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The Iraq Hydrocarbon Law: How and When?

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The much-discussed and often delayed Iraqi hydrocarbon law, approved by the Iraqi cabinet in February, is a bellwether for the future of the Iraqi state. Successful passage and implementation of the law would reflect a strong spirit of compromise and help to calm violence. If, on the other hand, the proposed law fails to pass, it will have negative repercussions for Iraq's social, economic and political stability.

To consider outstanding issues concerning the law, the U.S. Institute of Peace held a [public event](#) on May 18, 2007 featuring Revenue Watch Middle East Director Yahia Said. Said recently returned from several months in Iraq working on the International Compact with the UN. USIP Vice President for Post-Conflict Peace and Stability Operations [Daniel Serwer](#) moderated the event. This USIPeace Briefing summarizes the discussion and does not represent the views of the Institute, which does not take positions on policy issues.

The Hydrocarbon Law So Far: More than Oil, but Still Less than Everything

Yahia Said underlined the contentious climate surrounding discussion of the hydrocarbon law, which has more to do with the overall political situation than with the law's specific content. It has become a political battleground between those who want a more unified Iraq and those who want a looser, more decentralized federation. Many Iraqi citizens look to the law for what it can contribute to reconciliation, security, and welfare, but the political leaders see it as a test of who will govern in the future and how.

The portion of the hydrocarbon law approved by the cabinet in February concerns managing hydrocarbon investment, in particular how the upstream part of the industry will be developed. It is only one part of what will eventually be a four-part agreement. The three other parts of the agreement will deal with the issues of 1) revenue sharing; 2) restructuring of the ministry of oil; and 3) establishing the Iraqi National Oil Company (INOC).

The separation of revenue matters from management of the oil sector is vital, but there has to be agreement on the other matters—the sharing of revenue, the oil ministry (which is relatively non-controversial) and INOC (including the specific fields within its remit)—before the legislation can be

submitted to the Council of Representatives (the Iraqi parliament).

Power Sharing: The Balance Tilts Toward the Central Government...

The controversial issues in the law concern how power will be divided, first between the central government and regions (or governorates), and secondly between the public sector and the private sector.

The law starts with an article of the Iraqi constitution which declares that "the Oil and Gas are owned by all the people of Iraq in all the Regions and Governorates." The current draft treats oil as a united national patrimony, with the Council of Ministers as the supreme oversight body, the ministry of oil as the policy-setting body and the Iraq National Oil Company and its regional subsidiaries as the operating entities. The Federal Oil and Gas Council will be responsible for carrying out the Council of Ministers' duties in overseeing the sector.

This suggests a degree of recentralization of control over oil, an important concession by the Kurdistan Regional Government (KRG), which had previously insisted that Kurdistan's oil belonged to the people of Kurdistan, that "new" oil fields should be managed exclusively by the KRG, and that the private sector—including international oil companies—should play a major role. The ministry of oil argued for a prominent role for the state sector and the government in Baghdad. Compromise on the oil law was made possible by the promise of an ironclad system for revenue sharing, an agreement that has not yet been approved even in the cabinet.

The KRG has lingering doubts. Its objective is still to maximize KRG control and to maximize private sector (including foreign) investment. Some of the drafters and negotiators for the federal government are concerned that ambiguities and cumbersome institutional underpinnings of the law may lead to decentralization by stealth and open the way for inefficiency and abuse.

When the law goes to Parliament for official approval, it could be amended in ways that Kurdistan MPs would find difficult to block. That could undermine the revenue-sharing and other parts of the agreement as well.

...and Away from the Internationals

While the law makes room for foreign investors, it has not done so to the detriment of national interests, as many press reports have asserted. Fear that the law gives free reign to multi-national companies is unfounded, Said argued. Frankly speaking, "the aim of this law from beginning was to promote foreign investment in Iraq's oil sector. Yet while the law opens the door for foreign companies, there are careful, deliberate mechanisms in place to maintain control in the hands of national government."

