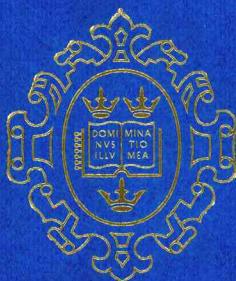

INTERNATIONAL ENERGY INVESTMENT LAW

The Pursuit of Stability

PETER D CAMERON

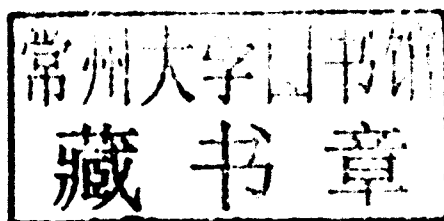


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FOREWORD

Energy is at the heart of modern life. Industry, agriculture, transport, home light, and heat, cannot function without it. The industrial revolution was fueled by coal, which remains a vital if polluting resource. Since petroleum displaced whale oil in the 19th century, it has been the energy source of choice. Investments in the finding, production, transport, refining, and marketing of petroleum have been, and remain, huge. They are necessarily long term. The complex and expensive arrangements require contracts and concessions. Those instruments are at once inherently stable—that is in their nature as undertakings for years—yet they have been subjected to reinterpretation, renegotiation, revision, and rupture. The search for stability has been unending. It might be said that it has been unsuccessful, but that would be simplistic. In point of fact, there has been a measure of stability in the international exploitation of petroleum, but sufficient stability remains elusive.

In this lucid work on *International Energy Investment Law: The Pursuit of Stability*, Professor Peter Cameron portrays and analyses the search for stability through contract and through treaty. He shows that, however challenging and challenged arrangements for the international exploitation of energy have been and remain, the influence of law is significant. To speak of the governance of law in the international energy sphere would be excessive. But to discount the influence of law would be uninformed.

Take by way of salient example the resolution of the inevitable disputes between investors and host States through international arbitration. The remarkable case of *Aramco v Royal Government of Saudi Arabia* reflects the transformation of a medieval economy into one of the richest the world has ever seen. Oil which was not known to be under Arabian sands was found by the Standard Oil Company of California, in unimaginably vast quantity. It was produced by the most modern methods; Aramco proved to be an enlightened operator; the uneducated citizens of Saudi Arabia moved from herdsmen to technicians and financiers in two or three decades; and, in the process, Saudi Arabia vaulted many centuries to spring to the forefront of contemporary economic life. In the midst of this process, Aristotle Socrates Onassis convinced the King of Saudi Arabia that a fleet flying the Saudi Arab flag should transport the oil produced by Aramco. But that, an alarmed Aramco maintained, would contravene the terms of a concession of 1933 that extended to 1999. That issue went to international arbitration. It was resolved in favor of Aramco. Saudi Arabia, to its credit, took full part in the arbitration and accepted the adverse award; the Onassis contract disappeared.

Or take the outcome of two other very large international oil arbitrations between the Islamic Republic of Iran and BP, and it and Amoco. Both were settled just before the rendering of arbitral awards. In *BP*, Iran apprehended that an adverse award on the critical points of law would prejudice multiple pending claims before the Iran–United States Claims Tribunal. At the last moment, it moved to block distribution of the award and paid BP amply for its claims and for the award's suppression; it has never seen the light of day.

In *Amoco*, again at a very late stage and apparently because it came to know of the imminence of an adverse award, Iran settled on terms that not only met Amoco's claims but sacrificed Iran's substantial counterclaims; again the award remains unpublished. But these are examples of the influence, not the impotence, of law in action.

Professor Cameron carefully paints on a large canvas. The results will be of high interest to the student and practitioner of international energy law.

Stephen M. Schwebel¹

¹ Judge Stephen M Schwebel is a former President of the International Court of Justice.

