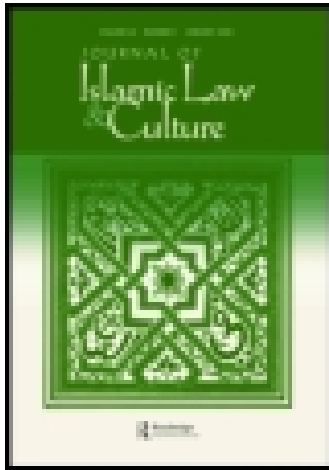


This article was downloaded by: [University of Connecticut]

On: 02 February 2015, At: 14:16

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Journal of Islamic Law and Culture

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/rilc20>

The link between Islamic law and hydrocarbon agreements

Arash Nazhad^a

^a Energy and Earth Resources Program , University of Texas , Austin, USA

Published online: 21 Aug 2008.

To cite this article: Arash Nazhad (2008) The link between Islamic law and hydrocarbon agreements, Journal of Islamic Law and Culture, 10:2, 169-178, DOI: [10.1080/15288170802236424](https://doi.org/10.1080/15288170802236424)

To link to this article: <http://dx.doi.org/10.1080/15288170802236424>

PLEASE SCROLL DOWN FOR ARTICLE

Taylor & Francis makes every effort to ensure the accuracy of all the information (the "Content") contained in the publications on our platform. However, Taylor & Francis, our agents, and our licensors make no representations or warranties whatsoever as to the accuracy, completeness, or suitability for any purpose of the Content. Any opinions and views expressed in this publication are the opinions and views of the authors, and are not the views of or endorsed by Taylor & Francis. The accuracy of the Content should not be relied upon and should be independently verified with primary sources of information. Taylor and Francis shall not be liable for any losses, actions, claims, proceedings, demands, costs, expenses, damages, and other liabilities whatsoever or howsoever caused arising directly or indirectly in connection with, in relation to or arising out of the use of the Content.

This article may be used for research, teaching, and private study purposes. Any substantial or systematic reproduction, redistribution, reselling, loan, sub-licensing, systematic supply, or distribution in any form to anyone is expressly forbidden. Terms & Conditions of access and use can be found at <http://www.tandfonline.com/page/terms-and-conditions>

The link between Islamic law and hydrocarbon agreements

Arash Nazhad

Energy and Earth Resources Program, University of Texas, Austin, USA

With a number of hydrocarbon-rich nations partly or wholly basing their laws and regulations on Islam, the link between Islamic law and hydrocarbon resources has become evident. Islamic laws are based primarily on the Qur'an, the Sunna and Hadith. The Qur'an is considered to be the words of God revealed to us through the Prophet (peace be upon him). The Sunna is the record of the actions of the Prophet (PBUH) and the Hadith are his sayings, which he based entirely on the teachings of almighty Allah. These sources must be thoroughly understood because they cannot be contradicted in the creation of agreements. This article sets out to make clear the connection between Islamic law and hydrocarbon concessions, and provides a brief summary of the religion and its bearing on hydrocarbon resources. The paper examines the Iranian Buy Back Agreement and confirms its conformity with Islamic law.

Keywords: Islamic law; Shari'a; mineral; hydrocarbons; iqtā'; riba; buy back; Iran; oil; gas

Introduction

Distributed across the globe in varying concentrations, hydrocarbons know no boundaries and are often extracted in one location, refined in another and eventually consumed in a completely different region. International hydrocarbon companies (IHC)¹ have responded by having complex networks of downstream and upstream processes. In a recent *Financial Times* article, the National Iranian Oil Company (NIOC) and Saudi Aramco were included as two of the new "Seven Sisters";² they both control a vast amount of hydrocarbon resources and base their laws wholly on Islam.³ This served as the author's prime motivation in investigating this relationship and exemplifies the clear link between Islamic law and hydrocarbon agreements.

