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Means of Resolving Disputes Arising from the Misuse of Joint Oil Fields

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ABSTRACT

Petroleum wealth is considered one of the most important natural resources whose collection areas lie within the lower layers of the Earth's surface and the bottom of the seas and oceans. Nature has designated some regions of the world and not others to contain in their land and embrace these precious petroleum resources in their interior, given that oil fields form a continuous surface area that forms a single unit. It is indivisible and is located in one or more reservoirs. The fields may be within the borders of a country's territory or extend outside its territory and be shared by one or more countries. They are called joint petroleum fields or cross-border fields, and organizing the petroleum exploitation of joint petroleum fields, whether on land or sea, requires the conclusion of bilateral agreements, to fix and draw borders, and to divide the petroleum reserve so that its exploitation is either directly for each country within its territory, or through participation in petroleum exploitation via A joint project or by agreement to refer the matter to international companies specialized in petroleum extraction. In the event of failure to agree on the regulation of petroleum exploitation, this leads to the outbreak of disputes between the countries concerned in the production stage regarding the nature and extent of the rights claimed by the countries whose territory lies part of the oil field. The dispute occurs due to the conflict of their interests and is known as an international dispute, as represented by the situation resulting from a collision. Viewpoints between two or more countries. In this case, the dispute is closer to a political dispute, in addition to being a legal and economic dispute. At first glance, these matters are contradictory between them, but in the event of rapprochement between the two parties, this dispute can be settled and resolved through non-judicial means represented by negotiation methods. Direct friendly methods, as well as indirect friendly methods such as good offices, mediation and conciliation. Resolve the dispute through judicial means represented by international arbitration and the International Court of Justice.

Keywords : *natural resources; oil fields; Iraq; internal dispute*

INTRODUCTION

First: the subject of the research

Given that the disputes that arise regarding the exploitation of cross-border oil fields concern international legal persons, independent of each other and legally equal, the opinion of any of them cannot prevail over the opinion of the other, and therefore, in order to settle these disputes, there must be compromise. Between its parties, because the absence of a higher authority in the international community would make the basis for every settlement of any dispute in this regard an agreement between its parties.

If the United Nations Charter issued in 1945 referred to the settlement of disputes in multiple ways, they can be used to resolve all disputes, whether small or large, serious or not, provided that the concerned state approves of the method used. However, it is clear from international practices for resolving joint oil field disputes that there are specific

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methods that are supposed to be used to resolve such disputes, which are represented by negotiation, arbitration, and international judiciary.

Second: The importance of the research topic

The importance of the research topic lies in the fact that disputes related to joint oil fields need to develop appropriate legal solutions to them in accordance with the legal principles and rules that are relied upon primarily in settling these disputes, and in a way that preserves the interests of the conflicting parties, taking into account the importance of negotiations, and developing Appropriate legal solutions, in accordance with bilateral or collective agreements; Relying on legal, political and diplomatic means to resolve these problems before submitting them to the competent judicial authorities. Disputes related to joint oil fields require diplomatic and political efforts that may be undertaken by the state itself, or require the intervention of other parties to reconcile the conflicting parties, while developing proposals and solutions that are organized in the form of international agreements or contracts that are agreed upon between the parties concerned.

Third: The research problem

The subject of the study raises an important main problem related mainly to: What are the means of resolving disputes arising from the misuse of joint oil fields? Sub-questions arise from it, which are: How effective are the mechanisms and means (judicial and non-judicial) stipulated by the international legislator for resolving disputes over the exploitation of joint oil fields? Have these means succeeded in protecting the rights of all parties to the conflict?

Fourth: Research methodology

In order to fully understand and cover all aspects of the study, we had to adopt the analytical approach to study the topic (means of resolving disputes arising from the misuse of joint oil fields), by analyzing the texts of international agreements and charters that regulated the process of exploiting joint oil fields, as well as analyzing jurisprudential opinions. Which addressed the subject of the research, and the international rulings issued in an attempt to reach solutions to the research problem.

Fifth: Research plan

The research plan was divided into two sections. The first section was devoted to explaining non-judicial means of resolving disputes arising from the exploitation of joint oil fields, and it is divided into two demands. The first section was devoted to explaining the settlement of disputes of exploitation of joint oil fields through direct friendly negotiations. The second section was devoted to explaining, settling disputes. Exploiting joint oil fields through friendly, indirect means.

As for the second section, we discussed the judicial means to resolve disputes arising from the exploitation of joint oil fields, which in turn is divided into two demands. The first demand dealt with international arbitration, and the second requirement was devoted to a statement by the International Court of Justice.

In the conclusion, the results and proposals reached through the research will be discussed.

THE FIRST TOPIC: NON-JUDICIAL MEANS OF RESOLVING DISPUTES ARISING FROM THE EXPLOITATION OF JOINT OIL FIELDS

Non-judicial means of settling disputes resulting from the exploitation of joint oil fields are meant as “various methods and mechanisms used to settle disputes outside the scope of official courts and judicial bodies” .

It should be noted that these methods have become the most widespread around the world, especially in settling oil field disputes. This is with the aim of implementing agreements regulating the exploitation of joint oil fields and settling disputes arising therefrom.

“These means are resorted to because of the advantages they enjoy, such as the speed of resolving the dispute, maintaining its confidentiality, and low costs, in addition to their flexibility in terms of procedures for resolving the dispute and the rules applied to it” ( ).

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It should be noted that disputes between parties to agreements regulating the exploitation of joint oil fields are settled through direct negotiations and friendly communications, by direct agreement between the parties, and without interference from a third party for this purpose .

International negotiations may take place through third party intervention, meaning that the two parties do not begin to settle the dispute themselves, but rather by seeking the help of a third party.

