



“Optimization Policies for the Management of the Iraqi Oil Extraction Industry”

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1. Introduction:

This paper attempts to answer a number of crucial questions, relating to the issue of “best” ways to manage, or to create the conditions for setting-up policies for the optimum management of the Iraqi Oil Extraction Industry, given the present context of the Iraqi economy and society. Of course, we assume that the concept of optimization is used here to denote a non- diverging consensus that all parties involved, particularly the Iraqi people, (the entire people, not a segment or segments of it), being the true owners of all natural resource, (crude Oil, here), and all partners, or investors should reap maximum **possible** benefits from the revenues, realized from the production, exporting and further industrial processing of the extracted crude oil in all parts of Iraq. By maximum benefits, we do not mean, here, merely, maximum present financial revenues, but also, maximum sustainable source of income and potential employment for the present and future generations of the Iraqi people, the owners of the oil wealth. The difference between these two meanings will become clear after we discuss, briefly, the general features of the “rentier” nature of the Iraqi economy.

After we review the general peculiarities of the Iraqi oil extraction industry, in Section 2, we will investigate in the subsequent sections of this paper, the **rational** for managing a major but depleting oil extraction industry, the need for a national development strategy, the legal and institutional arrangements, governing the activities of this industry, the flaws of the Oil and Gas Law, and methods of attracting investment capital and modules for partnerships, with implications for the distribution of developmental benefits among the entire Iraqi people, the true owners of the oil and other natural resources in the entire country.

2. The peculiarities of the economics of the Iraqi crude oil:

Crude Oil, though known, and partially used, as construction material, in the earliest civilizations of Mesopotamia, thousands of years ago, yet it was discovered in commercial quantities in 1886. After some struggle with the Ottoman Authority which was still ruling Iraq, before World War I, the British Petroleum, (BP), and lesser partners established the Iraqi Petroleum Company, IPC, during the early twenties of the last century, when Iraq, was, then, under British Rule, this time.¹

From 1927 onwards, Crude Oil started flowing and, largely, exported by the IPC, especially after the completion of the Kirkuk-Tripoli Pipeline in 1936. Vast oil reserves were discovered, and the IPC obtained concessions to explore and produce crude oil in almost the entire area of Iraq for 75 years, (the approximate Area of Iraq is over 420 thousand square kilometers.). Yet, oil production, since then, and up to June 1972, when the IPC was nationalized, i.e., over a period of almost half a century, had never been maximized or produced to capacity levels. The Government was paid , in return, up to the early 1950s, a modest amount as royalties, in addition to some payment in kind; i. e., some crude oil to be refined for local uses. Also, IPC failed to explore over 95% of the Concession land areas, granted to it, almost free. Though some sort of profit sharing agreement with the IPC was reached by the Iraqi Government, around the year 1954, and the hitherto increased revenues were, effectively, used by this Government, then, to launch an extensive development drive in the whole country; constructing and setting up basic infrastructures, e.g., dams, roads, extension of railways net, electricity and telephone nets, etc.

Yet, the surpluses generated by the received revenues from the crude oil exports were insufficient to provide investment to develop the non-oil sectors, or activities, like agriculture

1 Al-Adhath, Kamil, “Naftuna Reseeduna am Mismar Na’ashuna Alâkheer?” – Arabic; “Crude Oil, Is it our Bounty, or the Last Nail in our Coffin?”; published Article, on 10.02.2007.

and industry, especially downstream manufacturing industries, based on oil inputs and energies, like petrochemicals, oil refineries and other oil derivatives, etc. IPC, failed to raise the level of oil production, and declined to extend the oil extraction industry to the non-oil activities. So, for over fifty years the oil extraction in Iraq remained as an **external sector**, giving meager surpluses, incompatible with the great potentials of oil reserves in the country.²

