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Meeting to Discuss Hydrocarbon Legislation organized by the Council of Representatives of the Republic of Iraq, Dubai, April 18 2007

'It is better to get a penny which can save an unemployed person and keep them alive today than a putting a dollar into their account tomorrow when they are dead.'
Sheikh Khalid Al-Atiya, Deputy Speaker of Parliament

April 18, 2006

On April 18 about 150 Iraqis gathered in Dubai to discuss petroleum legislation pending before parliament. The attendants included the Ministers of Oil of Iraq and Kurdistan, the Minister of Planning, the Deputy Speaker of Parliament who initiated and chaired the meeting, representatives of the relevant parliamentary committees and factions, the authors and negotiators of the hydrocarbon law, the head of the South Oil Company which produced the bulk of Government Revenues and Iraqi GDP, numerous veterans of the Iraqi oil industry from inside Iraq and abroad many of whom occupy high positions in oil companies throughout the Gulf and beyond, and a large number of journalists from Iraqi, Arab and international media.

The meeting was unique in many ways. First, it was an unprecedented discussion involving the executive, legislative and civil society. Everyone was engaged on equal footing in an atmosphere of civility and mutual respect. It is hard to overstate how surprising the calm, rational and often cooperative spirit which dominated most proceedings was, considering the sensitive nature of the subject and the level of disagreement and mistrust among the various parties.

One of the most notable elements of the meeting was the constant presence of domestic and international media in the room and how little effect that seemed to have on the debate which remained frank and open throughout.

The meeting was an initiative by the Deputy Speaker of parliament, Sheikh Khalid Al-Attia from the SCIRI. The idea was to prepare for the debate in parliament, benefiting from the inputs of the oil industry experts, especially those outside the country. The concern was that

initial reactions to the law were extremely negative and were in part coloured by preconceptions and ideological bias. As the Sheikh put it, he expected the meeting to cut through the hype and provide MP's with as objective an understanding of the law as possible.

Ministers, drafters and negotiators from the Federal Government and the KRG were invited to introduce the law. Most of the day was then devoted to answering comments and questions from the floor.

The final draft of the law represented a compromise born out of eight months of 'heated deliberations' as the main Federal Government negotiator, Thamir Ghadhban put it. Thus almost all the parties involved in drafting and negotiations came to the meeting with proposed amendments which would bring the draft closer to their preferred position. Apart perhaps from the Ministry of Oil almost everyone in the room had some substantial amendments to propose on the law or its annexes. Hardly anyone, however, objected to the law in a fundamental way.

To complicate matters further the hydrocarbon law is part of a package which includes four annexes, and three more laws on the Iraqi National Petroleum Company (INOC), Ministry of Oil (MOO) and Oil Revenues. Only the main text of the Hydrocarbon Law was agreed by the Council of Ministers in February 2007, the annexes which divide fields and explorations blocks between INOC, the Ministry of Oil and the Regions and essentially determine how much of Iraq's oil remains in the hands of the state were presented as contested drafts adopted only by the Energy Committee of the Government. Two widely contrasting versions of the Revenue Law were also presented, one by the Federal Energy Committee and one by the KRG. The laws on INOC and the Ministry of Oil were outlined by the Minister and his main negotiator but not made available. This was difficult to square with the Minster of Oil's assurance that the whole package will be ready for presentation to parliament in one week considering how long it took to negotiate the Hydrocarbon Law.

Perhaps the main outcome of the meeting apart from opening up the process which was closed so far (at least from the federal government's side) is agreement on the urgent need for the law and on the core compromise around which it was built – a coherent federal framework for the management of the sector in conjunction with a per-capita revenue sharing framework. Indeed as the Ministry of Planning, Ali Baban put it; the law represents a great achievement by clarifying contested issues in the constitution: 'Emphasising article 111 of the Constitution (which establishes united Iraqi ownership of oil) and agreeing on a single petroleum account is a great foundation for national consensus

Even in the highly charged area of national control vs. foreign investment the divergence of positions was incremental. Most participants sought to increase INOC's share of fields from the currently proposed 80-90% of reserves while others, notably the KRG were seeking to reduce it to 'about 50%'.