In order to explain the non-judicial means of resolving disputes resulting from the exploitation of joint oil fields, we will divide this section into two requirements. We will devote the first requirement to explaining the settlement of disputes of exploitation of joint oil fields through direct friendly negotiations. As for the second requirement, we will devote it to explaining the settlement of disputes of exploitation of joint oil fields through friendly negotiations. Indirect, as follows:

The first requirement: settling disputes over the exploitation of joint oil fields through direct friendly negotiations

Negotiations are among the oldest means that have been used to settle disputes resulting from the exploitation of shared oil fields, as countries prefer to resort to them before using any other means. Negotiations are also considered one of the important diplomatic methods that are based on direct communications between the two conflicting countries, with the aim of settling the dispute existing between them. Through direct agreement, and unifying their points of view in order to reach the solution or organization that they agree on In the form of articles and paragraphs, it constitutes the draft agreement to be concluded.

In order to clarify the settlement of disputes exploiting joint oil fields through direct friendly negotiations, we will divide this requirement into two sections. We devote the first section to clarifying the position of international jurisprudence on resorting to negotiations. In the second section, we address international practices for settling disputes exploiting joint oil fields within the framework of negotiations, as follows: :-

The first section: The position of international jurisprudence on resorting to negotiations to resolve disputes over the exploitation of joint oil fields

There are many jurisprudential opinions regarding considering negotiations as one of the peaceful means of settling disputes arising from the exploitation of joint oil fields. Some international jurisprudence, including Dr. Hossam Ahmed Muhammad, considered diplomatic negotiations as one of the easiest ways to reach peaceful solutions to international disputes, given their lack of adherence to rules and procedures. Which often limits the ability of the parties concerned to reach such solutions, and he added that the success of negotiations depends in general on the extent of good faith among the parties concerned and the extent of their seriousness in reaching a peaceful solution .

Another side of international jurisprudence, including Dr. Ahmed Abu Al-Wafa, said that “it is established that the best way to resolve any dispute is that which requires that this be done through communication between the parties concerned themselves.” He added that this is conditional on this not being to impose rights that a party does not possess. Certain or to digest the rights of the other party or a third party absent from the negotiation process and concluded that in order for there to be a negotiation there must be something to be negotiated that falls within the authority or jurisdiction of the parties concerned.

While others from jurisprudence, including Dr. Abdul Wahed Muhammad Al-Far, see that direct friendly negotiations are a practical and successful means of settling international disputes, including, of course, disputes related to the exploitation of oil fields, especially if the participating parties have good intentions to end the dispute existing between them, and this is due to Negotiations are characterized by flexibility and breaking the barrier of doubt and mistrust between the two conflicting parties. The jurist concluded that because of this, many international treaties oblige their parties to resort to negotiation to settle the dispute before resorting to arbitration or international justice .

As a result of the importance of negotiation in settling disputes arising from the exploitation of joint oil fields, a part of international jurisprudence, including Dr. Ibrahim Muhammad al-Anani, believes that negotiation is a procedure that precedes all other settlement methods, as it is the natural and direct means of settling international disputes, and it can even be undertaken at the same time with.. Any other settlement method. Negotiation is often a preliminary means to reaching an agreement on the settlement method to be used to end the conflict .

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In the same sense, another side of international jurisprudence believes that negotiation is considered the main method in resolving disputes resulting from the exploitation of joint oil fields. In addition to its direct role in resolving them, it constitutes the first step in resorting to other means, as the conflicting parties must negotiate to determine Points of disagreement between them or the legal rules to be applied, if these countries decide to resort to arbitration or international justice .

While the two judges (Ammoun and Padella) believe that negotiation is a mandatory method between the signatory countries of the Geneva Convention issued in 1958, which are in dispute over the borders on the continental shelves, in application of the text of Article VI of the aforementioned agreement .

In summary, it can be said that the following results from conducting negotiations between conflicting countries regarding the exploitation of joint oil fields:

1- Either the dispute between the conflicting parties ends in such a way that no trace remains, and then there is no need to resort to any other means such as the judiciary or arbitration.

2- Or they fail to reach a settlement of the dispute through negotiation, and here they can resort to other methods of amicable settlement, judicial, or arbitration, according to what is agreed upon between them in the agreement regulating the exploitation process; In the event of failure to reach a solution through negotiation, they must involve a third party and seek its assistance in order to end the dispute arising between them.

Section Two: International Practices For Settling Disputes Over The Exploitation Of Joint Oil Fields Within The Framework Of Negotiations

Direct friendly negotiations are one of the diplomatic methods for settling international disputes, especially disputes related to the exploitation of joint oil fields. They differ from judicial methods in terms of the procedures and substantive rules they apply. Judicial methods lead to the issuance of a ruling binding on both parties to the dispute, based on customary legal rules and conventions. As for the settlement that takes place through diplomatic methods, it does not have to be based on legal rules as much as it needs to be based on reconciling conflicting interests and reaching a solution acceptable to both parties.

Among the international practices that referred to negotiations in the event of disputes regarding the exploitation of joint oil fields is what was stipulated in Article 4 of the agreement concluded between Norway and the United Kingdom in 1965, which stipulates that “in the event of the existence of oil fields or other mineral resources, there shall be a single geological unit extending across a line The relevant border on the continental shelf between the two countries, and if the part of this field or geological structure located on one side of the border line can be fully or partially exploited on the other side of it, then the two contracting countries must negotiate in order to reach an agreement on how to exploit it in an effective manner, and on how to divide the proceeds. "( ).