In fact, over half a century, the IPC, had discovered only 36 billion barrels, (bn/b), of the oil reserves, compared with 75 bn/b added, progressively up to the late 1980s, by the Iraqi National Oil Company, (INOC.), after the nationalization of the IPC in 1972, within a decade, or so, only! This situation had always been a source of unrest between the Iraqi governments, regardless of changes in regimes, and the IPC. This state of affairs led the new Republican Regime, under Brigadier Qassim, which came to power after toppling down the Monarchy system in 1958, to pass in 1961, the Law Number 80, which nationalized or retrieved over 95% of the land that was conceded to the IPC.³

After the elapse of another period of political turmoil, the Baath Party came back to power through a *coup d'état* in 1968; then, it nationalized the IPC itself in 1972.⁴ This development was thought by many, that, it would now lead to drastic increases in surpluses from oil exports; enough to unleash great development leaps for all economic activities in the economy, especially, industry. This thinking was vindicated because the country now had a well equipped National Oil Company, NOC, in charge of vast oil reserves, estimated to be around 115 Bn/b, with the lowest unit cost of production in the world, and easy accessibility to international transport of oil, through pipes, sea shipments, and tracks. But, alas, the Baath Regime, under Saddam Hussain, involved the country in very destructive and long wars; with Iran on the eastern borders, (1980-1988), invaded Kuwait on the southern borders, (1990), entered long duel with Syria on the western borders, (1979- 2001), and provoked a long and severe international economic blockade and various embargoes on the war- torn economy of the country, (1990-2003; i.e., till its downfall through the American and allied invasion of the country in April 2003).⁵

Hence, oil and even non-oil resources had been siphoned off for war efforts and security measures of a regime that was bent to sacrifice the whole future of the country and people to stay in power and continue its totalitarian system. The Iraqi people of all generations had paid and still paying heavy tolls in terms of their lives and undeniable rights to enjoy a decent standards of living in a free and democratic society.

3. What is the rationale for transforming a “rentier” economy?

Economic theory, in a host of literatures on economic development, deal, sometimes, intensively, with the concept of a “rentier” economy. In some studies this conceptual specification is approached in different terms; i.e., dual economy, primary producing economy, unbalanced economy, and so on. But what it means is that you have a case of an economy, endowed with one major primary resource, like raw materials, and/ or a natural

2 _____, *ibid*, p. 2

3 _____, *ibid*, p. 3

4 _____, *ibid*, p. 4.

5 Mahdi, Kamil, “Iraq Oil Law: Parsing the Fine Print”, pp. 11-12, *World Policy Journal*, summer, 2007.

resource, (crude oil, in our case), while other types of production activities, like agriculture, industry and services remain underdeveloped, due to lack of investment.

Since demand exists to sell your primary product, (crude oil, here), then, this would provide you with revenues or incomes, (by virtue of being the owner of the land of the oil fields), which you would have to decide how to use it. You would either consume those earned incomes from the exports of your crude oil away, or save them, partly or fully, for investment in the other non-oil activities. This is because you know that the oil reserves, you have now, will be depleted sooner or later. So, it is your **chance** to invest your present surpluses to create an alternative and more sustainable source of income, to be found in other non-oil activities. This was why the Iraqi Government decided, as soon as its share in the oil profits of the IPC rose to a relatively substantial level, during the fifties of the last century, to set up a Development Board to be mandated with using the whole or large parts of the oil revenues, strictly, for the development of other non- oil activities, e. g., infrastructure, manufacturing, services, etc. etc.

Now, the state of a “rentier” economy can best be seen through a duality scenario, (abstracting from social and political dualities, in this paper). On one hand, you have an exhaustible natural resource, (oil & gas), which is a scarce resource, confronting an ever increasing and inelastic demand in the international market, in spite of all the talks and practices of alternative sources of energy. While, on the other hand, you have, largely, underdeveloped non-oil sectors, (activities such as agriculture, manufacturing, services, etc.), where the vast majority of the labour force is unproductively employed, and where it is hardly sufficient for the overwhelming majority of the people to eke out a living for their families. So, economic rationality necessitates that oil revenues should be used to pull up the “unproductive” non-oil sectors.