The link between Islamic law and hydrocarbon agreements is a broad topic, but it has been narrowed in this article to focus on key Islamic principles and the Iranian Buy Back Agreement (BBA). This paper will allow IHCs to garner a better understanding of Islamic law, by reviewing the primary sources of Islamic law; it will provide an overview of the denominations with a focus on the Shi'a, and will analyse the economic and public policy

Corresponding Address: Email: arash.nazhad@mail.utexas.edu

¹Because of the growing importance of gas, the use of the term "hydrocarbons" in this article will encompass oil and/or gas companies. IHC refers to companies involved in either or both industries.

²The term "Seven Sisters" was originally applied to five American, one British and one Anglo-Dutch company who had become major powers in the oil industry before the twenties (Anthony Sampson, *The Seven Sisters: The Great Oil Companies and the World they Shaped* (Bantam Books, New York 1975) 71).

³Carola Hoyos, 'The New Seven Sisters: Oil and Gas Giants Dwarf Western rivals' *Financial Times* (11 March 2007).

effects of an Islamic state. In addition, an example of the application of Islamic law to a hydrocarbon agreement will be given by evaluating the Iranian BBA. During the investigation, the BBA basics, the project cycle, the bid specifics, its advantages and disadvantages and its observance of Islamic law will all be outlined. This will exemplify the importance of the adherence to and understanding of Islamic law for both IHCs and Islamic states, who must work with each other in pursuit of their respective goals.

I. Islamic law

1. The sources

Islam is a system which encompasses an economic order, social organization, and codes of civil, criminal, and international law.⁴ Islamic law governs the observance of Islamic principles, and in the mineral industry, its influence can be substantial. Although the law is primarily based on two sources, a total of four sources contribute to its construction.

1.1. Primary sources

The two primary sources of Islamic law are the Qur'an and the Sunna.⁵ The laws were revealed to the Prophet (PBUH) and subsequently published in the holy book of Islam, the Qur'an. It offers over 6,000 verses, broadly describing a variety of moral obligations.⁶ Of these 6,000, roughly 10% contain legal warnings,⁷ and approximately 80 verses outline concrete rules of law.⁸ The Qur'an's rules of law reign supreme in the establishment and construction of laws and nothing is allowed to contradict them in an Islamic state. The actions of the Prophet (PBUH), which are the legal principles protecting individual and community rights, are recorded in the Sunna. The teachings based on his sayings are recorded in the Hadith.⁹ It should be noted the Sunna and Hadith are sometimes referred to interchangeably because they present the same content in different contexts, and they are the other primary source of law. The principles of the Qur'an and the Sunna can be summarized as the teachings that aim to provide justice and equity for all members of the community, as well as guidance to a nation as a whole in its pursuit of development and growth.

1.2. Secondary sources

In order to apply the teachings found in the Qur'an and Sunna to a specific context not covered in either, Islamic law also offers the use of secondary sources in the creation of law, *ijmā'* and *qiyās*. *Ijmā'* literally translates as "consensus". It is the compilation of rules and laws agreed on by the '*ulamā'*' (learned scholars) based on interpretations made of the Qur'an, Sunna and Hadith, and rulings of past scholars.¹⁰ This process of interpretation is

⁴Walied El-Malik, *Mineral Investment under the Shari'a Law* (Graham and Trotman, London 1993) 3.

⁵Muhammad S. Karim, *Oil, Islamism, and International Petroleum Industry Legal, Economic, Political and Cultural Issues* (LLM dissertation, University of Dundee 2001) 9.

⁶Ibid. 11.

⁷Mike Bunter, 'Sovereignty over Minerals and Petroleum in the Islamic (Shariah) Law and the Question of Ownership' (2006) 4(1) *Oil, Gas and Energy Law Intelligence* 1, 10.

⁸Hassan Sayed Amin, *Commercial Arbitration in Islamic and Iranian Law* (Vahid Publications, Tehran 1988) 39.