The deliberations, however, also demonstrated how fragile and finely balanced the current compromise was. The KRG Natural Resources Minister, Ashti Hawrami, insisted on several occasions that the KRG is only going to agree to a complete package which meets their expectations as far as the revenue sharing arrangement is concerned and that they will not accept any amendments to the law which would 'violate the constitution' by eroding the region's

autonomy.

One of the law's main drafters Thamir Ghadhban, warned legislators that delaying the adoption of the law will only weaken the Federal government's position as more regions emerge and seek more privileges. These assertions, however, seemed to leave parliamentarians unimpressed. They were cognizant of the fragility of the compromise but were not going to forgo their constitutional right to amend the law or their interest in the case of majority MPs in seeing a more coherent decision making framework. They were aware of the time constraints but made it clear that they will not subject themselves to arbitrary deadlines. It is this newly found assertiveness and maturity by the Iraqi people's representatives that was most remarkable about the meeting. Anecdotal evidence from proceedings at the Constitutional Review Committee suggests that a similar substantive and constructive atmosphere is prevailing there. A new generation of Iraqi political elite seems to be finally emerging out of the post invasion chaos. The question is, is it too late to stop the slide.

Following are some of the key issues discussed during the meeting:

Should there be a law?

One of the triggers behind the meeting in Dubai was a meeting organized by Iraqi oil experts in Amman on February 17th. The main conclusions of the Amman meeting was that it was untimely to adopt a hydrocarbon law given the circumstances, particularly the foreign troops presence, the levels of violence and mistrust and the fact that the basis of all legislation - the Constitution is under review over the coming months.

Some parliamentarians and oil experts felt that a second look at the law was warranted and that the view from Amman was prematurely dismissive.

Indeed in Dubai the same group of oil experts agreed on the importance of the law which the Deputy Speaker described as 'the most important law for Iraq after the Constitution'. There was agreement that the law is the key to establishing an environment conducive to the development of the sector and that it could not be delayed until the security situation is resolved or the constitution is amended.

This was in part a result of the appreciation of the political significance of the law which as the Minister of Planning and Development Cooperation said goes beyond its economic importance. Some, however, argued that deliberations on the hydrocarbon legislation can as well become a source of further tensions rather than part of a 'national compact' as Mr. Baban and other law proponents had hoped.

Hydrocarbon Federalism

Federal government and KRG speakers emphasized that the agreements contained on the hydrocarbon law represented a compromise. The Oil Minister saw the compromise as fully establishing a coherent, centralized framework for the management of the sector consistent with the principle of undivided public ownership of the resource. Ali Baban would have liked to see more power given to the centre but conceded that this is the best that could be achieved in the

current context of mistrust. The KRG on the other hand would have liked the law to be more in tune with their interpretation of the Constitution by giving the regions full control over resources on their territory. Ashti Hawrami was, however, content with the compromise which amounted to the region voluntarily delegating its competencies to the Federal Government in exchange for a robust revenue sharing framework. Therefore he stressed that it was critical for the passing of the law from the KRG perspective that the entire package is passed as one including the still disputed annexes and revenue sharing law.

The drafters of the law including Tariq Shafiq and Farouk Al-Qasim felt that the compromise went too far in undermining the coherence and effectiveness of the decision making process and leaving loopholes and ambiguities which would lead to damaging decentralization. In this context they particularly objected to the exclusion of Parliament from the decision making process on significant oil contracts, the unwieldy composition and procedures of the Federal Oil and Gas Council and the Council of Independent Experts; The KRG threatened that any amendments in this direction would void the deal.