Article 2 of the agreement concluded between Italy and Yugoslavia regarding the delimitation of the border between them in the area of the continental shelf of the Adriatic Sea in 1968 stipulates that “in the event that it is confirmed that there are natural resources on the seabed or in the sub-bottom, d to both sides of the agreed-upon boundary line on the continental shelf between the two countries, so that this leads to the possibility of exploiting the petroleum and mineral resources that belong to the part of the continental shelf belonging to one of the contracting states, partially or completely, through part of the continental shelf belonging to the other state, so the competent authorities in the contracting states must Negotiating with the aim of reaching an agreement on the method of exploiting the aforementioned wealth, before starting consultations with those who are authorized to exploit it later.

What can be observed from the text of Article Two of the above agreement is that it imposed a clear obligation on the two countries not to begin exploiting or granting licenses to exploit the acquired composition of petroleum and mineral resources extending to the continental shelf of the two countries, except after reaching an agreement between them regarding the method of exploitation, and this imposes on them It is necessary to reach an agreement in this regard and not just enter into negotiations.

In addition, we find that Article 3 of the agreement concluded between Federal Germany and Denmark in 1971 stipulates that “in the event that mineral or petroleum resources are discovered on the continental shelf of one of the two countries, and it turns out that they extend to the continental shelf of the other country, the governments of the

two countries must reach an agreement." An agreement on its exploitation, taking into account the interests of both countries, and on the basis that each of them has a right over the sources of wealth inherent in its continental shelf.

What is noted in the text of Article Three of the above agreement is that it stipulates a commitment to the necessity of reaching an agreement and not just starting negotiations. Both countries are obligated to work to ensure that the negotiations end within a reasonable period by concluding an agreement between them regarding the shared oil fields on the continental shelf.

In addition, we find that both Saudi Arabia and Bahrain have adopted the method of direct friendly negotiations regarding the dispute that occurred between them regarding the exploitation of oil fields in their shared coastal area. These negotiations resulted in the conclusion of an agreement in 1958, which stipulates "unified exploitation of the common area between the two parties." Through Aramco, which was entrusted with the use of drilling and exploitation rights on behalf of the two parties, and in accordance with the conditions specified in its concession contract with the Saudi side, the two parties agreed that half of the net revenue would be divided equally between the two countries, with the company operating the field receiving the other half.

The negotiations that took place between Iran and Bahrain, as opposing countries in the Arabian Gulf, also resulted in the conclusion of an agreement in 1971 for the purpose of dividing and demarcating the opposing maritime borders between the two parties on the continental shelf with the aim of defining the natural resources of the oil and gas fields shared between them, and the agreement became effective in 1972 .

On the basis of this agreement, the division of borders was negotiated based on the method of straight lines. This method is called (land line). This method is resorted to in the event that there is a deep dent or discontinuity in the coast, or there is a group of islands forming a chain along the coast at a direct distance. ., and that the negotiating parties took this approach by referring to the solution provided by the International Court of Justice in its decision issued regarding the fisheries issue in 1951 ., which took into its terms the Geneva Sea Convention of 1958 and the United Nations Convention on the Law of the Sea of 1982 .

Through the analysis of the aforementioned agreements, it becomes clear to us that they have indicated the existence of an obligation on the States Parties to resort to direct friendly negotiations before beginning the exploitation of the common petroleum resources, with the aim of reaching an agreement on all issues related to the development and exploitation of the common source, as the negotiations include the following aspects:):

1- Estimating the stock of crude oil and other producible hydrocarbon materials contained therein.

2- The division criterion on the basis of which the share of production of each of the concerned countries is determined.

3- The method of joint exploitation that determines the degree of cooperation between them in order to preserve the rights of each of them and take into account common economic interests.

The second requirement: settling disputes over the exploitation of joint oil fields by amicable, indirect means

The agreements regulating the exploitation of joint oil fields often stipulate that disputes must be resolved through negotiations, and not to resort to other stipulated means of settlement, except after it is impossible to settle them through negotiation, meaning that other legal means must be sought to settle these disputes, after the inability of the conflicting parties. By reaching an agreement through direct friendly negotiations that ends the dispute between them, which provides appropriate conditions for one or more third parties to intervene in order to help find a peaceful settlement of this dispute.

In order to explain the settlement of disputes over the exploitation of joint oil fields by indirect amicable means, we will divide this requirement into two sections. We devote the first section to explaining good offices and mediation, and in the second section we address conciliation as follows: -

Section One: Good Offices and Mediation

To study good offices and mediation as alternative peaceful means of settling disputes arising from the exploitation of joint oil fields, we will divide this section into two paragraphs. In the first paragraph we discuss good offices, and we devote the second paragraph to explaining mediation as follows: -

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First - Good Offices: Good Offices are an act undertaken by a state (other than a conflict state) to bring two conflicting points of view closer together. These states do not, by default, participate in the negotiations, nor do they provide solutions to the dispute .

It is worth noting that the United Nations Charter of 1945 did not explicitly mention (good offices) as one of the peaceful means of settling international disputes referred to in the text of Article (33) thereof, but it is implicitly included in these means by adding the phrase: "or other means." peaceful means of their choice."

Unlike the Hague Conventions of 1899 and 1907) which explicitly referred to "good offices as a peaceful diplomatic means for resolving international disputes, including, of course, disputes arising from the exploitation of joint oil fields, and called on countries to use them in their mutual relations" .

The (good offices) method is resorted to in the event that disputes cannot be settled through diplomatic negotiations, and there are conflicting rights and demands. However, there is no obligation on any country to provide its services in this regard, nor is there an obligation on any party to a conflict to accept the (good offices) offer. In all cases, the third party must obtain the approval of both parties to the dispute before exercising its good offices. It is then permitted for it to attempt to bring the two parties to the dispute together, making it possible for them to reach an appropriate solution to the dispute. This is done by meeting each of the two parties to the conflict individually, and it is rare for the third party to attend a joint meeting. When a dispute cannot be settled through diplomatic negotiations, and the conflict of rights or demands appears to be of sufficient importance, then the method of (endeavours) can be resorted to. Al-Hamidah .