⁹Karim, op. cit. 11.

¹⁰Bunter, op. cit. 7.

known as *ijtihād*.¹¹ *Qiyās* is another tool used by Muslims and is the process by which learned jurists draw analogies from the Qur'an and Sunna.¹² This principle is based on the precedent set by the Prophet (PBUH) in support of a judge in Yemen.¹³ The judge declared he would use his own judgment to draw from the Qur'an, Sunna and Hadith, if he could find nothing in them to address a particular issue directly.¹⁴ Thus, unlike the Qur'an and Sunna, which Muslims regard as infallible, *ijmā'* and *qiyās* are opinions formed by humans through interpretation, so they are recognized as imperfect.

2. Denominations

There are two¹⁵ denominations in Islam, Sunnis and Shi'a. The most widespread school of thought in Shi'a Islam is the Ja'fari school. The Qur'an does not dictate the ownership of natural resources, so the various schools of Islamic thought are permitted to present their own interpretation on this point, as long as their interpretations do not contradict the Qur'an, Sunna and Hadith, and meet the requirements for payment of *zakāt*. Iran follows the Ja'fari school and since the interest of this article is to examine the Iranian BBA, it will focus on the Ja'fari school of thought.

2.1. The Ja'fari view of natural resources

The most important difference between the Sunni school of thought and the Ja'fari school is that the latter is still open to *ijtihād*.¹⁶ This allows for greater flexibility in the development of laws and has been essential in adapting Muslim teachings to the changing needs of society. In Iran, the process of *ijtihād* can be used by the Supreme Leader.¹⁷ However, this flexibility is not yet widely reflected in the construction and implementation of Iran's mineral laws. The most important element relevant to the hydrocarbon industry is that this school of thought does not allow privatized companies to hold mineral rights titles. Furthermore, extraction can only be part of state commercial activity, because the state is believed to be the only entity that can truly be observant of the entire community's needs.¹⁸ On this basis, private industry participation as rights holders could only be justified if it were more heavily regulated and the interest of the entire community could be assured, or if the state became tyrannical.

¹¹Ibid.

¹²Brian Russell et al. eds., *An Introduction to Business Law in the Middle East* (Oyez, London 1975) 3.

¹³Amin, op. cit. 61.

¹⁴Ibid.

¹⁵Some might argue that there are four denominations, and would include Sufis and Kharijites. However, the Kharijites are extinct and Sufis are either Shi'a or Sunni oriented. Furthermore, they are very small in numbers compared with the Sunnis and Shi'a, so they are ignored for the purposes of this article.

¹⁶As mentioned before, *ijtihād* is the process whereby rules are derived from interpretations made of the Qur'an, Sunna, Hadith and rulings of past scholars.

¹⁷The Supreme Leader is the highest ranking religious figure in the country and, since the country is wholly governed by Islam, this makes him the highest ranking political leader. See David Smock, *Applying Islamic Principles in the Twenty-First Century* (Special Report 150, United States Institute of Peace, Washington 2005) 3.

¹⁸Mike Bunter, 'The Iranian Buy Back Agreement' (2005) 3(1) *Oil, Gas and Energy Law Intelligence* 1, 2.

3. Economics and public policy

The key Islamic economic principles are the sanctity of private property, the state's role as a regulator, a need for risk sharing, prohibition of charging interest, Islam's prerogative to redistribute income (*zakāt*)¹⁹, and the prevention of waste and idleness.

