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Interview: J. Jay Park on the Iraq oil law

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DUBAI, United Arab Emirates, Sept. 26 (UPI) -- J. Jay Park's work on international legal petroleum regimes has taken him around the world. He hel hydrocarbons law and has led training sessions for officials in Iraq's Oil Ministry.

He also represented Western Oil Sands, a Canadian firm, in its deal with the Iraqi Kurdistan Regional Government.

Earlier this month in Dubai, Park held a daylong workshop on the ins and outs of Iraq's draft oil law, as part of the Iraq Petroleum 2007 summit, org; the summit were representatives from oil firms around the world, as well as top Iraqi oil officials, including Oil Minister Hussain al-Shahrstani.

United Press International sat down with Park on the sidelines of the summit to discuss the mind frame for crafting an oil law; what decisions the Ira of regime Iraq can choose from; and what types of contracts -- including the controversial production sharing agreement -- work for Iraq's oil.

UPI: You've worked either with companies working within certain legal regimes or helped the governments set up legal regimes, so you've seen thi Iraq situation, how do you see them being able to find compromise, to agree on ... to pass an oil law, either this (draft) one or another one?

Park: When I'm looking at a resource law from a legal standpoint there are certain attributes that I want to see it addresses. The attributes from the there going to be fair share of resource revenue going to the state? Is there going to be adequate addressing of environmental, health and safety is there are local benefits accruing to the economy through employment, through training, through technology? Are they going to ensure that oportur the resource can be seized within the economy and not just exported? And is there a transparent process for the award of rights and the administra

From the point of view of the investor, what they want to know is: is this a regime in which if they make a discovery they will be able to complete the investment that they make? Number two, is the agreement a stable agreement so that once they make an investment they're going to be able to the deal won't change on the them, which is a problem we see in a lot of places, what we call the problem of the obsolescing bargain? And then fin: have adequate legal means for remedies if there is non-compliance with the agreement?

So if you've got all those features addressed in a petroleum law then I think the law itself is a good law because it addresses well the issues that ari That's what I look at. That's a technical kind of analysis.

When you then say, politically, how are they going to get this passed, that to me is really an issue for Iraqis. One of the things that I always look to i resource. In Iraq, they address this issue in part in the constitution. It needed more definition in the petroleum law and a revenue-sharing law, and tl

Now the biggest issue you have with respect to sharing of the resource revenue is who gets to receive the revenue. And I'm advised that there has to share the revenue resulting from the resource economy on a demographically equal basis. That's the biggest issue. If they have solved the bigge who controls activity, they're less important. So if they've solved the big issue, then already then in my view the other issues are surely able to be si (oil) law is going to be passed. Because once you've solved the revenue issue and how you're going to share it, then it's in everyone's interest to m when you've got everybody aligned in that sense, then I think you're going to see success.

Q: In the oil minister's presentation, when asked about what happens if the law is dragged out for so long, and he said 'well we have the legal right because we need to develop whether there is a new law or not,' can you explain that, what he bases that on?

A: Iraq has an oil law. It was passed in the 1980s. It is a short law, seven or eight pages, 17 articles. It grants the power to the government to mana respect to petroleum activities. It doesn't contain a great deal of detail on how that is to be done and you can follow from that then there is a great d as to how it may run the industry under the terms of that law.

What I believe the ministry is saying by that is 'there is not a vacuum with respect to petroleum law in Iraq. We'd like to see the new law passed bec law,' and I'm inclined to agree. From a technical petroleum law viewpoint, the new law is a better law than the old law. What I think the minister is s: passed and if it isn't passed then we'll have to just work with the old law.'

Q: You started your presentation explaining your frame of mind when you go into drafting an oil law. We have the Iraq scenario where we know the assume there's a lot more oil and gas and the industry is already established for a long time. Compared to, for example, Somalia or another country, and gas but we don't know so that's why we're creating this regime so we can figure it out, we can have the legal tools to do the exploration and de

thoughts when you're creating, what is the difference when you're creating the law, your mind frame when you sit down to write it.

A: The difference between developing a law for a regime that does not know if it has any oil and gas versus developing a law for a regime that knows what to do with a substantial existing resource base?

