary system; (b) legal–contractual system, both is briefly discussed here.

This system has two types: (a) traditional legal–concessionary system which has been applied before 1950s and D'Arcy contract is one of its major examples. In this contract, the government gives the possession of oil well to a foreign company only in exchange for receiving a low percent of oil selling price (about 10–20%) as the right of land or economic rent; (b) 50–50 legal–concessionary system: after political evolutions and nationalization of oil industry in Iran and United States, the right of land was changed to 50–50. The 1954 consortium contract is a major example of this in which the assets of Iranian and American people was possessed for foreigners.

This system is divided into joint venture contract and buy service contract and it differentiates from legal–concessionary system by the fact that in this system, owner's equity is for the nations and governments of Iran and United States.

Joint venture contract

Joint venture contract are divided into three different groups:

(1) Joint venture for production contract

In this type of contract the foreign company is committed to pay tax, to educate the work force of the host country, etc. and the host country has not any responsibility for refunding the costs for exploration, etc. until the oil is produced. If the foreign company produces oil, all costs are refunded to the foreign company, at first, and then, it will be contributed in 10% of produced oil for a limited time, e.g. 20 years. Since the contribution of foreign company in 10% of the produced oil after complete refunding of all costs as well as a suitable yield is not acceptable

from religious point of view due to the fact that it does not any work to deserve any payment, this issue has been prohibited.

(2) Joint venture for benefit contract

It is actually a new version of joint venture for production contract in which, the operational costs for oil production share between the investor and the government and if oil produces, after reckoning with the host government and earning a special benefit, it contributes in a given percent of the obtained benefit from oil selling for a limited time determined in the contract rather than contributing in the produced oil. Similar to previous case, however, this type of contract is not legal from religious point of view.

(3) Joint venture for investment contract

It is the most progressive type of joint venture contracts. It means that the host country and the foreign company contributes all costs, benefits and losses for oil production according to the contract and finally, after reckoning all costs from the produced oil, the foreign company will contribute to the real benefit obtained from the produced oil for a determined time proportional to its investment.

Buy service contracts

These contracts divide into four categories including simple buy service contracts, venture buy service contracts, buy back contracts and EPC contracts.

(1) Simple buy service contract

Merely service contracts are applicable for productive activities. Its fee is cash, fixed and determinant and in order to encourage the investors, some rewards are gifted to them such as buying a portion of product with the cheapest price. Cash and determined earning is the index of this contract.

(2) Venture buys service contracts

These contracts are more interested for exploration of oil and gas fields. It means that the foreign company accepts the risk of loss of investment until the exploration, exploitation and production of oil and gas is completed, the foreign company also approves that if oil and gas explores, it will be responsible for production of the explored oil and gas. In this manner, the whole produced and producible oil belong to the host country and the foreign company, according to the contract, earns a fixed wage as refunding the investment as well as suitable benefit and venture or according to the revenue obtained from oil selling and after reducing tax, all costs along with a suitable benefit and venture are paid to the foreign company.

(3) Buy back contract

Buy back is a form of counter trade and its international concept differs from buy back contracts that are common in Iran and United States oil industries. However, the concept of investment in international business is not agreed with the rules governing this type of contract. The Persian meaning of this term is repurchase agreement or post purchase of product. Regarding the concept of buy back used in counter trade codes passed as well as non–oil counter trading codes passed, the act of encouraging, absorbing and supporting passed, the first, second and third five years laws and annual fiscal rule of the country till now, the term "buy back" is used as repurchase agreement. Buy back is in fact a type of contract consists of two subcontracts in which, the effects of buy in its especial concept governs the both subcontracts. Buy back is a contract in which the operating company (investor) is responsible for all costs required for investing in oil operation such as installation, operation and technology transferring, etc. and after operating the project, all of those are given to the host country. Refunding the original costs as well as its benefit from the crude oil and its product selling in the global market may be in cash or not. According to the definition of American and European Economy Commission, international buy back contracts are as following: "The initial topic of contract is trading the equipments, machinery, patent, technology or technical aids which are used for operating production facilities for buyer. All parties agree that the seller buys the products from buyer that is produced by these facilities". Simply, buy back is a trade in which one the parties taking the rights and responsibilities of seller in the first subcontract and the rights and responsibilities of buyer in the second subcontract and another party plays the role of buyer in the first subcontract and the role of seller in the second one. In fact, buy back consists of two buy contracts in which the role of seller and buyer mutually changed, the required finance for implementing the responsibilities is taking by investor, and the contract is dependent on buy back.