3.1. Private property

Private ownership in Islam is a concept that is recognized in principle, but not always practiced in the mineral industry.²⁰ In order to be privately owned, an object of ownership must be capable of being possessed, must have value, must not be an unlawful object, and cannot be a religious land endowment.²¹ Under Islam, almighty *Allah* is the only owner and all human beings hold their property as trustees.²² This trusteeship in Islamic states is equivalent to ownership in Western nations. Property can be privately owned when obtained in good faith, in a lawful and fair manner, with the payment of *zakāt*.²³ Islam's respect for private property can be accredited to the career of the Prophet (PBUH) as a merchant and his apparent understanding of its sanctity. In the mineral industry in Islamic states, although private ownership of natural resources has been known to be tolerated, it occurs under explicit conditions of production that promise social utility and equitable division of income.²⁴

Iqtā' is Arabic for a land grant made by the head of state or imam. The concept of the imam giving land grants is widely accepted.²⁵ The imam's right to make *iqṭā'*'s is based on historical precedents set by the Prophet (PBUH) in making land grants to various tribes.²⁶ Although the recipient has the option to assign his right to a third party, *iqṭā'*'s can be revoked if left uncultivated for over three years, or if the recipient proves to be incompetent.²⁷

3.2. *Ḍarūra* and *istiṣlāḥ*

The sanctity of private property is unquestionable in Islam and private ownership of hydrocarbons can be justified if it is in the interest of the public or if it is a necessity. This idea of public interest and necessity is part of the "doctrine of necessity", *ḍarūra*, and "public interest", *istiṣlāḥ*. *Ḍarūra* can be invoked only if failing to undertake the specific action will lead the community to face serious negative consequences.²⁸ *Istiṣlāḥ* is a method of legal reasoning made by the creation of new laws without precedent, or the suspension of earlier rulings, based solely on the community's best interest and future welfare.²⁹ These doctrines further reveal Islam's flexibility and enable states to change laws in varying circumstances.

¹⁹Zakāt is a mandatory tax levied on an entity's wealth and its goal is to redistribute wealth in society.

²⁰El-Malik, op. cit. 4.

²¹Walied El-Malik, 'State Ownership of Minerals under Islamic Law' (1997) 14(3) *Journal of Energy and Natural Resources Law* 313.

²²Muhammad Muslehuddin, *Economics and Islam* (Islamic Publications, Karachi 1974) 97.

²³Ibid. 98.

²⁴Oystein Noreng. *Oil and Islam: Social and Economic Issues* (John Wiley & Sons Ltd, London, 1997), 309.

²⁵El-Malik, *Mineral Investment*, 69.

²⁶Ibid. 68.

²⁷Ibid. 69.

²⁸Ibid. 28.

²⁹Ibid. 25.

3.3. Role of the state

A propos of the administrative responsibilities of the state, Islam makes it clear that the state's role should be of a regulatory nature.³⁰ With regard to the mineral industry, the state has numerous functions. It should grant and supervise concessions. It should behave as an enabler by providing credit to stimulate the growth of the hydrocarbon industry growth. It should facilitate commerce and transactions by developing trade centers and exchanges. And finally, it should protect private property. The great Muslim economist Ibn Khaldun argued that political and economic power in the hand of one body could prove to be tyrannical more than it would prove to be equitable.³¹ Although policies of greater privatization in the natural resource sector should eventually be pursued, greater transparency within Islamic States, further maturity of markets, and advancement of the country's economic democratization is required in order to assure just and equitable results.

3.4. Risk and profit sharing

The idea of risk sharing is supported by three concepts. First, it is intended to protect the economy from foreign domination by requiring foreigners to include national entities as equity participants, thus allowing the state to claim a greater share of the profits. Second, it allows for equal footing of capital and labor in partnerships between legal entities. Finally, it offers entities that become capital partners in projects requiring investment in Islamic states an alternative to interest income through production sharing.

3.5. Riba

Riba literally means "interest" and is forbidden in Islam. In order for observe Islamic law to be observed, it is important to replace debt service payments that can be deemed as *riba* with more equitable financial mechanisms. *Riba* is stated to be unlawful in Islam in four different passages; however, there is room for interpretation on whether interest constitutes *riba*.³² The four passages are:

That which you give as interest to increase the people's wealth increases not with God, but that you give in charity seeking the good will of God, multiplies manifold (Q 30.39).