The market price of crude oil contains a large element of “rent” which reflects not only scarcity but also the “lost” **opportunity cost** whenever oil reserves are depleted. Hence, unless, present oil revenues are reinvested in the other non-crude oil sectors, the **opportunity** to find alternative sustainable sources of income might be lost; perhaps for ever!!

4. What is the “right” concomitant national development strategy?

Economic rationality would, therefore, be an overarching consideration for the full use of, not only crude oil revenues, but also crude oil itself for nurturing and developing the downstream industries and other non-oil activities. To translate this view in economic terms, the following concise principles can be listed:

- a. To achieve maximum growth for the whole economy, (oil and non-oil), then you need to realize the highest possible rate of growth in the non-oil sectors, (both in terms of capital formation and productivity).
- b. To achieve sustainable development, you need to link the rate of economic growth with the rate of growth of crude oil, (production and exports), in quantity and value terms.
- c. To achieve maximum possible development, you may choose a strategy for reducing oil exports for the sake of diverting, in longer terms, amounts of oil from trade to domestic downstream industrialization.
- d. The geographical location of investments in non-oil industries should not be determined by ethnic, religious or political considerations, but largely based on

economic efficiency and competitiveness criteria, assuming that social coherence is attainable.

This may lead you to a border point where you may choose to refrain from exporting crude oil, no matter how high is the surge in its prices in the international market; this is for the purpose of using it as an input (raw material) or a source of energy in the other non-oil domestic industries, if the expected growth rate would lead on the road towards sustainable development, i.e., after the oil epoch had vanished. Given specified conditions, the quantitative side of these relationships can be easily depicted, mathematically, in an econometric model, but available space in this paper would not permit such an exercise.

In light of the preceding arguments, it seems that not only rationality but also economic survival ordinate the following considerations, as relevant to the case of oil development in Iraq:

- a. The prime objective of sustainable development should be “maximum development” not maximum financial oil exports revenues.
- b. You need to have a central national strategy with a clear vision for sustainable development, not segmented sub-national policies which would never be optimal.
- c. You need to have full national control on crude oil production and trade; this means that full national **sovereignty on oil production must be preserved**, given certain safeguards against undemocratic centralism.

5. What are the “right” legal and institutional arrangements?

Before we consider legal and institutional arrangements, needed to optimize future development in Iraq, three major facts have to be acknowledged and recognized as basic postulates for growth strategies. **First**, that oil is a fast depleting natural resource. **Second**, that Iraqis are a de facto indivisible one people, and that any division of the people and country would militate against rational maximization of developmental benefits, (neither for the people as a whole, nor for the socio-religious and ethnic segments of the population). **Third**, high individual and societal welfare comes through, not only social coherence and peaceful coexistence in a multi-ethnic society, but more importantly, perhaps, through **efficient economic management of common resources**, run rationally in a framework of legal, democratic, transparent laws and institutions. Otherwise, any welfare targets will not only be sub-optimal but also, in the case of Iraq, unachievable at all.

No country or nation on earth, today, can claim **absolute** racial and religious purities; mixed races, religions and ethnic groups are the backbone of all – not some – societies and states. They coexist and thrive under constitutional arrangements of their choice; be those of federal or unitary forms. In most democratic societies, **what matters is not the form of government, but the legal framework and principles**, i.e., the laws and statutes, guaranteeing equality and observing and protecting the rights of individuals and groups, and upholding the sovereignty of all people, with no discrimination, whatsoever, against groups, ethnicities, or religious sects, regardless of their relative sizes in the total population. If such legal and institutional arrangements are available, then equitable sharing in the fruits of development is guaranteed for all. Examples from advanced and developing countries are beacon for all. The USA, Switzerland, Australia, from the advanced countries; India, and Brazil from developing countries, can provide models for those who envisage a separatist constitutional arrangement in Iraq. We will, certainly, discover that such isolationist tendencies, whether advocated by the Kurds or the Shiites in Iraq, are politically motivated without proper considerations to their economic consequences. **In economic terms, the real welfare of the people of any segment of the Iraqi population, would be damaged**