(4) EPC contract

EPC contracts are implemented between the representatives of government and an international oil company. Therefore, the most important difference of this type of contract and concessionary contract is that in this contract, government is not directly involved. Principally, the representative of client is responsible for supervising and controlling the project in such contracts. This contract is of three components:

(a) Engineering; (b) Procurement; (c) Construction. These components may be implemented in one company. Therefore, although the three different components of E, P and C taking their responsibilities, client can only be referred to the contractor not directly to the offending unit. In this type of contract, client (Oil National Company) is always confident that one party is responsible for implementing the project as EPC. Maybe the only negative point presented in EPC contracts is its long time required for contracting. EPC contract is of some asvantages over other contract which causes to be widely interested in large oil projects. Such advantages along with forcing the risks to the contractor cause that national oil companies become more and more interested to accept this type of contract. The only deficiency of EPC contract is financing which offsets by the contractor through EPCF contract and approving project financing. In this manner, contractor can be contributed to the product (oil) with the client and dissipates the costs. The modern forms of these contracts are emerged in oil and gas contracts.

The general legal principles are the principles, which are accepted by all nations of the world, and the involved parties widened its context and discarded the national rules by selecting it as the governing rule of the contract. In most of these contracts, involved parties selected the common legal principles as the governing rule and if it does not exist, contract refer to general legal principles accepted by civilized nations or international laws. One of the positive characteristics of these principles is its dynamism. For this reason, its evidences cannot always consider as a constant. At the other hand, it can be concluded that these principles are resulted from legal convergence of governments. While this convergence developing these principles, sometimes can be developed by evolution of other principles.

Following the emergence of liberation and anti–imperialism movements in various governments around the world and their independency after World War II and beginning of Cold War, developing governments have been tried to use the principle of permanent possession on natural resources as one of the common principles of general international laws and in order to create more balance and equivalency in international relations. The considered principle has been an intensive conflict between western governments and third world ones. Certainly, one of the major reasons of this issue is its applicability as a strong shield against the argument of western governments about the absolute sovereignty of the principle of fulfillment of obligating in international contracts of governments and international agreements and in turn, the effort of investor governments to internationalize the international contracts and escape those from national rules of host country, especially for protecting against nationalization by the host government. In fact, the permanent possession on natural resources has not been developed independently but it has been used as a reaction to international political events. Some examples are including the issue between Iran and British Oil Companies (1951), Chile Copper Industry (1972) and Libya Oil Industry (1976–77). It is clear that the first step is defining the natural resources, clearly and correctly.

There are various definitions in various literatures. However, this concept has been accurately investigated during last decades. Natural resources are usually divided into two categories in geographical and economical books:

(a) Non–renewable resources, such as earth and mines which have been formed during millions of years and are of constant amounts.

(b) Renewable resources which can be reproducible during a human generation. This definition seems more acceptable, although there is not any confidence about its universality. The term "natural wealth" which is used as the alternative for natural resources in UN resolutions is not a clear meaningful relationship with natural resources. Hence, it is a conflict between some lawyers.

Some of them believe that: "why this possession must be exclusive for natural resources". Amir Rahimi suggests that this possession should be extended so that it involves all economic activities. The capacity and potential of human resources in a government also considered as its natural resources. At the other hand, the possession of natural resources, including all fossil and non–fossil resources, should be for the government in order to make strength and power in economical fields. It should be noted that the meaning of possession is the control and management of strategies in oil and gas contexts and its concept is not agreed with involvement of the host government in oil resources. Since oil is a strategic product which plays a critical role in the economy and safety of the country, the possession of government on oil and gas resources must be extended.