The drafters, who were all Iraqis but worked in English, paid heed to the balance between the need for investment and expertise from abroad and the requirement for national control over revenue and exploration. The national oil company is given control of over 90 percent of known reserves in the law's annexes, which allocate fields between INOC, the ministry and the regions. The law mandates that all contracts made with foreign companies contain language that ensures national control, maximizes national economic return, and ensures through various conditions Iraqi sovereign control and interest.

Said believes that a more plausible concern is that the restrictions placed on multi-nationals, combined with national and regional insecurity, would discourage foreign investment. There is even a question of whether the wording of law allows companies to book reserves. Said concluded on this point that "in terms of spirit, intent, and language it is a law that is informed by the national interest."

Transparency is Important

Will the state have the technical capacity to exercise the degree of technical regulation and development

required in the new law?

Said believes that the Iraqi state's lack of technical capacity is a real issue, but will not present problems for implementing the law's strong provisions on transparency. He feels that the law is the "strongest [oil law] on transparency in the region." It requires the publication of all contracts, all commercial data related to the industry, output figures, taxes, royalties, and so on. Optimistic on this front, Said stated that "the beauty of transparency is that it is one thing you can do to shore up accountability without huge associated demands of technical capacity."

There is Still a Long Road Ahead...

There is still a long road ahead before passage of the Iraq hydrocarbon law. The draft put forth in February cannot go to parliament on its own—it must go as one piece of the four-part package. The other three parts are in various stages of development, with the revenue-sharing component being the most contentious.

While parliament has shown willingness to take the oil law's passage seriously, it is not willing to be pushed around by the international community or those who wish to see quick passage. Members of Parliament understand the necessity and gravity of the issues, but they also understand their constitutional right to examine the document carefully. Some feel that there are other issues more urgent than an oil law. The majority argue that the law can and must be part of the solution to Iraq's broader instability and is an essential part of the way forward, but only after thorough discussion.

The most important element still pending is the revenue-sharing scheme. Fearing mistreatment at the hands of the central government, the KRG insists it should receive its share automatically from a special agency that would parcel out oil revenues according to a pre-agreed formula.

Said commented that the solution to some concerns of the Kurdish and other groups might lie outside the hydrocarbon law. The constitution allows for, but does not create, a second chamber of parliament, a Federation Council, which is the more appropriate venue for protecting minority interests. The absence of this Council poisons many debates and creates many legislative ambiguities in Iraq today. The Council is being replicated in miniature in the Federal Oil and Gas Council, the Electoral Commission, and any eventual agency which will oversee revenue distribution. This blurs the boundaries between the legislative and the executive, reduces efficiency, and reduces the accountability of government.

...and Progress is Important

Undoubtedly, the February draft law represents a rare moment in which political elites were able to achieve a reasonable compromise. That said, the compromise is fragile and might be destroyed by the "noise" surrounding the process. Moreover, important pieces of the legislative package remain still to be concluded. While it is vital that the oil package move forward, so that Iraqis (and Americans) can see tangible progress toward reconciliation, stabilization, and reconstruction, it is also important that the Iraqis own the process. It would be a serious mistake for Washington to abbreviate the process, just as it would be a serious mistake for Baghdad to allow it to drag on too long. Either unrealistic expectations of early legislative action or unrealistic prolongation of the process could vitiate the political benefits of the legislation.

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- [*Oil, Profits, and Peace: Does Business Have a Role in Peacemaking?*](#)
USIP Press, March 2007
- [*Oil—the Curse—Might Also be the Answer*](#)
Op-Ed by Jonathan Morrow, January 2006

- [Managing Iraq's Oil Revenues](#)
USIPeace Briefing, February 2004
- [Iraqi Oil Revenues: "Managing the Devil's Excrement"](#)
Event, January 2004 (Audio Available)

This USIPeace Briefing was written by [Christina Parajon](#), a program assistant in the [Center for Post-Conflict Peace and Stability Operations](#). The views expressed here are not necessarily those of the Institute, which does not advocate specific policies.

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