And their taking interest even though it was forbidden for them (Q 4.161).

O believers take not doubled and redoubled interest and fear God (Q 3.130).

Allah hath permitted trade and forbidden usury (Q 2.275).

Islam prohibits *riba* because without *riba* the production capacity of an economy can be increased, its employment opportunities furthered, and the poor protected from potential exploitation.³³ If financial returns on instruments found in agreements, such as interest, can be proven to avoid the three reasons listed above for its prohibition, it can be argued that the "interest" referred to in the agreement does not constitute *riba*. Thus, certain jurists have ruled that interest found in production agreements is lawful and not considered as *riba*,

³⁰Ibid. 98.

³¹Ibid. 19.

³²Ibid. 89.

³³Ibid. 91

while they deem interest charged to individuals for consumption to be *riba*,³⁴ consumption meaning that which an individual consumes to satisfy his needs in order to be able to live a quality of life afforded to his average peers. Others believe that the inclusion of a financial tool such as interest in a transaction should not be regarded as *riba* when it is charged to wealthy individuals, since it is not excessive and their consumption goes beyond meeting their needs,³⁵ although of course defining “wealth” is a subjective matter. Thus, it is not impossible to include interest in an agreement as long it can be justified through necessity or public interest, or if it does not lead to the three reasons listed above for the prohibition of *riba*. This is why examples of the use of interest can be found in numerous Islamic observant funds, the growth in Islamic Banking, and *bay‘ bi-al-wafā’*³⁶ agreements.

3.6. Income redistribution

The three income and wealth redistribution tools at the disposal of an Islamic state are *zakāt*, *ṣadaqa*, and taxes. Islam puts no limit on the amount of wealth individuals can possess, but it requires payment of *zakāt*³⁷ and *zakāt* is a formal requirement in many petroleum agreements or land ownership titles. The funds derived from *zakāt* should be used to provide public goods that directly benefit the poor, such as schools, social programs, training, and micro lending opportunities. Failure to pay *zakāt* is punishable by law. In the petroleum industry, the average rate is about 20% on cash assets.³⁸ *Ṣadaqa* is another payment similar to *zakāt*, but voluntary in nature and should be considered by investors as the single most important tool IHCs have at their disposal to increase their popularity.³⁹ Like Western nations, Islamic states also use taxes, which are dictated by the head of state or imam, for the purpose of income redistribution.

3.6. Idleness and waste

Islam condemns wastefulness and leaving resources idle, so Islamic states prohibit it. This is an important concept in Islamic economic principles. Islamic economics encourages resources to be used to their fullest potential. The idea that land rights can be obtained through cultivation is intended to discourage idleness and encourage production. For example, the Prophet (PBUH) granted Muzayana and Juhayana land, but they left the land idle so others began cultivating it.⁴⁰ When the Caliph Omar, the head of state at the time, was asked to evict the new tenants, he refused and Muzayana and Juhayana lost the title to their land because they did not work it for three years.⁴¹ If they had carried out some form of commercial activity, their right would not have been rescinded, unless they were incompetent or the doctrines of *ḍarūra* or *istiṣlāḥ* were invoked by the state.

II. The Iranian Buy Back Agreement

An agreement in the hydrocarbon industry is a document that sets out the terms of a relationship between two or more parties. An agreement outlines a defined time frame, area,

³⁴Ibid., 90.

³⁵Ibid.

³⁶*Bay‘ bi-al-wafā’* is the Islamic banking system’s version of the Western mortgage agreement.

³⁷Karim, op. cit. 11

³⁸Ibid.

³⁹Noreng, op. cit. 32.

⁴⁰Ibid. 69.

⁴¹Ibid.

scope, profit and risk division. In addition, it sets out the obligations and rights of both parties. In today's market, in most Muslim states rich in hydrocarbon resources, such as Iran, the agreement will generally lean in favor of the state.