The possession of mines is different in each country according to the corresponding legal requirements; since private persons are allowed to pose oil mines. Hence, to investigate the nature of an oil contract, it is necessary to identify real and legal persons as all involved parties in such contracts. According to Article 38, Iran civil act, land possession requires the possession of parallel spaces, as high as below and above the earth and owner can pose in the air and on the earth unless it prohibited by law. Oil mines are belonged to the earth, whether exists on the earth such as salt stone mines or in depth such as oil and coal. Article 161, mines act states that: the mine, which is located on the property of a person, is belonged to that person. Mine possession differs based on its natural condition. After recognition of the principle of permanent possession of countries on natural resources, the principle of autonomy for determining the governing rule affects by it and it led to the fact that the national laws of the host country governs the contract. However, it makes limited requirements for the government. As a result, in contractual relationships, the principle of mandatory contracts and the principle of fulfillment to obligating were approved in inter–governmental agreements and are of absolute credit. About the contractual relationships of unequal parties, however, application of these principles with such credit is not certain. Private parties of the oil contract questioned about the involvement of government according to the possession right or national benefits by improving their position in the framework of contract and the principle of fulfillment to obligating.

While the principle of contractual freedom is respected in civil act of many countries, it is controlled by some constraints and its territory is extended to the point that it cannot violate the social rights and freedom of other persons. It is clear that the principle of contractual freedom does not mean that the will of persons in regulating a contract and determining its effects and conditions is infinite. Today, in contrast to the beliefs of individualists of 19th century who have not been considered any limit for the freedom of persons, there is not any lawyer who believe in unlimited freedom for persons and to prevent chaos, disturbance of the public peace and to maintain social necessities, law maker limits the freedome although respects and legalizes it. Therefore, the principle of freewill is not absolutely creditable. The most important constraints for this principle are: (1) law; (2) public peace; (3) ethics.

Some experts of private international laws believe that this principle facilitates fraud from laws and allows the parties to agree about the sovereignty of other laws to escape from their responsibilities and at the other hand, this issue causes lose of trust. Applying the principle of autonomy in selecting the governing rule of contract leads to a logical cycle; since in normal condition, the validity of contract verifies by law and law credits to will of parties while a will that is the creature of law can determine a law itself. In this manner, we are encountered to a logical cycle. Hence, opposition of this principle believe that the governing law to contract must determine by law not the will of parties; since law is the reason that contracts become imperative.

Here, we are briefly discussed about the position of autonomy in contract laws based on the basic laws of Iran: Iranian law maker, regarding the principle of freedom of contracts, states order in Articles 10, 968 and 975, Iran civil laws: Article 10 ends all conflicts about the principle of freedom of contracts and also answers to some religious questions (Such as arguments about the validity of initial conditions). It is obvious that in other legal systems, there are some limitations such as public peace ethics and imperative laws. Article 975 states that: court is not allowed to perform foreign laws or private contracts which are against the ethics or public peace due to hurting

social feelings or any other reason, although these laws are basically allowed. Article 6, civil trial law states that: court discards contracts which are against the public peace or ethics. Therefore, Iranian law maker explicitly determines the governing laws to contracts. In this regard, a contract in Iran can follow up a foreign law only if its parties are foreigner. Article 968 states that: the governing of the laws for the location of contract is imperative and any deal that violates these laws is against the public peace and hence, is discarded.

Selection of the governing law to contract must along with good will and parties should not misuse from their rights based on the principle of autonomy. Pros of limiting the will of parties believe that the selection of governing law can be validated even with a weak bond between contract and laws of the country. Good will means a will without fraud in a contract. Good will is validated in various legal systems and is one of the determinative factors for limitations and effects of contracts. Principle of good will is acceptable based on religious laws and there are many hadithes about good will. Therefore, if citing to good will does not violate the legal and religious rights of people, it can be validated as a contractual principle.

This is one of the fundamental principles of international business contracts and usually, trust can be achieved under the presence of eminence of parties, diplomatic support by the government and records of the parties and it requires a suitable guarantee such as creating the fields for transferring the topic of contract or making a legal insurance, letter of guarantee, LCD, etc. Confidentiality of information is one of the security issues of an international contract. As the parties of international contracts would have different nationality and legal systems and it is possible that parties would not be appropriately familiar with these principles, a role of a trustworthy intermediate to protect information is very critical. Hence, parties determine how to protect information based on their wills and put it to the contract.

