

International Contracts in Developing Countries about Oil and Gas: for instance, Kurdistan and Kuwait

Mahdi Nooruldeen M.Nory

Lecturer at Department of Law- University of Knowledge, Erbil-Kurdistan Regional Government-Iraq

Abstract

International contracts in fields of Oil and Gas management and trade has significant effects on economic and political areas. Developing countries do not have enough experience or financial capability to embark on exploration and technological support. English law will govern Oil and Gas in Kurdistan regional government. Kuwait has one of the smallest land areas of any OPEC country but it is the 10th top oil and gas producing country in the world. Kuwait applies its own laws to govern and manage Oil and gas contracts.

Keywords: international contracts, Oil and Gas, Kurdistan and Kuwait

Introduction

There are different types of oil and gas contracts through which the rights and obligations of the parties are determined. Developing countries do not have enough experience or financial capability to embark on exploration and technological support.¹ Each country which has petroleum chooses its own legal contractual framework for dealing with international oil companies. There are more than 40 states which use production sharing contracts, including in Africa, Central Asia and South-East Asia.² On the other hand, there are some developing countries which have used service contracts in the oil and gas sector such as, Iran, Kuwait, Mexico, Turkmenistan, Bolivia, and Ecuador.³ This study will focus on the country of Kuwait, as an older and more experienced state, and the newly-constituted autonomous region of Kurdistan in Iraq.

Kuwait is a small country in the Middle East. It is situated south of Saudi Arabia, with Iraq in the north, and the Persian Gulf to the east. It belongs to the group of countries which have used service contracts in the oil and gas sector. Throughout history, Kuwait has changed its strategy for hydrocarbon contracts: in 1934, it signed concession contracts for the exploration for and exploitation of oil.⁴ However, currently it uses enhanced technical services agreements.⁵ Kurdistan is a semi- autonomous region in Iraq. It borders on Iran in the east, Turkey in the north, Syria in the west and the rest of Iraq in the south. It is one of the regions to choose production sharing contracts with international oil companies. After Saddam's regime fell in Iraq in 2003, it created an opportunity for companies to invest indifferent sectors generally and specifically in the oil and gas sector in the Kurdistan region.⁶ Since 2004 many production sharing contracts with enormous international petroleum companies have been signed and they have discovered several oil fields. In contrast to Kuwait, Kurdistan has chosen English Law as the Governing Law for its contracts with international petroleum countries.⁷

The purpose of this study is to investigate the best type of oil and gas contract for promoting investment in developing countries, through a comparative study of Kurdistan and Kuwait.

The main aim and objectives:

Derived from the above, the main aim of the current study is to examine and compare the effectiveness of different legal frameworks for promoting investment in the oil and gas industry in developing countries through a comparison of the Kurdistan region and Kuwait. This will include evaluating if English Law is appropriate as the Governing Law or if the concept of 'Lex Petrolea', favoured by Kuwait, may be more relevant.⁸ To achieve

¹ C S A Okoli, 'Production sharing agreements and licences: a distinction without a Difference?' (2012) 282 IELR pp 1-5

² Allen & Overy LLP, 'Guide to Extractive Industries Documents :Oil and Gas'

<<http://www.allenoverly.com/expertise/sectors/energy/oil-and-gas/Pages/default.aspx>> accessed 8 February 2014.

³ A Ghandi, C.-Y.C. Lin, 'Oil and Gas Service Contracts around the World: A Review' <http://www.des.ucdavis.edu/faculty/Lin/service_contracts_review_paper.pdf> accessed 8 February 2014

⁴ T Al-Emadi, 'Joint Venture Contracts (JVCs) among Current Negotiated Petroleum Contracts: A Literature Review of JVCs Development, Concept and Elements' (2010) 1 Geo. J. Int. Law pp 645 - 667

⁵ A Bacci, 'Kuwait's O&G Contractual Framework and the Development of a Modern Natural Gas Industry' <<http://www.daoonline.info/public/foto/BACCI%20Kuwait%20O&G%20Contractual%20Framework.pdf>> accessed 15 February 2014

⁶ M Polaris, 'About Kurdistan' [2012] <http://www.morganpolaris.com/kurdistan.html> accessed 23 February 2014

⁷ KRG, 'Production Sharing Contract for Exploration and Production in Kurdistan' (2006) <<http://www.eisourcebook.org/cms/Iraqi%20Kurdistan%20draft%20Model%20Production%20Sharing%20Contract.pdf>> accessed 25th March 2014.