It is a condition for the success of (good offices) that it does not conceal selfish motives, as it is a friendly act, which must be free of bias towards any of the interests of the two parties to the conflict or stemming from the interest of the third party who exerts its good offices .

The "good offices" usually end in persuading the two disputing parties to sit at the table for direct negotiations, or helping them to resume them, or accepting the principle of an amicable settlement of the dispute, without the third party studying the details of the conflict in depth or contributing to the negotiations. However, there are cases in which the two disputing states have invited the third party, which has accepted the offer of its good offices or sought its assistance for this purpose, to be present during the negotiations.

One of the applications that can be cited regarding (good offices) is what some Arab countries did regarding the Iraqi-Kuwaiti conflict regarding the issue of joint oil fields in 1990 .

Likewise, the efforts undertaken by Tunisia, Egypt and Ethiopia in the dispute existing between Algeria and Morocco over some border regions during the months of October and November 1974. The dispute between Chile and Peru in the Tacna-Arica region was also settled through the good offices of President Herbert Hoover.) The President of the United States of America at that time, who presented a proposal to divide the region, which was accepted by the parties on May 15, 1929, which in turn led to the conclusion of the Lima Treaty on June 3 of the same year, whereby the Tacna region was annexed to Peru and the Arica region was annexed to Peru. Chile. It is worth noting that this dispute is one of the longest international disputes related to borders, and its goals lie in exploiting the common natural resources in these regions .

Second - Mediation: Mediation is defined as "an optional, non-binding means of resolving disputes, under which the parties resort to a neutral third party, who acts as a mediator in an attempt to resolve the dispute by examining the requests and claims of the parties and assisting them in negotiating to resolve the dispute" .

Mediation, like other means of settling disputes, also has its own rules, given that the mediator has a pivotal and important role in completing the mediation process, and it is important from the beginning that the professional behavior of this mediator chosen by the parties, or appointed by others (the arbitration center for example) is consistent with Rules of conduct for the arbitrator: No person may act as a mediator in any dispute if he has any personal or financial interest as a result of this mediation.

The mediation method differs from the good offices method in the degree of participation undertaken by the third party. According to this method, it has direct participation in the negotiations and suggests appropriate solutions. This method is characterized by its effectiveness, as the presence of the foreign element in resolving international disputes constitutes a source of moral pressure on the conflicting parties. An example of this is the mediation undertaken by

six member states of the Inter-American region to end the long dispute between Bolivia and Paraguay over the Chaco region.

In the field of exploitation of joint oil fields, mediation was used to prevent the escalation of the dispute over these fields, and thus, to prevent the outbreak of conflict between the parties, such as the Algerian mediation between Iraq and Iran, which resulted in the signing of the Algiers Agreement, as well as the American mediation between Saudi Arabia and Kuwait regarding the dispute over the joint oil fields. (Al-Khafji Field and Al-Wafra Field)" .

In summary, it can be said that states can resort to mediation as a non-judicial means to resolve disputes arising from the exploitation of joint oil fields. However, before resorting to mediation, it is required that negotiations and good offices be resorted to. In the event that these means fail to settle the dispute, states have the right To resort to mediation to solve it.

Section Two: Success

Conciliation is one of the non-judicial means of settling disputes, and countries usually resort to it in the field of petroleum investment, in order to resolve the dispute by bringing together different points of view .

Conciliation is defined as "an amicable way to settle disputes that arise between the parties, based on the selection of a person, in an effort to reach a path that brings together the different points of view without extending the cycle to proposing a solution they are satisfied with" .

It is also known as "one of the alternative means of resolving commercial disputes, and it is mediated by a neutral and impartial third person. Its purpose is to bring the parties to the dispute closer and propose a reconciliation agreement between them. This person is called the conciliator, and his decisions are non-binding and cannot be implemented by force"

It is also known as "a means of settling investment disputes, whereby the two parties to the dispute resort to a neutral body that determines the facts and proposes foundations for settling the dispute that can be satisfied by both parties"

Through the presentation of these definitions, it becomes clear that one of the most important features of conciliation is that it brings together the two parties to the dispute through a third party Third, it may be a specific individual or an institutional body, called a conciliator or conciliation body, in order to find an amicable solution between the conflicting parties. Unlike an arbitrator or judge, a conciliator does not decide the dispute, but rather presents proposals to both disputing parties.

Conciliation is considered a modern type of mediation, and a middle way between it and arbitration and the judiciary. The League of Nations drew attention to it at the beginning of its formation, and it became popular among countries, and was stipulated in many bilateral and collective treaties concluded to settle international disputes, the most important of which is the Locarno Agreement of 1925. And the Arbitration Charter of 1928. Conciliation was undertaken by special committees, called (conciliation committees), which were similar in composition to investigation committees and their tasks, in addition to investigating the issues on which the dispute was based, with the possibility of proposing a solution to this dispute that could be satisfied by both disputing parties . .

An amicable settlement usually takes place on the initiative of one of the parties after the dispute arises, but in different cases the reconciliation process may take place as a result of an agreement reached between the parties before a dispute occurred between them, or based on a lawsuit from the arbitration center or chamber . This was clearly stated specifically in Article (28) of the Washington Convention of 1965, which stipulates that "1 - Any Contracting State or any citizen of a Contracting State wishing to institute conciliation proceedings must submit a written request in this regard to the Secretary-General, who shall send a copy From the request to the other party to the dispute.

Upon completion of the conciliation procedures, either the conciliator will reach a written agreement to settle the dispute, then this agreement becomes binding on the parties and is enforceable from its date, or the conciliator will fail in trying to reconcile the parties to the dispute, then the conciliator must in this case write a report proving the failure. Trying to reconcile the parties to the conflict .