This principle is referent to Article 10, civil act that states: "private contracts are pervasive relative to parties". According to this principle, the effect of contract is limited to the parties. According to civil act, the principle of order relativity is only assigned to the lawsuits. However, the question rises that how persons that are not parties of the contract support against the contract? If they are allowed by law maker to reconsider or this order is of absolute validity? In author's opinion, this issue has a same origin in both international and national legal system. In national legal system, the systems related to rules and policies of the country are of close mutual relationships and courts have determined operational guarantees to consider it. Hence, this principle should be investigated from to viewpoints in the context of international business contracts: (a) ability for absolute citing in legal phenomena; (b) ability for citing in legal problems. Legal phenomena have clear origins. Contract is a legal act between two or more given persons. According to the principle of order relativity, which its effect is limited only to the involved parties and or lawsuit, orders are only applicable for the involved lawsuits. Therefore, it can be concluded that: although the imperativeness of court orders and or the effects of contracts is not exceeded from the territory of parties' relationships, the presence of legal relation, that order is recognizable based on it, is validated from both lawsuits and third parties. Therefore, it can be said that: order is a legal phenomenon with absolute citing ability.

The principle of imperativeness is one of the most important religious rules governing the contracts and it means that when a contract is correct and its imperativeness is in doubt, this principle orders that the contract is imperative and irrevocable and involved parties are required to follow its contain. Article 219, civil act states about the imperativeness of contracts that: contract which are based on laws are imperative between the involved parties and their representatives unless it cancelled with consensual or due to a legal reason. The principle of imperativeness only governs contracts. It is clear that this principle is not only related to determined contract but involves undetermined contracts too. It is logical that when involved parties make a contract, they must responsible for its protection and also be confident about themselves. In contrast to the beliefs of some lawyers, this principle is supported by a huge social and economic interest; since all people regulate their economic relations based on this logic that involved parties take their responsibilities and if this principle is not approved, economic chaos will shadows our society. There is no businessman that trade based on promises and takes any responsibility for others.

Most governments are needed to absorb foreign investments in their infrastructural projects, including mother industries, to develop their industries. Therefore, make some laws about this issue. The encouraging, absorbing and supporting foreign investment act is one of these laws to absorb foreign cash investment in the form of currency as well as no–cash investment in the form of transferring the technology that plays a critical role in absorbing foreign investment, especially in oil and gas industries. Since the current sanction against Iran prohibits or widely limits any economical, technical and even foreign investing, it can be regarded as an opportunity to develop and progress the internal companies. Absorbing the foreign investment is not only in the form of cash but also would be very effective in the form of transferring technology and presenting in international markets. Generally, lack of foreign investment leads to weakening of the industry and regarding the current political situation, it would be led to isolation of our oil and gas industries. However, it would be led to developing mother upstream, midstream and downstream industries as well as growing internal economy by making appropriate rules (through compiling suitable laws in order to absorb and encourage foreign investors); since countries having oil are required to be developed in a way towards economic and energy self–sufficiency. Therefore, education and transferring technology is inevitable in order to achieve a sustainable development. Hence, educating experts in technical, economical and negotiating about oil contract is an infrastructural activity in oil industry of the countries having oil resources.

One of the major reasons for developing buy back contracts in Iran and United States are legal requirements induced by nationalization of oil resources and impossibility of assigning their possession; in addition, legal regulations wrote in five years developing plans of Iran and United States and oil rules and some dispersed regulations govern on oil contracts of Iran and United States. Legal requirements are as following:

Principles 44–45 and 81: according to 44th principle of constitution law, large resources and mother industries of Iran are

belonged to the government. The economic system of Iran is founded on three piles with accurate regulations: government, cooperative and private. Principle 45, constitution law: Public wealth such as left lands, etc. is belonged to Islamic government so that organize it based on general policies. According to 81th principle of constitution law: allowing foreigners to found business companies is absolutely prohibited. This issue is a reason for impossibility of any direct foreign investment in oil and gas industries of Iran.

(a) Oil act: Cooperation of foreign investments is allowed. (b) Oil act: Any consortium contract which guarantees the possession of foreigners on resources as well as the produced oil above the well is prohibited but this act allows "buy service" method for using in exploration, development and production. (c) Oil act: According to Article 6, foreign investment which requires the presence of investor along with possession on oil resources, facilities and equipment is prohibited. The 77th principle of constitution law governs the contracts between the Ministry of Oil and other governments. (d) Oil act: All oil acts before it is discarded and appropriate type of contracts are not clearly determined.