1.1. Buy back agreement basics

The Iranian BBA is a hybrid service agreement similar to the Islamic law concession, *iqtā' istighlāl*, which gives the concessionary the administrative right to explore and or produce minerals, but does not give them any ownership rights.⁴² The lack of ownership rights in the agreement is enforced by Articles 44 and 45 of the Iranian Constitution, which require that all mineral deposits be vested in the state. Even the Iranian Parliament, known as the *Majlis*, cannot circumvent the article by granting mineral concessions to foreigners or local private companies.⁴³

1.2. BBA project cycle

The procedure in place is as follows. The NIOC announces a call for bids to a specified acreage to be submitted on a certain date. IHCs bid for the right to explore the area and include in their bids a detailed outline of their capital commitments to the venture and possible work programs and further remunerations. The winning bidder is promised a predetermined rate of return to be disbursed upon discovery of commercial reserves.⁴⁴ This rate will be paid in kind when the first barrel of oil is produced.⁴⁵ If a commercial discovery is made, the IHC is not guaranteed participation in the development phase. Rather, the IHC must negotiate with NIOC to be granted the right to participate in the development phase of the discovery. If the IHC and the NIOC cannot agree terms for the development phase of the venture, the IHC is paid a fee for the exploration phase as described above, and the NIOC calls for bids for the development of the acreage. If the IHC and the NIOC agree to the development phase terms, the project will proceed. Once the development of a field is assigned to a particular IHC, the IHC is in charge of operations until the production of commercial viable hydrocarbons takes place. At that point, the IHC hands over the operations in the field to the NIOC. Once the NIOC is operating the field, it sells the IHC a percentage of the production at a discounted rate to allow for a reasonable rate of return established in the agreement, which continues for several years until the NIOC completely repurchases the acreage from the IHC.

1.3. Bid specifics

In addition to the submission of a proposal that encompasses technical, commercial and financial information, the IHC's bid must contain the following clauses specific to the BBA.⁴⁶

- (1) It should describe the IHC's rate of return, defined as:

⁴²Mike Bunter, *Petroleum Contracts in Islamic Law: the Concession (Equity) and Contractor (Production Sharing) Agreements* (2005) 3(3) *Oil, Gas and Energy Law Intelligence* 1, 16.

⁴³Bunter, 'Iranian Buy Back Agreement', 2.

⁴⁴Derek Brower, 'Explorers in Defiant Mood' *Petroleum Economist* (10 March 1999).

⁴⁵*Ibid.*

⁴⁶Bunter, 'Iranian Buy Back Agreement', 3.

- (a) NIOC reserve production, designated P barrels, is total output minus the suggested “cost oil”.
 - (b) IHC cost recovery, assigned from the remainder P barrel, which is based on a predetermined proportion.
 - (c) A monthly or annual fee charged to the NIOC for capital costs required for implementation. The cost recovery takes place over the amortization period, which is generally five to eight years.
 - (d) An internal rate of return defined as uplift over London Interbank Offered Rate (LIBOR).⁴⁷
 - (i) The uplift is a predetermined value which stays fixed and is added to the LIBOR.
- (2) An outline of the use of Iranian goods and services.

1.4. Advantages and disadvantage to the IHC and Iran

There are multiple benefits derived for the IHC engaged in a BBA rather than a different form of agreement. Their costs are reimbursed, they receive an agreed rate of return, and they get feedstock for their refineries. In addition, because of the short nature of the agreement, the Iranian BBA allows an IHC to stop operating in the field before the field peaks. Generally, the agreements are for about 15 years, unlike traditional petroleum agreements which are 20 to 25 years in length.⁴⁸ Theoretically, the IHC could skip from one maximum profit scenario to another by negotiating to operate BBAs one after another, thus only operating fields that are yet to peak, although whether this would happen in reality is questionable.⁴⁹