The parties to the dispute may not wish to continue with the conciliation procedures. In this case, the parties to the dispute must announce their position in this regard while committing not to disclose and maintain secrets that were present within the efforts of the conciliator to obtain a solution to settle that dispute .

Hence, it becomes clear to us that conciliation procedures are carried out through good offices, far from the idea of rivalry, and this would preserve the friendly relationship between the parties to the dispute in the matter of accepting or rejecting the conciliator's proposals. However, the parties to the conflict's conviction of the impartiality adopted by the conciliator invites them to consider the proposals made by the conciliator. By presenting it and the solutions it presents. This confirms the importance of the effect of the conciliator being a specialist in the disputed field. Then the conciliator will have a more effective impact in resolving those disputes and forcing the parties to resolve the dispute.

It is worth noting that the role of conciliation in settling disputes arising from the exploitation of joint oil fields "is a means of bringing together different points of view and proposing some solutions without this including an obligation to accept them, because the conciliator does not have, like a judge or arbitrator, the authority to make any decision, but rather It helps the conflicting parties to reach a solution through the recommendations provided.

Among the first petroleum agreements that referred to resorting to conciliation as a means of resolving disputes was what was stipulated in Article 43 of the petroleum agreement between Iran and the consortium company in 1954. It states: "The parties have the right to refer the dispute to a mixed investigation committee consisting of four members, each party nominating two of them. It is the responsibility of the committee to search for an amicable solution to the dispute, and it issues its decision after hearing the statements of the representatives of the two parties within a period of three months, starting from the date the dispute was presented to it." In order for the decision to be binding, it must be issued unanimously.

The second topic: Judicial means for resolving disputes over the exploitation of joint oil fields

Judicial means are considered the most important methods of resolving international disputes arising from the exploitation of joint oil fields. This importance is due to the effectiveness and resolution that these means achieve for this type of dispute, which often has exhausted other diplomatic means without reaching solutions acceptable to the parties.

Judicial means are distinguished over other means of resolving disputes by two basic advantages: First, the decisions issued through these means have binding force vis-à-vis the parties to the conflict, so rulings issued by the International Courts of Justice or its predecessor (the Permanent Court of International Justice) have binding force vis-à-vis the parties to the conflict and in Its facts ., and rulings issued by courts or arbitration bodies do not have this force unless explicitly stated so ., and in the event of refraining from implementing these rulings, especially those issued by the International Court of Justice, the other party has the right to resort to the Security Council to take the necessary measures To implement them, while non-judicial means do not have any binding status unless the parties reach an agreement regarding them .

As for the second advantage, judicial settlement is often based on the application of applicable legal rules. Settlement on illegal grounds is not permitted except at the request of the parties.

In order to explain these methods, we will divide this topic into two requirements. We devote the first requirement to explaining international arbitration, and we devote the second requirement to explaining the International Court of Justice, as follows: -

The first requirement: international arbitration

International arbitration is considered one of the most well-known judicial methods in the scope of international disputes related to the exploitation of shared petroleum resources. In addition to its flexibility in dealing with disputes of a mixed legal, economic, or technical nature, it often achieves a balance between conflicting national interests in this regard, as it enjoys The parties are free to choose arbitrators whose competence and integrity they are confident of, in addition to their complete freedom to choose or exclude the applicable legal rules, or apply other considerations.

In order to explain international arbitration as an important judicial means in resolving disputes related to the exploitation of bit fields In this case, the matter requires dividing this requirement into two branches. We will address the first branch to explain the concept of international arbitration as a legal tool for resolving disputes in joint oil fields. As for the second section, we will discuss international practices for settling disputes of exploitation of joint oil fields within the framework of international arbitration, as follows: :-

The first section: The concept of international arbitration as a legal tool for resolving disputes in joint oil fields

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International arbitration is one of the ancient judicial methods used in international relations to resolve disputes peacefully. Arbitration courts can consider all international disputes regardless of their nature. They may decide on political or legal disputes, and other disputes as long as the arbitration agreement grants them this authority.

In order to learn about this method, it is necessary to understand the definition of international arbitration, its legal nature, and the immediate measures taken to prevent the escalation of disputes, as follows:

First: Definition of international arbitration: There are many definitions provided by international law jurists regarding arbitration. Some of them (Dr. Kamal Abdel Aziz Taji) argued that what is meant by international arbitration is "one of the means of resolving disputes between two or more persons of international law, and the ruling issued by The arbitrator or arbitrators chosen or agreed upon by the disputing states shall be binding." .

Others, including Dr. Ibrahim Muhammad al-Anani, defined it as "a means of peaceful settlement that countries resort to, to liquidate the centers in dispute in an effort to achieve the rule of law instead of the rule of force" .

Others, including Dr. Khalil Hussein, also defined it as "a procedure by which a dispute between two or more countries can be resolved by a binding ruling issued by an international arbitration body" .

Some scholars of jurisprudence, including Dr. Hosni Musa Mahmoud, define it as "the consideration of an international dispute with the knowledge of a person or body to whom the disputants resort, with their prior commitment to implement the decision issued in the dispute by this person or body" . This definition is consistent with the definition contained in Article (37) of the Hague Convention for the Peaceful Settlement of International Disputes of 1907, which stipulates that international arbitration is "the settlement of disputes between states on the basis of respect for the law by judges chosen by these states themselves, and resorting to arbitration involves basis of an undertaking to submit to the arbitration award, in good faith by judges of your choice, and on the basis of respect for international law."

Based on the definition above, international arbitration in the field of disputes related to the exploitation of joint oil fields can be defined as "the settlement of disputes arising between the countries concerned and related to joint oil fields by judges chosen by them and on the basis of respect for the rules of international law."