by dismantling the economic unity of Iraq, especially in the field of oil management policies, and will result in real losses and, perhaps, a tragic missing of a great opportunity to use the oil resources properly and efficiently, so as to break away from the chains of poverty and backwardness; needless to say, to achieve true independence. The dispersion of the Oil Industry in Iraq, (*production, processing & income distribution, as formulated by this Federal Oil and Gas Law and other Laws, like the Federal Law on the Distribution of Public Financial Revenues, and the Oil and Gas Law, passed by the Parliament of the Regional Kurdish Government, KRG*), is not technically and economically viable, and it is more so in terms of geo-political conditions; the discussion of those latter aspects goes beyond the objectives of this brief paper.

6. Why does the present draft Law of the Oil and Gas fails to achieve any goal for optimum and just development?

Most, if not all, of my research colleagues who are participating in this esteemed Conference, would, I guess, discuss, perhaps, in detail, the proposed draft Law of Oil and Gas in Iraq. I have myself contributed several Articles, in Arabic and widely circulated, about this draft Law, exposing its justification, timing, structure and the substances of many of its problematic articles (see Endnotes^{6,7,8}). So, I feel that I should not repeat or duplicate the work on this topic. Instead, I would like to concentrate on highlighting the following basic flaws of this draft Law, giving some logical arguments as to why it will fail to achieve any goal for optimum and just development in Iraq. The brief discussion will focus on those provisions of the selected Articles that militate against the basic **principles of the national strategy**, needed to transform the Iraqi “rentier” economy into a viable sustainable one:

- a. The contradictory and vague legal provisions of both the Constitution and the Oil and Gas Law;
- b. The concessionary Articles which weaken or waive off the national sovereignty over oil policies;
- c. Lack of safeguard Articles in the draft Law to guarantee the application of economic feasibility principles to intended investment contracts.

But, before that, let us give some background.

A Prelude:

Iraq is a relatively vast country with the heritage of the earliest civilizations in the history of mankind. The size of its present population approximates thirty millions, (including some four millions, still in the Diaspora). The Arabs constitute the largest majority of the population, with a few ethnic minorities, the largest of them being the Kurds who inhabit the northeast mountainous corner of the country, named Kurdistan of Iraq, and form some 15% of the total

6 Al-Adhath, Kamil, “Qiraah Awaliah fi Muswadat Qanon Alnafit WA Algas Fi AlIraq, 2007”, in Arabic; “A Preliminary Reading of the Oil and Gas Law in Iraq, 2007”.

7 Al-Adhath, Kamil, “Limatha WA Kaif Yajib an Nurajea Qanoon Al Nafit WA Algas, Wa Mata?” in Arabic; “Why and How we must revise the Oil and Gas Law in Iraq, and When?” published Article, 26.03.2007.

8 Al-Adhath, Kamil, “Mulahathat Assasiah hol Miswadat Qanoon Almwarid Almaliah”; recently passed in Iraq; published Article, *Alsabah Aljadeded*, Iraqi Newspaper, 04.08.2007.