There are several drawbacks to the BBA for both parties. In the long run, IHCs receive no equity stake in the venture, and they cannot book any reserves. Additionally, since the NIOC works with the IHC for a shorter period, the transfer of know-how is limited. The transfer of technology is limited, because the IHC is only engaged in the acreage during its optimal production period, so it is not required to employ advanced technologies to extract oil or gas, which might be necessary under more tested conditions. Furthermore, an IHC does not have the incentive to employ advanced technologies because the IHC will eventually lose proprietary control over the assets. The IHC's return on a BBA project is estimated to be about 5%–6% over the entirety of the project's life.⁵⁰ On the basis of these returns, it is possible to assume that the rate of return is not the focus of the IHC's interest. Rather, it is the feedstock that the IHC acquires through the process, and any favor they might acquire with the Iranian government in order to gain access to more lucrative opportunities in the future. In addition, the fixed rate of return brings about inefficiencies. Since the IHC's level of efficiency has little or no effect on the IHC's rate of return, it does not have the incentive to behave in the optimal manner and might even behave economically inefficiently and arguably against the interest of the NIOC. The NIOC has made efforts to protect itself from inefficient behavior by not guaranteeing production grants for entities that find commercially viable deposits through exploration agreements. However, this does little to deter economically inefficient behavior by the IHC during the production phase of the agreement.

⁴⁷LIBOR is the interest rate banks offer to lend each other unsecured funds at.

⁴⁸Karim, *op. cit.* 23.

⁴⁹Bunter, 'Iranian Buy Back Agreement', 3.

⁵⁰*Ibid.* 4.

1.5. Islamic observance

The BBA's compliance with Islamic law is debated. There are arguments for and against whether a BBA is in the best interest of the public. The agreement seems to be somewhat economically inefficient by not being correctly incentivized and consequently not promoting efficient behavior, but at the same time it protects the Iranian economy from foreign domination and assures consistency. The BBA can be defended against the criticism it has received due to its incorporation of the LIBOR, which some have labeled as *riba*.

Islam prohibits *riba* because without *riba* the production capacity of an economy can be increased, its employment opportunities furthered, and the poor protected from potential exploitation. However, LIBOR can be justified as follows:⁵¹

- (1) Without LIBOR or Uplift, can the production capacity of the Iranian economy be increased?
The LIBOR expense will not decrease the economic life of the field because the IHC is paid in kind. Furthermore, with the majority of the Iranian government revenue derived from hydrocarbons, not investing in them would restrain Iran's economic production capacity in the long run. Thus, the LIBOR over Uplift found in the BBA cannot be considered as *riba*.
- (2) Are the Iranian economy's employment opportunities furthered without the inclusion of LIBOR or Uplift?
Since the hydrocarbon industry is the biggest industry in Iran and has the greatest long-term potential, the opportunities fostered through partnership with IHCs far outweigh any opportunities the government would forgo if it did not engage in the agreement. Thus, once again, LIBOR over Uplift found in the BBA cannot be considered as *riba*.
- (3) Are the LIBOR and Uplift found in the BBA exploitive in nature?
The competitive nature of the industry gives the Iranian government many choices and allows it to pit bidders against each other and extract the most competitive bid at the lowest cost to them. Thus, LIBOR over Uplift found in the BBA cannot be considered as *riba*.
- (4) In summary, LIBOR over Uplift found in the BBA does not go against Islamic principles and should not be considered as *riba*.

There is a degree of uncertainty in the Islamic tradition concerning mineral grants, but records show that the Prophet (PBUH) granted mining concessions in the Red-Sea Hills of Saudi Arabia to Bilal ibn Harith al-Mouzani, thus setting precedents for present day hydrocarbon agreements.⁵² The only criticism to which the Iranian BBA is vulnerable is the lack of transparency and the secrecy that surround the agreement. Since hydrocarbon profits seem to find themselves in private pockets, transparency is of particular importance.⁵³ Critics could accuse the BBA of not embodying Islam's spirit of community, equity and justice. Citizens, including members of the parliament, lack information regarding BBAs that are signed and the details of them, which means they are unable to hold the NIOC and individuals in charge accountable of their actions. Regardless of this flaw, the Iranian BBA should be deemed to comply with Islamic law.