Articles (968–969–974–975 and 210–231 and 243 and 1240 and 1241). Iran civil act explicitly determines the governing law on contract and limits any freedom in this regard. According to these laws, a contract which signs in Iran can follow foreign laws only if all involved parties are foreigner (articles 968 and 969). Articles 975 and 210–231 are related to order rules about qualifications of involved parties and articles 1241–1243 and 1240 are related to protector contracts.

Firstly, requirements of the first, second, third, fourth and fifth five years economic, social and cultural development plans of Islamic Republic of Iran are discussed. It should be noted that regarding the performed studies, development plans are merely a set of various general orders that are not practical due to lack of appropriate, coordinated and optimum planning system as well as lack of integrated and fundamental relationship between fiscal planning and policies. Due to these deficiencies, there is a large difference between the predicted values in development plans and real ones. However, the development objectives of the plans can be obtained by more attention paying to the attitude and structure of plans. Regarding the importance of requirements of development plans, their orders are described here:

According to Article H, paragraph 29, the first economic, social and cultural development plans of Islamic Republic of Iran, Iran National Oil Company allowed to contract up to 3.200.000.000 dollar in order to provide the required gas for internal usages, export and operation of gas fields so that the costs of investment can be refunded from the production of these fields. According to Article Z, paragraph 29, government allowed to make buy back contracts up to 10 billion dollars in order to meet some demands of industries and mines in relation to export and investment. This plan has been performed.

It is an intra–generation plan which limited to sustainable development in agriculture and is summarized in four parts: effort to make social justice, sustainable development of agriculture, developing non–oil exports and reinforcing military forces of the country. Article X, paragraphs 22 and article C–3, paragraph 25 state that: governmental companies are allowed to make buy back contracts in the zone of passed plans in order to perform infrastructural plans for developing and increasing the production and export capacity of the country while insurance companies and banks are responsible for taking required surety–bond for foreign parties after taking enough guarantee from them. If the expired payment is not paid, it is possible to withdraw from bank accounts of foreign parties as these contracts are imperative documents.

This act, similar to the second one, is an intra–generation plan. It aimed to correct organization of the country and one of the main coordination in corresponding fiscal plans was equipping revenue resources of the government in order to achieve an economy without oil. However, not only the oil revenue of the government was not reduced during this plan, but also its contribution was largely increased. Four articles have been assigned to oil and gas sections in this plan: articles 85, 118–120. According to article 85, paragraphs C, D, V and X, central bank had not allowed guaranteeing the refunding of buy back contracts. All payments including refunding and related costs should be originated from exporting the production. Article 118 requires the Ministry of Oil to increase the production of crude oil and natural gas up to 1 million gallon and 250.000 m^3 per day, respectively, and production priority is for shared fields. Article 119 allowed the Ministry of Oil to make new generations of buy back contracts for exploration and developing new fields. Finally, article 120 insisted that all revenues from export of oil, gas and liquid gas productions is for the Ministry of Oil so that it is responsible for providing internal demands to oil products and maintaining and developing the current level of crude oil production and performing protecting plans for producing from oil resources.

It was an inter–generation plan which has been accounted for as long term economic document of the country for sustainable, knowledge–oriented development. Its objectives were: developing basic knowledge, providing national safety, protecting Islamic–Iranian identity and culture, effective sovereignty of the government and its establishment. Totally, three articles are related to oil industry entitled as preparation for fast economic growing which mainly discussed about the assignment of oil selling revenues and saving it in currency account. It should be noted that its third article has been corrected twice. The main orientation of this plan was highlighted in corresponding fiscal plans towards less relying upon oil export revenues and other natural resources.

The fifth five years plan is toward the 20 years perspective document. At the other hand, determining the objectives is the first and most important step in compiling a developing plan. For this reason, it is critical and vital to accurately determine its objectives. The main objectives of the plan are realizing two indices: progress and justice. Drawing native Islamic–Iranian development plan is the first step towards this objective: accelerated move towards realizing an Islamic society approaching towards justice and cooperation in all fields. In this plan, only four articles are related to oil and gas industries but it increased to eight articles by the congress (articles 125–132): the Ministry of Oil is allowed to increase the production of oil and gas up to 1 million gallons and 250 million m^3, respectively, by the priority for shared fields after passing technical and economical feasibilities of plans in economy council and writing on the fiscal

rules by the following methods: using various types of exploration, development, production in a determined period in oil and gas fields, by maintaining possession rights and applying holding down, using buy back method, by taking the principles and conditions cited in paragraph (b), article (14), fourth development plan.