What many countries have done is they've established a state oil company and give it the management and ownership of the existing resource base. Development of that resource base is then within the control of that state oil company. But new exploration operations would then be open for assets to deal with that. Many states take different approaches to that.

Mexico says only the state oil company can do any exploration. Consequently, there's not a great deal of exploration and Mexico's production is because the company lacks the capital to explore it extensively.

Other countries, I come from Canada, says 'no, we're not going to have a state oil company but we're going to award these rights to private investors.

Iraq has chosen a middle ground. Iraq has said a state oil company will hold the existing producing base. It will also hold the discovered but undeveloped existing production and it may invite other companies to assist it in developing those resources but fundamentally they will be owned by the state oil company.

Then with respect to exploration areas and other discovered areas that need a lot of work to develop them, the scope is broader for how that can be done. Types of petroleum contracts that could be used, with many different structures, although it's clearly suggested that a joint venture with Iraqi participation would be the best.

Q: What would you say are the risks in entering Iraq's oil sector?

A: The principle risk that oil companies are designed to address is geological risk ...

Q: Is there oil or not, will you put the money in and come up with nothing ...

A: ... Exactly. That generally the record on exploration is that out of every 10 exploratory wells only one or two are going to be successful. But the world varies widely and so clearly Iraq is one of those places where the geology offers wonderful opportunities because we've already seen how much there's a great deal more yet to be explored. Clearly the geological risk in Iraq is less than it is in Ireland.

Q: In your presentation you had the four annexes up there. (The annexes are a draft list of the categories of Iraq's oil fields and exploration blocks, created.) You said this is the contract that you would use for each. Can you explain what specific contract per annex and why not the other ones?

A: Annex 1 is just producing fields. It's likely the existing producing fields involve minimal to no risk in terms of, you know, it's producing and what's needed is production and enhance facilities to allow production to occur. In those regimes around the world that use a service contract, that's the type of contract.

Other fields that need development work, drilling of further wells, construction of more significant facilities because they are not currently producing, is designed differently and has different work commitments and even you might need a different skill set as well, so that's why I deduced from the law that a development contract is something that is suited to that kind of an arrangement.

And finally when it comes to areas that don't have a discovery, that's where there is a more significant degree of risk and a risk exploration contract to encourage exploration activity and if exploration is successful, to allow development.

Q: What's the difference between the risk contract and the exploration and development contract?

A: In my opinion you're just mixing up different terms. An exploration and development contract and a risk exploration contract, to me, would mean the same thing.

Q: So the terms that they're (Iraqi government) putting up there, why do they have these two mixed terms?

A: One, I believe, is intended to be a broad term to describe a wide range of contracts called exploration and development contracts and then the other contract, is a specific contract they have in mind. It's one of the details of the law that needs to be further elaborated, either in the regulations or in the law.

Q: And if they decided to go the route of the production sharing agreement or some modified version that would fit within the law, where within these would that be Annex 4?

A: A production sharing type contract could be a form of risk exploration contract that would be suited to Annex 4. The word development and production are not specific types of agreement, it defines what the activities will occur under the agreement. Consequently, that's another area that needs better defined model contracts that will follow.

Q: But when you just take a production sharing agreement or production sharing contract, and if those were to be one of the model contracts that a government would sign with an oil company, where do you see this being applicable, in the four annexes, and where would it not make sense to do a production sharing agreement from the government's standpoint? In Annex 1, would you sign a PSA in Annex 1?

A: The problem is we're using a set of terms that are designed to apply to a different concept, which is exploration activities and all the types of activity in petroleum activities, and seeking to apply it to an existing, producing resource base.

Q: So you're saying a PSA is for when exploration is involved.

A: It would be rare to see a production sharing agreement used and granted at a time of, for a field with existing production.

Q: What about for a discovered but not producing field?

A: A discovered but undeveloped field could conceivably be the subject of a production sharing contract if the state decides that that's the appropriate

Q: But there's far less risk because you know that there's oil there.

A: The usual kinds of activities under a production sharing contract would need to be suitably revised to suit the development, instead of an exploration

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