population. While in terms of religion, Moslems are the overwhelming majority. But, in terms of religious sects, particularly among the Moslems, the Shiites constitute the majority, while the Sunnis, (excluding the Sunni Kurds), make about one third of the population. This ethnic and religious structure of the population had always been used by various authoritarian regimes, especially during the long *reign* of the totalitarian Saddam Regime, (1968-2003), to oppress or disfavor the majority segment of the population, i.e., mostly the Shiites, as well as suppress, very often by force, the Kurds who had always claimed their ethnic rights which included self rule and even complete independence. Such policies rooted social antagonism and strife, leading to the revealed tendencies of the Kurds and the Shiites to disintegrate one way or another. Though we do not intend to deal with these socio-political issues, here, but to give a glimpse, as to why the Kurds, in the first place, seem to interpret the Federal Oil and Gas Law, in light of the new Constitution, as granting them the full right to pursue independent oil policies to manage the oil fields and reserves in the Kurdistan areas. Similarly, this may explain, generally, why the Shiites, (the majority Arabs who mostly inhabit the mid and oil rich south of the country) put claims for a federal status, presumably, of the same rights as those already acquired or interpreted or even dictated, by the Kurds, particularly, with respect to oil management policies and oil revenue sharing, i.e., claiming the right to control fully their proportionate proceeds of the exported oil from the oil fields in their areas. Having said this, we may revert now to discuss the highlights of the major flaws in the federal Oil and Gas Law.

a. The contradictory and vague legal provisions of both the Constitution and the Oil & Gas Law

After the collapse of Saddam`s Regime in 2003, the Coalition Provisional Authority, CPA, of the occupying forces, under Bremer, advocated the issuance of a law to privatize oil production.⁹ This was followed up through by the third elected Iraqi Government which started, with disguised foreign help, (mostly American), to draft a law behind closed doors. Eventually, among several disputed drafts, (none of them were officially published for public debate), we obtained the third draft, as approved by the Ministerial Council in February, 2007, which we will use, here, for the discussion of some of its selected Articles.

Article number 111 of the Constitution states categorically that *oil and gas are exclusively owned by the Iraqi People in all regions and Muhafadhat, (Governorates)*. Article number 1 in the draft Oil and Gas Law states the same. So these two provisions should make the management of these resources a centralized or Federal responsibility, because oil belongs to all Iraqis, not to the parts of it who happen to reside in areas where oil fields exist. Yet, both the Constitution and Oil and Gas Law include provisions, in some of their Articles which obscure this federal or central responsibility.¹⁰

The Constitution provides in Article No. 112 (item-first), that the Federal Government shall manage oil production policies jointly with regional governments, meaning the Kurdistan Regional Government, (KRG), and other oil producing Governorates. And, in the same Article, (item-Second), the Constitution states that strategic policies to develop the wealth of oil and gas shall be drawn up by the Federal Government and the regional Authorities, meaning KRG, and other Oil producing Governorates. *These two provisions do not mean that the Regions and/or the Governorates should pursue their own oil management policies;*

9 Bremer, Paul, "My year in Iraq: the Struggle to Build a Future of Hope", see Google, Website; and, see also, Baker and Hamilton Report, "Iraq Study Group: United States Institute of Peace, Dec. 2006.

10 Aldistur Aliraqi, "The Iraqi Constitution", 2006, and Qanoon Alnafit wa Algas, "The Oil and Gas Law", Feb. 2007.

they merely emphasize the need for coordination and integration between the Federal Government and the regions in this respect. But the KRG has used provisions from other Articles of the Constitution to interpret the Federal Oil and Gas Law to mean that it has the power to pursue its own oil policies, and, to hastily grant contracts to companies for the exploration and development of oil fields within its region, (despite the undefined borders of this region).