⁸ A D Jesús O, 'The Prodigious Story of the Lex Petrolea and the Rhinoceros' (2012) 1 TPLI pp 1, 52

this main aim, this study seeks to achieve several objectives as follows:

1. To examine different types of oil and gas contracts in developing countries generally and specifically to compare those used in the Kurdistan and Kuwait oil and gas industries.
2. To examine the advantages and disadvantages of these different types of contracts for developing countries.
3. To examine alternatives to those contracts for use in developing countries.

This topic is significant because the oil and gas contractual frameworks (applications and types of oil and gas contracts) in Kurdistan and in Kuwait are totally different. Therefore, identifying positive points in the legal aspects of each framework is crucial for promoting investment in the oil and gas sector in Kuwait and in the Kurdistan region, and more generally in developing countries. Also no comparative research has so far been undertaken into the different types of contracts in the oil and gas industry in Kuwait and in Kurdistan which may help to inform appropriate contract choice in developing countries. Furthermore, the author desires to develop his knowledge of oil and gas investment, in order to contribute to an improvement in any defects in the legal framework in the oil and gas industry in developing countries in his future career.

The oil and gas industry in these two countries will be examined in this chapter. This will be the most important point in this work. It will try to answer to the research questions. The Ministry of Natural Resources of the Kurdistan Regional Government is responsible for the development of natural resources in the region, in accordance with Iraqi Constitution articles 111, 112, 115 and 121, under the supervision of the KRG's Regional Council for Oil and Gas, and in accordance with Kurdistan's Oil and Gas Law (Law No. 22 of 2007), which entered into force on August 9, 2007.

This work will analyze both the relevant primary and secondary sources of information on the topic. Internet sources will also be used widely because this research topic, especially in term of Kurdistan, is very new.

The primary sources which will be used include the Constitution of Iraq 2005, the Kurdistan Oil and Gas law 2007 and the Constitution of Kuwait 1962. Secondary sources of information include relevant journal articles, studies and reports on the topic, papers written by academics and researchers on Kurdistan and Kuwait's contracts relevant to the study.

Kuwait has one of the smallest land areas of any OPEC country but it is the 10th top oil and gas producing country in the world.¹ Its first agreement in the oil and gas sector was, a concession agreement signed in 1934 with the Kuwait Oil Company. It supports the concept of 'Lex Petrolea'² in establishing applicable law for petroleum contracts

The Kurdistan Regional Government (KRG) began to achieve political and economic control over oil and gas reserves after the previous regime in Iraq was toppled in 2003.³ In 2004, the first oil field was discovered and since then oil and gas has played an important role in increasing the economy of the region. Kurdistan has become attractive for international oil companies to invest in petroleum, production and exploration. The KRG passed its own regional Petroleum Investment Law in 2007 and made new production sharing contracts with numerous international oil corporations including U.S.-based Hunt Oil.⁴ It has chosen English Law as the Governing Law for these contracts.