The discussion on the oil revenue law was more polarized. Everyone agreed on the idea of a single petroleum account but this is about as far as the agreement reached. The Ministry of Oil assumed that all oil receipts will be deposited directly into the account apart from the payment of costs plus fees to INOC. The KRG draft though not their intervention at the meeting indicated that they envisioned a situation whereby the region collects revenues and then submits them to the account. The KRG was adamant about the region(s) receiving their share of oil revenues ‘from the top’ in a process administered by the oil revenue commission. The MOO insisted that distribution should take place through the federal budget, executed by the Ministry of Finance under supervision of Parliament and the Oil Revenue Commission. The KRG protested that this is not very different from the current system which has seen payments to the KRG delayed arbitrarily by up to four months. The Federal Government’s response was that delays caused by mismanagement rather than ill will are affecting everyone including federal appropriation and that their draft law sets up mechanisms which will remedy this problem and ensure timely disbursements. The federal draft law calls for example for monthly reviews of budget execution and corresponding remedial action by the Revenue Commission in addition to its role of overseeing fairness of distribution.

Indeed the debate over hydrocarbon federalism was the least conclusive. It was clear that almost all participants except for the KRG would have liked a more coherent and effective decision making process under parliamentary supervision whether in relation to the sector or revenues. It was not clear how such a system can provide safeguards for the regions and minority actors in general should the majority dominated parliament and by extension government act in bad faith.

State vs. Private

This debate while emotional and at times more charged than the one on federalism revealed less pronounced differences than expected. It was clear from the tone of most speakers with the exception of the KRG and some Iraqi executives that Resource Nationalism is a dominant sentiment. The drafters of the law demanded that the annexes be amended to include all of Iraq’s discovered reserves into INOC’s portfolio. Neither they nor the Ministry of Oil envisioned the

use of standard PSAs for the development of these fields. They did allow for their use in new fields and exploration blocks included in Annex 4, however.

The KRG made a strong plea for the reduction of INOC's portfolio to about 50% percent of known reserves and the opening of the rest to the private sector. They argued that this will be a sufficiently large load for INOC and that burdening it any further will only mean that reserves will remain untapped. Ashti Hawrami questioned the usefulness of a law which purports to promote investment in the industry if most known assets are to be kept off the table. In this discussion the MOO seemed to leave the door open for investment at least in fields listed under Annex 2 (un-developed fields close to the currently producing ones within INOC's portfolio)

There were at least two lists of fields circulated at the meeting suggesting the removal of various fields from INOC's control. It is noteworthy that proposed changes to the annexes presented by the KRG propose the transfer of several fields located in so called 'disputed territories' (territories at the borders of the KRG which it would like to absorb) away from INOC's control. Most Members of Parliament and experts however seemed unwilling to be seen as 'reversing nationalization' as one participant put it in anyway. The KRG seemed more interested in protecting its positions on federalism rather than on this issue. It may still go along with MOO approach given that most development work in Kurdistan is likely to be based on fields not allocated to INOC.

Conclusion

The hydrocarbon legislation has a difficult road ahead; as Mahdi Al-Hafedh from the Iraqi List pointed out, the legislators will have to 'navigate a minefield' of issues. The precious and fragile agreement on the joint management of Iraq's oil wealth can collapse if no agreement is reached on the way to share this wealth. Improper arrangements on the management of the industry or revenues can not only be inefficient but also open the doors wide for abuse. Some of the issues can not be resolved within the legislative realm and need to be addressed in the Constitution – in particular achieving the right balance between efficient and transparent governance at the national level with safeguards for regions and minorities.

The meeting in itself, however, points at the best way forward – open and inclusive debate with broad cross sections of opinions and appropriate engagement of the technical experts. Its success seems to have inspired both parliamentarians and members of the government to replicate this format in other areas. This can only be helpful in both reducing tensions and suspicions and in arriving at rational and sustainable compromises.

Transparency was the main achievement of the meeting and one of its most important recommendations, including the proposal to submit material oil contracts to parliament.