One may attribute such misinterpretation to two inconclusive Articles of the Constitution itself; Article No. 110, which specifies the exclusive duties or powers of the Federal Government; it lists its responsibilities to draw up foreign, economic and trade policies, etc., but fails to mention oil policies specifically. While Article No. 121, (items First and Second), bestows legal, executive and judicial powers upon regions, (KRG) and other Governorates, (whenever they form regional governments), and grant them the right to amend or override any Federal Law, not related to any of the exclusive powers of the Federal Government. This explains why, perhaps, the KRG went ahead and passed, through its own regional Parliament, a Regional Oil and Gas Law, basing it, precisely, on the last-mentioned Constitutional Article No. 121, (items First and Second), ignoring all the other various Articles in the Constitution which edify the central role of the federal Government in guiding and managing economic development of the country as a whole. The provisions of the basic Articles of the KRG Oil and Gas Law make it almost impossible to integrate and harmonize oil policies on a national level. Though this is not the place to discuss the legal and economic connotations of this regional law, but it suffices to state that if it is adopted as a model for other Governorates (would-be regions), then, evidently, **no national strategy for the optimum development of Oil Extraction Industry would be possible in Iraq**. The obvious consequence here is that a major dimension of *rationality* to use depletable natural resource, (oil and gas), for sustainable development is knocked down; dimming the economic future of all Iraqi people, including the Kurds themselves, even if they were to split in a separate state.

b. The concessionary Articles which weaken or waive off the national sovereignty over oil policies:

Though there is a lot to be revealed in this respect, our focus is confined to Chapter Three of the Oil and Gas Law, relating to the activity of exploration and development of oil fields. In this regards there are two major Articles; numbers 13 and 14; while we emphasize the former Article, a passing mention will be made of the latter. According to Article 13, contracts can be granted to contractors, (largely competent international oil companies) to invest for the exploration, development and production of oil fields with exclusive rights to use discovered, or yet to be discovered, oil fields for a total period of about 37 years (including extensions). The module of such contracts is not explicitly named as Production Sharing Agreements (PSAs), but is, essentially, the same. Apart from being economically unjustifiable and unsuitable for almost all oil fields in Iraq, these Agreements would, virtually, nullify the much needed national sovereignty over the oil and gas resources. This Sovereignty is needed to pursue a strategy for the optimization of development. This is basically because it is the investing International Oil Companies (IOCs), not the national Federal Government who decide the level of output and exports of crude oil. This means the Federal Government, and regional Governments for that matter, could not control production and trade of crude oil, and hence, could not, whenever relevant, reduce oil exports or to divert oil for domestic downstream chemical and energy based industries. It follows that “optimum development” could not be attained, while a policy of maximum sales of crude oil abroad is pursued by IOCs; simply because it is in their interest to do that, as long as it is within the terms of signed contracts.

Beside this basic flaw in such concessionary Article, there are various strong arguments to reject such modules of contracts for oil production in Iraq. We may list below some major ones, since other colleagues might dwell on them in more detail.

1. Production Sharing Agreements (PSAs) are similar to the Concessionary Agreements of the past. They carry with them almost similar defects; exploitation, and unfairness. Anyway, such models constitute a very small percentage (about 15%) of all forms of investment partnerships in the World.
2. Such PSAs have been mainly implemented in Areas of high risks and difficult environments, like drilling in sea shores and deeper seas.¹¹
3. It could be shown easily, but time here does not permit us to do so, that the margin of profits for the investing IOCs is unjustifiably high and monopolistic in nature for a very long period of time, while, in the case of Iraq, risks of oil exploration are known to be very low. So, it is not only unfair but *irrational* to adopt such models to increase the productive capacity of the Oil Extraction Industry.¹²
4. It is well known now, that Iraq has a potential of oil reserves that might reach 300 bn/b, and there are already 80 fields ready for production; only 17 are actually used, while 63 oil fields with reserves of about 80 bn/b are now ready for drilling, or accessible. In this case, only a few billions US Dollars are needed for few years to upgrade those fields. It is quite possible to increase production to some 8 – 10 m/b per day over the next decade with an average annual investment of 3-5 bn USD. So, why should the Iraqi Government seek further exploration, exposing its vast oil reserves to depletion over a shorter time span, and losing its sovereignty over them?¹³ Anyway, if oil export revenues exceed the absorptive capacity of the economy, then, the impact of further investment would be inflationary and wasteful.
5. The unit cost of oil production in Iraq is almost the lowest in the world; the cost per barrel is just about one dollar, while in Russia and USA, or in the North Sea, it is about ten-folds or more. So, why should the Iraqi Government and people concede to IOCs tremendous profits for extra output which would exceed the needs for domestic downstream development, i.e., inconsistent with “optimum development strategy”, which might be incompatible with a strategy for maximum financial resources that would benefit largely the IOCs.¹⁴
6. Beside all this, Article No. 14, relating to the obligations of the contractors, does not contain provisions for training and transfer of technology as part of the contractors’ obligations, despite the huge profits that could be realized by their investments.