Second: The legal nature of international arbitration: "The arbitration that is resorted to in settling disputes related to joint oil fields is arbitration of an international nature, governed by the rules of public international law, taking into account the provisions agreed upon by the parties to the dispute that regulate the operations of exploitation and investment of these fields." Arbitration here is considered international arbitration, as it is carried out by two sovereign states, and the parties may agree to choose arbitrators by an international body such as the International Court of Justice. International arbitration is limited to cases that are between persons of public international law.

Third: Immediate measures taken to prevent the escalation of disputes: The concerned governments are generally obligated to provide facilities to arbitration bodies, such as providing the documents or information they request and facilitating the conduct of inspections if these bodies decide to conduct them.

In addition to the power of arbitration bodies to issue final decisions binding on the parties to the dispute, they sometimes have the power to take immediate or temporary precautionary measures to prevent the dispute from aggravating or causing harm to one of its parties, without entering into its subject matter .

International work abounds with many legal precedents, as the letters exchanged between Saudi Arabia and Abu Dhabi attached to the agreement on arbitration in 1954 stipulate that the two parties agreed to take immediate and precautionary measures to prevent the escalation of the dispute between them, especially in undertaking activities related to the discovery of oil in the region, until.. Deciding on the subject of the dispute.

The implementation of these procedures has recently been raised in the heated dispute between Turkey and Greece over the exploratory activities carried out by Turkey in the Aegean Sea region, which have reached the point of military conflicts between the two countries. Greece has asked the International Court of Justice to intervene to impose immediate precautionary measures in accordance with According to Article (41) of the court system ( ), which allows it to intervene in the event of the possibility of irreparable damage to one of the litigants, and the court rejected this request. The exploratory activities carried out by Turkey to discover the riches of its continental shelf do not represent irreparable harm, knowing that Greece has filed a lawsuit on the basis that exploratory activities weaken its economic

position when conducting negotiations with advanced investment companies to exploit this region, in addition to the harmful effect on Its policy related to energy production, which in its opinion constitutes damage that is impossible to repair.

Section Two: International practices for settling disputes over exploitation of joint oil fields within the framework of international arbitration

The practical reality has witnessed many international practices for settling disputes arising from the exploitation of joint oil fields through many collective and bilateral agreements, which stipulate the choice of arbitration as a means of resolving legal disputes, which cannot be predicted in the future, and over which paragraph of the agreement the dispute arises. Changes may occur in the interests of the parties during the period of implementation of the agreement, which is often a long period. Therefore, When drafting the agreement, it is important to follow the method of simplicity and clarity, and this is what is stipulated in many collective and bilateral agreements .

Among the international practices that referred to resorting to international arbitration as a means of resolving disputes related to the exploitation of joint oil fields, is what was stipulated in the collective agreement concluded between the Federal Republic of Germany, Denmark, and the Netherlands in 1971, to refer any dispute that may arise regarding determining the legal nature of oil or gas reservoirs. Which are discovered on the continental shelf at the border areas agreed upon, may be referred to arbitration to decide whether they are national reservoirs located entirely in the extensional or continental sector of one state or a joint state that extends across the border to the continental shelf of another state, and in the event that an arbitration ruling is issued confirming their international status, or if The two parties agreed that before submitting the dispute to arbitration, the agreements obligate the disputing parties to enter into negotiations with the aim of settling the dispute over how to exploit the common reservoirs .

This is what Article Two of the above-mentioned agreement indicated, saying, “In the event that a source of mineral resources is discovered on the continental shelf of either party, and the other party realizes that the discovered reserve extends to its continental shelf, it must present its proposal to the other party supported by the necessary data.” If the viewpoints of the two parties do not agree, the arbitration court stipulated in Article Five of the Agreement shall have jurisdiction to decide on this matter based on the request of one of the parties.

In addition, we find that the bilateral agreement concluded between the Federal Republic of Germany and the Netherlands included the same rules with an insignificant difference in wording. Article 2 of it stipulates: “If one of the contracting parties proves the presence of minerals in or on the continental extension, and the other party sees conclusively that the presence of these minerals extends to its continental extension, then the latter party must notify the first party of that, supported by the data on which its opinion is based.” If the first party does not support this opinion, the arbitration court must issue its ruling on this matter based on the request of one of the parties. If the two parties agree in opinion or if the court’s decision is issued in support of the fact that the minerals extend throughout the continental extent of each of the two parties, then the governments of the contracting parties must. Issuing rules for exploitation, taking into account the interests of both parties.

The third agreement concluded between the Federal Republic of Germany and Denmark also included similar provisions regarding some procedures for settling disputes over common reservoirs.

The bilateral agreement concluded between the United Kingdom and Norway in 1965, on regulating the joint exploitation of the Faraj field, also referred to international arbitration as a means of resolving disputes related to the exploitation of joint oil fields in the event that peaceful means fail to settle the dispute, through what was stipulated in Article (27) of the agreement. By saying, “..any dispute between the two countries regarding the interpretation or application of the agreement, or any issue related to contracts concluded between licensees or owners of pipelines, shall be settled through negotiations or an advisory committee. If a settlement is not possible, either party may submit the dispute to an arbitration court.” It consists of three members, each government appoints one of them, and the third member is chosen to preside over the court by the appointed members, provided that the person chosen to preside over the court is not a citizen or resident of Norway or the United Kingdom. If one of the two countries fails to appoint a member of the court, the government of the other country may Request the International Court of Justice to appoint him, and the arbitration court’s ruling shall be binding on both parties.”

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The second requirement: the International Court of Justice

The Permanent Court of International Justice was established based on Article 14 of the League of Nations. The court continued its activity until the outbreak of World War II, when it was decided to officially dissolve it in 1946 as a result of the disappearance of the League and its replacement by the United Nations. With the establishment of this organization, another new court was established, the International Court of Justice, to operate as a judicial body affiliated with the United Nations, which replaced the Permanent Court of International Justice. It should be noted that the system of this new court does not differ from the system of its predecessor, and its basic system is almost the same. The statute of the Permanent Court of International Justice, and its headquarters is the same as the headquarters of the previous court (The Hague, Netherlands).