On the other hand, Law of Financial Rights officially called the Law of Identifying and Obtaining Financial responsibility to the Kurdistan Region of Iraq from Federal Revenue (law no. 5 of 2013). It will form the legal basis for the agreement of outstanding revenue issues between the KRG and the federal government of Iraq. Moreover, head of international law (Jeremy P Carver, CBE) states, Kurdistan Regional Government has authorities over oil and Gas under the constitution of Iraq. This formal opinion confirms the constitutional authority of the KRG to manage the gas and oil resources of the Kurdistan region as set out in the Oil and Gas Law of KRG-Iraq (Law n.22 of 2007), which is in full conformity with the constitution of Iraq. This law will be vital to oil companies seeking to invest in Kurdistan because it will remove a number of the current concerns. But it may also represent a limitation to the KRG's management over the fields, since any new federal approved law is likely to impose a number of revisions to the model currently in force in Kurdistan, including changes to the regime for royalties and corporate income tax. Until this new law is enacted, however, and despite the legal arguments in favour of the validity of the PSCs, the uncertainty regarding the development of the region's oil and gas reserves looks set to continue.

¹ Independent Statistics and Analyses U.S. Energy Information and Administration, 'Kuwait is one of the world's top producers and net exporters of oil' <<http://www.eia.gov/countries/cab.cfm?fips=ku>> accessed 10 March 2014

² K. Talus 'OGEL Ten Years Special Issue: Internationalisation of Energy Law' [2012] (3)OGEL <http://www.ogel.org/article.asp?key=3264#citation> accessed 18 March 2014

³ S Zual, 'Survival Strategies and Diplomatic Tools: The Kurdistan Region's Foreign Policy Outlook' [2012] (14) IT 141, 158

⁴ The New York Times, 'Dallas Oil Company Approved to Drill in Kurdistan' <http://www.nytimes.com/2007/09/10/business/worldbusiness/10hunt.html?_r=1&> accessed 5 March 2014

Since 2007, the KRG has been using a model production sharing contract (PSC) for all participants in Kurdistan, based on a model measured and considered reasonable and in line with international practice. Under the PSC, the contracting company has to act in accordance with an initial three year exploration sub - phase (seismic plus 1 - 3 well commitment), following which a second examination secondary point of two years can be commenced, with a possible extension approved for further evaluation. Upon discovery, the contractor can apply to enter the development phase, which lasts 25 years (with possible extensions). The contractor has the typical rights and obligations, including recovery of costs; payment of royalties to the KRG; sharing of “profit oil”; bonus payments; and taxes, which are paid from the Kurdistan Regional Government’s share of profit oil.¹

In addition, Article (3) of Law of investment in Kurdistan region-Iraq confirmed that, “Foreign Investors and Foreign Capitals shall be treated the same way as national Investors and national Capitals. A foreign Investor shall be entitled to own all the capital of any project that he sets up in the Region under this Law”². It seems obvious that KRG has significant rules to encourage foreign investors to invest in Kurdistan especially in the field of Oil and Gas because Kurdistan is new to this kind of investment and business and KRG intention is to create its own decisions and to have power over its territory and control its wealth for the benefits of Kurdistan region. In contrast the country of Kuwait does not need these kinds of rules because it has a very strong economy.

Conclusion

Developing countries have used different types of contracts in the oil and gas sector. Kuwait and Kurdistan use different types of oil and gas contracts to explore for and produce petroleum. In this research, the author will attempt to present possible reasons for this in the context of a comparative study of Kurdistan and Kuwait. In addition, the legal frameworks in these countries will be evaluated, including whether English Law is appropriate as the Governing Law for these contracts and the applicability of the concept of ‘Lex Petrolea’ Kurdistan has chosen English Law as the governing Law for these contracts.

The main aims and objectives of the research have been explained. This work has explained legal responsibilities of Oil and Gas trade in Kurdistan and it illustrated the conflicts between central government (Iraq) and Kurdistan regional Government. Furthermore, this work makes clear that KRG has a legal authority to explore Oil and Gas. However, Kuwait has its own Oil and Gas law which manages every aspect of petrol contracts.

Kuwait is the 10th top oil and gas producing country in the world. Its first agreement in the oil and gas sector was, a concession agreement signed in 1934 with the Kuwait Oil Company. In addition, the KRG passed its own regional Petroleum Investment Law in 2007 and made new production sharing contracts with numerous international oil corporations including U.S–based Hunt Oil. It has chosen English Law as the Governing Law for these contracts.

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