11 Greg Muttitt, “Production Sharing Agreements, (PSAs), Platform, Series, 2005. See also, Tariq Shafiq, “Khafaya Qanoon Alnafit wa Algas”, Arabic; “The Secrets of the Oil and Gas Law”, published Article, 2007.

12 Al-Amir Fouad, “Mareh Thalitheh: Mulahathat hol Miswadat Qanoon Alnafit WA Algas”, Arabic; “For the Third Time: Notes on the Draft Oil and Gas Law”; published Article, 2007.

13 _____, *ibid*, p. 7

14 _____, *ibid*, p. 8

c. Lack of safeguard Articles in the draft Law to guarantee the application of economic and financial feasibility principles to intended investment contracts:

Article No. 9 of the Oil and Gas Law presents the rules and criteria or, generally, the procedures for granting contracts to would-be contractors, but none of those rules and criteria refer to the basic conditions of undertaking specified feasibility studies for each proposal of investment. Economic and financial feasibility studies are essential to determine not only the profitability and returns for the country, but also to assess social, economic, financial and even environmental impacts of each project. Such studies would involve quantitative economic measurements, like the marginal costs and revenues, as well as the marginal physical products, at all levels; i.e., from the well to the field levels. This quantitative analysis should be reinforced by a parallel financial analysis, using discount and internal rates of returns, etc. the Article should include a clear provision for economic and financial feasibility study; not necessarily in detailed terminology, as a safeguard for reaching the right rational and economic choice of the contractor and to strike a fair business deal.

To carry out analytical studies and scientific quantitative measurements, the Federal Government must have not only qualified cadres, but also suitable institutions; well equipped and organized Ministry of Oil & Gas; independent and capable public oil companies, active and well qualified private sector; a net of transparent webs for regional and external cooperation and information tracks.

7. Are the PSAs the best methods for reviving and investing in the Iraqi Oil Industry?

Recently, various Oil Specialists and business leaders, as well as some spokesmen from poor countries, potentially endowed with some oil reserves; advocated Production Sharing Agreements (PSAs), as a way to attract high investments and fairly compensate the high risks of the investors. Many economists and oil experts studied the nature and conditions of such PSAs; this is not the place to repeat or review these studies. But, briefly we comment as follows:

- a. Those PSAs involve heavy investment from exploration stage to final disposal of production (crude oil). Hence, investors would need to retrieve their costs first. Therefore, as soon as oil flows out; half of it will be allocated to repay for costs; this is why it is called “cost Oil”, the other half would be shared as “profit Oil”. The profit share (after paying off some royalties), always exceeds highest commercial interest rates.
- b. The oil reserves must remain over a period, ranging from 30 – 40 years, under the monopoly of the investing Oil Companies because the stages from exploration to exports and final retrieval of costs will extend over several decades in most cases, especially, whenever the stake of investment was high, and the terms of the contracts were too generous.
- c. Most PSAs were carried out in high risk projects, mainly in “rough” areas in poor countries, whereas the conditions in Iraq are almost risk free.
- d. Because of such conditions the oil owner countries would only theoretically be considered as owners of oil resources; in practice the IOCs are the owners. Hence owner countries, practically, lose sovereignty over their resources. For the same reason, they could not determine when to produce, or how to produce and how much to produce!