The United Nations Charter of 1945 referred to the International Court of Justice in the first paragraph of Article Seven as one of the basic organs of the organization, and then Chapter Fourteen of it was devoted to it. Article (92) of the Charter, which is the first article of Chapter Fourteen, stipulates that "the Court International justice is the main judicial instrument of the United Nations, and it performs its work in accordance with its statute annexed to this Charter, which is based on the statute of the Permanent Court of International Justice and is an integral part of the Charter.

In light of the above, we will divide this requirement into two sections. In the first section, we will discuss the importance of the role of the International Court of Justice in settling disputes in joint oil fields. As for the second section, we will discuss the applications of the International Court of Justice in settling disputes over the exploitation of joint oil fields, as follows: -

The first section: The importance of the role of the International Court of Justice in settling disputes in joint oil fields

The importance of the role of the International Court of Justice in settling disputes related to the exploitation of joint oil fields is embodied in a set of characteristics and advantages that it enjoys in terms of how it is formed and considers the dispute brought before it. We will explain this by dividing this section into three paragraphs as follows:

First: Formation of the International Court of Justice: The formation of the Court in itself gives it special importance, as the Court consists, based on the first paragraph of Article Three of the Statute, of fifteen cases. It may not be Two of them are nationals of one country, and they are required to have high moral and scientific qualities and be experts or legislators in the field of international law, regardless of their affiliations or nationalities .

Based on the text of the first paragraph of Article Four of the Statute of the Court, members of the Court are elected by the General Assembly and the Security Council from a list of persons nominated by national groups.

The court's judges are chosen for their personal qualities and represent the major legal systems and schools in the world to prevent the presence of judges representing specific legal systems that would consequently make the rules applied by them foreign to the conflicting countries. In order to increase confidence in the court's judges and ensure their impartiality and integrity, they are prohibited from working in any political or administrative profession or position, or any position related to the case pending before the court, such as an agent, lawyer, or advisor. This provides the required confidence in the court's judges.

It is worth noting that resorting to the International Court of Justice is one of the most prominent judicial methods known for resolving disputes between countries. The International Court of Justice also has special importance in resolving border problems and exploiting natural resources therein. The International Court of Justice is considered the main judicial body of the United Nations in accordance with Article 92 of the United Nations Charter.

Second: Jurisdictions of the International Court of Justice: The International Court of Justice exercises two types of jurisdictions. The first type is judicial jurisdiction. The jurisdiction of the International Court of Justice is originally optional. Meaning that its mandate is based on the consent of all disputants. This jurisdiction does not extend to anything other than what the parties agree to refer to it, whether at the outbreak of the dispute or before it. According to the provisions of the first paragraph of Article (36) of the Court's statute, the court's jurisdiction includes all cases that the parties present to it, and it also includes all matters stipulated as Especially in the United Nations Charter, or in applicable treaties or agreements .

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As for the second type of jurisdiction, it is embodied in the advisory jurisdiction. The International Court of Justice, in addition to its judicial mission, has another function, referred to in the Charter of the United Nations and chaptered in the Statute of the Court, which means that it issues a fatwa on any legal issue on which the General Assembly or the Security Council requests it to give a fatwa. Other organs of the United Nations and its specialized organizations can submit a request for an advisory opinion to the Court if the General Assembly approves it .

For our part, we believe that the diversity of the International Court of Justice's jurisdiction between (fatwa and judicial) has a positive role in resolving all international disputes, including disputes related to the exploitation of joint oil fields.

Third: Procedures of the International Court of Justice: The procedures of the International Court of Justice are characterized by transparency, taking into account the interests of litigants, preserving their rights and ensuring their integrity. The Court has the right to take the temporary measures it deems necessary to preserve the rights of the parties in the disputes developing before it . Court sessions are held in public unless otherwise decided.

The court issues its decisions according to the opinion of the majority of the judges present. The ruling must be reasoned and include the names of the judges who participated in it.

It is important to point out here that the ruling issued by the court has binding force with respect to those against whom it was issued in relation to the subject of the dispute that was decided . In addition, its provisions are compulsorily implemented in the event that one of the litigants refuses to implement them, and through the mediation of the Security Council at the request of the second party ., and it is also final and not subject to appeal, and in the event of any disagreement about its meaning, the court interprets it based on the request of one of the parties .

As a result of the advantages and characteristics enjoyed by the international judiciary represented by the International Court of Justice, it plays an important role in settling disputes resulting from the exploitation of joint oil fields. This will be clarified through court applications.

Section Two: Applications of the International Court of Justice in settling disputes over the exploitation of joint oil fields

Resorting to the International Court of Justice is considered one of the most prominent judicial methods known for resolving disputes between countries. It is also of particular importance in resolving border problems or exploiting natural resources therein.

"The International Court of Justice has played a major role in resolving disputes between opposite or neighboring coastal states, especially disputes over the delimitation of maritime borders. The criteria used by the International Court of Justice to settle maritime border disputes between those countries have varied, as we note that it sometimes uses the principle of the middle line or equal dimension, and that it takes into account the principle of special circumstances, and emphasizes in every case the need for the solution it reaches to be consistent with the principles of justice" .

International work is full of many examples of the intervention of international judicial bodies in resolving border disputes in general, and in the exploitation of shared petroleum wealth in particular.