ACKNOWLEDGEMENTS

This book has been written at a time when investor-State agreements in the international energy industry have been subject to an unusual number of challenges: partly as a result of increases in the oil price, partly due to a shift in relative bargaining power between the parties as accessibility by foreign investors to available energy resources becomes more limited, and partly as a reaction to the programmes of market reform that were vigorously pursued in the 1990s. I have benefited considerably from candid conversations with executives and in-house counsel in the energy industry, officials in government and lawyers in a wide range of firms from many different countries around the world. The sensitivity of the issues involved, and client confidentiality, has meant that many of these conversations have had an influence on this book in ways that I cannot specifically acknowledge. They were particularly important in giving my insights and sources that shaped the two case studies in the book. I am most grateful to the many individuals who have shared their experiences so generously with me and without whom this book would have been a much poorer work.

In the course of writing this book I have organized, attended and participated in a number of conferences, workshops and seminars held under the auspices of the Association of International Petroleum Negotiators (AIPN). These included meetings in Austin, Texas, New Orleans, Paris, and Rio de Janeiro, as well as two highly stimulating seminars in London, organized by the Europe-Africa Chapter of the AIPN, and hosted by Herbert Smith and Deloitte respectively. As a result, I have been able to interview a number of lawyers and negotiators from countries that figure in this study. I have also benefited from a number of excellent individual presentations and panel session debates which touched on themes in this book. In particular, I owe a debt to the presentations and follow-up discussions I had with David Asmus, Doak Bishop, Nigel Blackaby, Elisabeth Eljuri, Paula Hodges, and Matthew Weiniger. The collaboration I had with Graham Kellas and Wood Mackenzie at one of these events has persuaded them to let me use some of their diagrams and tables in this report, for which I am grateful.

The role of the internet continues to play an increasingly important role for a researcher, and I am happy to acknowledge the debt I owe to the efforts of those remarkable individuals who operate websites that provide primary and secondary source material on investment claims, such as Andrew Newcombe and Luke Petersen. The Oxford Investment Claims website was invaluable and in a different way so were many of the stimulating exchanges by colleagues on OGEMID.

A number of people were kind enough to read chapters and comments on them. I am grateful to my colleagues at the CEPMLP in Dundee, Kaj Hober, Abba Kolo, and Melaku Desta, for their suggestions and advice. The Latin American chapter benefited from the comments of Elisabeth Eljuri, Cesar Mata Garcia, and Dario Arias. Roland Brown, David Asmus, and Graham Coop also commented on parts of the text. Daniel Behn, one of my PhD students, was most helpful in reading through and editing several of the chapters before

they were submitted to the professional care of Oxford University Press. He was also very helpful in assembling the materials in Appendix II. At the Press I was fortunate to have the help of Vicky Pittman, Benjamin Roberts, and Catherine Redmond to guide me through the process. None of them bear any responsibility for the results or any errors in the text.

* * *

The idea for this book was conceived while conducting a study for the Association of International Petroleum Negotiators (AIPN) in 2005 and early 2006¹. That study focussed largely on stabilization clauses in international petroleum agreements but also made a tentative foray into the impact of investment treaty cases on contract stability. The notion that a longer work might be justified was encouraged by Oxford University Press and the proposal received a very favourable response from no less than half a dozen peer reviewers. That initial research provided the basis and the stimulus for the present work, and I am grateful to the AIPN for giving me the opportunity to commence this undertaking. In particular, I wish to thank the then Vice President for Education, and subsequently AIPN President, Karen Krug, and the peer reviewer of that earlier work, Frank Alexander. The subject matter of this book—unilateral State actions and investor defences—has developed considerably since that work and my own research has revealed further relevant materials. However, without the AIPN's initial support it would have had nothing to develop from, and for that I am highly appreciative.

Peter Cameron
Edinburgh New Town
October 2009

¹ Peter D Cameron, "Stabilisation in Investment Contracts and Change of Rules by Host Countries: Tools for Oil & Gas Investors" (2006): <<http://www.aipn.org>>.

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