Though there are other unfavorable conditions associated with such agreements, we could, briefly, indicate why PSAs, generally, do not suit the situation Iraq:

- a. Oil fields in Iraq are almost risk free;
- b. Cost of production per barrel in Iraq is almost the lowest in the world.
- c. Investment requirements to raise oil production level and productivity are not beyond the financial capabilities of the Iraqi economy.
- d. The Iraqi Federal Government must preserve its sovereignty over oil, and its control to plan oil production and supply, if sustainable future development is its national goal.
- e. There are many other alternative modules to finance the oil extraction industry to choose from. So why go to PSAs?

Among the many modules for enticing investment in the oil extraction industry in Iraq, we can list, without detailing, some of them below:

- a. Service Contracts;
- b. Technical Service Contracts;
- c. Risk and Service Contracts (RSC);
- d. Buy-back Contracts;
- e. Joint Venture Contracts¹⁵
- f. Commercial borrowing.

Also, especially tailored contracts can be devised if need be. So, why limit the choice to PSAs? The investors, IOCs and private investors would still get very high rewards, due to the redeeming and conducive nature of oil field reserves in Iraq, i.e., their abundance, accessibility, low risk and low costs.

Finally, a word must be said; rejecting PSAs does not mean rejecting foreign investment, rather this represents a call for rationality and economic efficiency which are usually invoked by the rules and criteria of the World Trade Organization and international mobility of capital.

8. What are the possible or available ways to move out of the impasses?

In light of preceding discussions, I think the way out of the impasses that seem to be created or would be impacted by the draft Oil and Gas Law in its present format is quite straight forward. A few stepwise suggestions could be considered:

- a. The fundamental Constitution must be amended to incorporate a clear-cut provision, stating that the operation and management of the oil and gas resources are a **federal responsibility**. Also, a provision for relevant mechanisms of **regional coordination** and transparent consultation, between the Federal Government and the KRG and all other Governorates, especially the oil producing ones, must be included.

15 Uday A. Hussain, "Dirasseh Feniah Ektisadiyah Lemashroa Qanoon Alnafit wa Algas"; "A Technical and Economic Study for the Oil and Gas Draft Law", November, 2007.

- b. Revision of the Federal Oil and Gas must cater for all the relevant observations made, whether in this or other objective studies.
- c. Revision of the KRG Oil and Gas Law must be carried out to incorporate a mechanism for coordination and consultation with the Federal Government, and to eliminate all provisions that militate against the principles of achieving “Optimum” regional and national development of a unified and democratic country.
- d. Set-up all the necessary institutions, required to carry out, efficiently, oil and gas operations and policies.

9. Conclusion and Recommendation

The overriding conclusion is that some rational revisions for both the Constitution and the Federal Oil and Gas Law are needed. A few recommendations are suggested hereunder:

1. Revisions of the Constitution and the Federal Oil and Gas Law must be carried out, in light of clear national and regional strategy for sustainable and balanced development.
2. Existing national Laws for the operation and management of the oil and gas resources, e.g., the 1987 Oil Law and others, should be enforceable till rational and careful revisions are carried out for the Constitution and the Federal Oil and Gas Law, as well as the KRG Oil and Gas Law.
3. Setting up a new and vigorous national oil company (NOC) and regional branches must be a priority; all relevant laws and regulations should be enacted as soon as possible.
4. Pooling and utilizing all Iraqi oil expertise which proved its worth through the various expert contributions to recent debates on all Laws relating to the Oil and Gas resources. Iraqi oil experts and consultants, whether at home or in the Diaspora are national assets that should be attracted by the Iraqi patriotic Government to support its knowledge-base for the rational operation and management of the depletable oil and gas resources. Otherwise, politically motivated policies and dispersing of expertise over regions would lead egregiously to depredation and defeat to all the partners of wealth and fate in Iraq.

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