The most relevant international practices to settle the dispute over joint oil fields, which were considered by the International Court of Justice, were related to delimiting borders, and then determining the ownership of petroleum resources to one or both parties to the dispute. It was delimiting the borders on the continental shelf between the Federal Republic of Germany and the Netherlands. Denmark is the subject of a dispute between them, due to the refusal of the Federal Republic of Germany to apply the principle of the middle line stipulated in Article VI, paragraph 2, of the Geneva Convention on the Continental Shelf in 1958, on the basis that applying this principle leads to unfair, and even unjust, results for it, as it obtains under it a portion Simple part of the North Sea continental shelf.

On February 2, 1967, the three countries agreed to submit their dispute to the International Court of Justice. The court ruling was issued in support of the view of the Federal Republic of Germany, as the court ruled that "the demarcation of boundaries on the continental shelf must be carried out by agreement on the basis of the principles of justice, and taking into account all surrounding circumstances, So that this would leave each of the countries concerned

with the continental extension, which is considered a natural extension of its terrestrial territory under the surface of the water, without leading to an attack on the natural extension of the territory of other countries.

Another practice of the International Court of Justice is the issue of delimiting the continental shelf between Tunisia and Libya, where the two countries agreed to submit the dispute existing between them on 6/10/1977 to the International Court of Justice. This case was also related to the division of petroleum wealth and the granting of concessions in the disputed area. The International Court of Justice ruled on February 9, 1982 in that case that "it is necessary to take into account any available indications of a line or lines that the parties themselves consider fair or have acted upon in this manner." The Court indicated the existence of a maritime border that governs reality. This line arises from the same method in which the two parties granted oil concessions, and extends from the end point of the land border towards the sea.

In the Gulf of Maine case between Canada and the United States of America, both Canada and the United States of America asked the International Court of Justice to draw a single maritime border separating their exclusive economic zone and their continental shelf in the Gulf of Maine, where Canada claimed that their behavior represented identical lines of granting concessions. Petroleum production for both Canada and the United States of America in the conflict zone, proving the existence of a de facto maritime border or a maritime border on a temporary basis, but the United States of America denied the existence of the line attributed to it by Canada, and also denied respecting the permits it had issued for any specific line .

Since Canada had based its claim on the ruling of the International Court of Justice in the case of Tunisia and Libya, the Court indicated that even assuming that there was a de facto demarcation between the areas in which each party had issued permits, this could not be considered as a situation similar to the situation it relied on. The court made its conclusions in the case of Tunisia and Libya. In that case, the court relied on the behavior of each of the two countries, but it gave special consideration to the behavior of the colonial countries that were previously responsible for the foreign affairs of the two parties, i.e. France in relation to Tunisia and Italy in relation to Libya .

In addition, we find that the International Court of Justice had a major role in resolving the border dispute between Qatar and Bahrain . as a result of the failure of good offices and negotiations to resolve it, so the dispute was presented to the International Court of Justice by agreement of the two parties in 1991, and the court issued its ruling to resolve the border dispute. It was stated on 3/16/2001, "By demarcating a single maritime border in the Gulf of Bahrain, thus defining the territorial waters of Bahrain and Qatar and sovereignty over the islands located within them. The two countries accepted the ruling at the time" .

CONCLUSION

1- It has become clear to us, through international practices for settling disputes over the exploitation of shared oil fields, that international disputes related to the exploitation of shared petroleum resources are not of a single nature. Every dispute or issue has its own specificity that can be settled in ways appropriate to it. Hence, we find that disputes related to petroleum or collective agreements can be settled by amicable and non-judicial means, in addition to settling them through judicial means.

2- Despite the multiplicity of non-judicial means of settling disputes resulting from the exploitation of joint oil fields, the most effective means of settling these disputes is negotiations, as it is considered one of the most important of these means. In addition to being an original way to resolve disputes, it represents the main stage in Reaching agreement, or referral to other judicial methods. The success of negotiations lies in political and ideological factors, such as political and ideological rapprochement and discord between countries, and the economic balancing of conflicting interests is considered a fundamental factor in their success.

3- In addition to non-judicial means in settling disputes over the exploitation of joint oil fields, judicial means represented by international arbitration and the International Court of Justice have been resorted to. The method of arbitration represents special importance in this field due to its flexibility as it achieves reconciliation between various legal considerations, in addition to its ability to achieve economic budgeting. And the technical interests of conflicting countries.

As for the method of resorting to the International Court of Justice, it is considered one of the most prominent judicial methods known in resolving disputes between countries. It also has special importance in resolving border problems or exploiting natural resources therein. "The International Court of Justice has played a major role in resolving disputes

between opposite or neighboring coastal states, especially disputes over the delimitation of maritime borders. The criteria used by the International Court of Justice to settle maritime border disputes between those countries have varied, as we note that it sometimes uses the principle of the middle line or equal It takes into account the principle of special circumstances, and emphasizes in every case the need for the solution it reaches to be consistent with the principles of justice."

FUTURE WORKS

1- Negotiating the exploitation of the joint oil fields, provided that this negotiation ends, within a reasonable period, with a final agreement on the features and dimensions of the joint field, how to exploit it, and the criterion for dividing its reserves, on the basis of the rules of justice, taking into account the common interests of the parties.

2- It has become necessary to legally address the numerous and complex problems raised by the operations of discovering, drilling and exploiting joint cross-border oil fields, and this is done by unconventional means, taking into account the activation of practices that have proven to be serious and refraining from practices that have proven to be ineffective.

3- The necessity of adopting new and original methods to avoid and settle disputes over the exploitation of shared oil fields, which are represented by preventive diplomatic means that aim to resolve disputes before the outbreak of armed conflicts.

4- The necessity of working on He established permanent arbitration centers in the Arab countries specialized in settling oil disputes and seeking the assistance of specialized university professors and researchers in this field, as a result of the large number of disputes related to the exploitation of joint oil fields, especially in the Arab countries where significant confiscation of petroleum wealth is concentrated.

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