As previously stated, this act has been passed and is related to encouraging and supporting foreign investment, its operational code as well as center for foreign investment services. The article 9 of this act state that foreign investment does not lead to expropriation and nationalization unless for public benefits and based on law. The right of government about the governance on natural resources is insisted in this article. In addition, various forms of foreign investment and methods for providing currency are discussed in this law.

In this operational code, some issues are explained which are in the framework of main laws but in more detail as well as more practical and operational manner.

In literature of international laws, there is not a clear legal definition of natural resources. Hence, the general criterion that considers natural resources as valuable economic goods is right here. Generally, there are four major references in which the international rules governing the natural resources and their possession: 1–3–4– charter of the UN: (a) The second paragraph of introduction, states about human rights and equal rights of nations and the fourth paragraph states about social progress and better standards of life in the light of comprehensive freedom and responsibility for using social and economical mechanism of development. (b) Articles 55 and 74 states about providing international peace through development.

(a) Resolution (VI) 523, 12 Jan 1952, is passed to make business agreements uniform towards maintaining the resources of countries. (b) Resolution (VII) 626, 21 Dec 1952, is explicitly stated about the right of developing countries for possessing their natural resources and it explained that the right of people to freely explore and use natural resources is agreed with charter of the UN. (c) In resolution (IX) 837, 14 Dec 1954, the selected word means right for determining destiny while it is one the status of human rights commission. (d) Resolution (XVII) 1803, 14 Dec 1962 guarantees the principle of permanent possession of natural resources. Next resolutions such as (XXI) 2158 and (XXVII) 3076 and (XXVIII) 3171 more emphasized on these points.

Conventions make international regulations uniform using global community or a part of it. In addition to international conventions about the governing rule on international contracts, there have been numerous two sides' agreements between various countries, especially in South America, Africa and Europe, United States and our country has not such agreement with other countries.

After declaring under ocean resources as common heritage of humankind, UN conference about the rights of seas passed some regulations about natural resources under the oceans in 10 Dec 1982. Generally, these regulations are relied upon the principle that the governance of country does not cause to claim the right of possession on these resources. These resources are operated by international bed ocean authority and through contracts with private persons.

3 Conclusion

In the current paper, we try to clear principles and rules for identifying differences between involved parties and similarities and distinctions induced by variety of these types of contracts and leads to this theory that different in type of contracts does not necessarily mean that their principles and bases and rules but the uniform principles governing on upstream, midstream and downstream contracts of oil industry is more than their differences and distinctions. Certainly, this research plays a basic role for clearing the differences between these contracts.

By comprehensive investigation of the history of oil industry and legal system governing it and investigating various types of contracts and considering related legal principles and fundamentals, the following results can be obtained:

Compiling legal nature of oil contracts and identifying their positions in the system of contracts requires enlightening the legal nature of involved and related factors on this legal foundation.

The governing rule on oil contracts is one of the most basic legal conditions of contract which considerably affects the permanency and lifetime of contract. Generally, international contract is related to different legal systems, forcibly or optionally. In fact, the governing rule is a function of contract's nature which defines as the governing rule on contract due to the relationship between contractual elements and legal systems. Now, regarding the point that this research aims to find principles that bring the best, highest and most accessible contractual benefits for our nation and finally, achieve uniform contract which protect our national benefits in upstream, midstream and downstream contracts of oil industry, it can be concluded that buy back contracts are not suitable alternative for concessionary and consortium contracts that are used around the world; since if the objective of Iranian government is preventing the control of foreigners on oil and gas resources, it can be achieved through alternating better contracts which consider the benefits of foreign investment more practically.

At the other hand, buy back contracts guarantee the complete possession of Iran and United States on oil and gas resources and prevents unnecessary costs by presenting an accurate plan and control of oil project. Therefore, maintaining buy back contracts with new changes in its content will guarantee our benefits.

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