⁵¹El-Malik, *Mineral Investment*, 91

⁵²Bunter, 'Petroleum Contracts', 3.

⁵³Sampson, *op.cit.* 70.

IV. Conclusion

The Qur'an and Sunna cannot be contradicted because they are messages of God that must be followed in Iran, where Islam is the sole law that governs the nation. Since bargaining power has shifted in favor of states with vast resources of oil and gas, such as Iran, IHCs must be more observant of the requirements of Islamic law. Elements of Islam, such as the sanctity of private property, the state's role as a regulator, the need for risk sharing, the prohibition on charging interest, the prerogative to redistribute income, and the discouragement of waste and idleness, influence the laws, economics and public policy of Islamic states and, in turn, influence agreements that Islamic states enter into. In its creation, Islam was endowed with tools such as *darūra* and *istiṣlāḥ*, which equipped it with the flexibility required to govern evolving Islamic societies. Because of this, when change can benefit the members of the community and it is in the community's best interest, new laws are created or old laws are suspended. The Prophet (PBUH) said, "You know better about your mundane affairs but for your religious matters these are to be referred to me".⁵⁴ Thus, the flexibility of Islamic Law is only limited by the observance of the spirit of the Qur'an, Sunna and Hadith, which are fundamental in the creation of agreements.

References

- Amin, H.S., 1988. *Commercial Arbitration in Islamic and Iranian Law*. Tehran: Vahid Publications.
- Brower, D., 1999. Explorers in defiant mood, *Petroleum Economist*, 10 March.
- Bunter, M., 2005. Indonesia: from Concession to Contract. *Oil, Gas and Energy Law Intelligence*, 3(1), 1–18, GasandOil.com/ogel, via Inter-library Loan Service, <http://www.lib.utexas.edu/services/ils/>
- Bunter, M., 2005. The Iranian Buy Back Agreement. *Oil, Gas and Energy Law Intelligence*, 3(1), 1–8.
- Bunter, M., 2005. Petroleum contracts in Islamic law: the concession (equity) and contractor (production sharing) agreements. *Oil, Gas and Energy Law Intelligence*, 3(3), 1–19.
- Bunter, M., 2006. Sovereignty over minerals and petroleum in the Islamic (Shariah) law and the question of ownership. *Oil, Gas and Energy Law Intelligence*, 4(1), 1–22.
- El-Malik, W., 1993. *Mineral investment under the Shari'a law*. London: Graham and Trotman.
- El-Malik, W., 1996. State ownership of minerals under Islamic law. *Journal of Energy and Natural Resources Law*, 14(3), 310–326.
- Hoyos, C., 2007. The new seven sisters: oil and gas giants dwarf Western rivals, *Financial Times*, 11 March.
- Karim, S.M., 2001. Oil, Islamism, and international petroleum industry legal, economic, political and cultural issues. LLM dissertation, University of Dundee.
- Muslehuddin, M., 1974. *Economics and Islam*. Karachi: Islamic Publications.
- Noreng, O., 1997. *Oil and Islam: social and economic issues*. London: John Wiley & Sons.
- Russell, B. and others, eds, 1975. *An introduction to business law in the Middle East*. London: Oyez.
- Sampson, A., 1975. *The Seven Sisters: the great oil companies and the world they shaped*. New York: Bantam Books.
- Smock, D., 2005. *Applying Islamic principles in the twenty-first century*. Special Report 150. Washington: United States Institute of Peace.

⁵⁴Cited in El-Malik, *Mineral Investment*, 80.