

ICC Awards, FSC Decisions and The Three-Years State Budget

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A heated debate dominates domestic politics in Iraq nowadays, indicating possible severe fracture in internal geopolitics and political alliances. Strong and effective correlation between and mutual reinforcement of three “legal instruments” stand, probably, behind the current majority endorsement of new amendments and additions to draft budget law; triggering waves of current anger and dismay, particularly from KRG side regarding budget law 2023-25 and the apparent impacts of FSC decisions and ICC award.

I have written and published many articles in Arabic on the implications of these three instruments, three of the articles are listed below and, thus, I find it unnecessary repeating their contents in full here.

The articles were widely circulated, well received and, I think, have impacts. In all my articles I argued that the Iraqi federal government, i.e., the executive branch, and the parliament, i.e., the legislative branch, should fully and emphatically adhere to the Iraqi Federal Supreme Court-FSC Decisions and now, to the Tribunal of the International Chamber of Commerce Award-ICC Awards, regarding all issues pertaining to KRG oil exports when drafting and promulgating the state budget. Moreover, I called upon the FSC and the Commercial Courts to expedite their deliberations and decisions regarding the remaining KRG contracts with IOCs. Also, I suggested for the Ministry of Oil to be a pro-active by preparing well for any possible and probable action that could be taken by Turkey. In this regard, I proposed RAMM framework- Risks Assessment and Mitigation Measures. Additionally, I highlighted the complementarity of three different jurisdictions on the illegality of KRG oil export: American State Jurisdiction awards in 2014/5 regarding Greece’s oil tankers transporting KRG oil; Iraqi Jurisdiction since 2022 by FSC decisions on the unconstitutionality of KRG laws, contracts, and exports; and now the Tribunal Award, February 2023 of the ICC, Paris. Finally, I called KRG and the Kurdish leaders to accept and live with the new reality, which provide their region higher revenues per each barrel of oil produce there and higher allocation from state budget law.

Very briefly, the complementarity of decisions from three different jurisdictions presents significant legal precedents and premises in support of Iraqi federal government in any future legal action regarding illegal KRG export of Iraqi oil and for annual state budget laws and revenue sharing.

In 2014 and 2015 American courts, in New Orleans and Texas, issued decisions that oil cargos, chartered by KRG, on the United Kalavryta, the United Emblem and the United Leadership tankers could no longer be sold in the U.S. Consequently, KRG redirected the cargo to be offloaded in Israel. The Fifth Circuit's- in New Orleans September 21, 2015 decision denied the KRG's appeal on the grounds that the disputed cargo., regarding the

United Kalavryta tanker. "The KRG mooted this appeal through its voluntary decision to discharge the Cargo in Israel," the court said in its decision and adding, "In so doing, the KRG severely weakened its argument for equitable relief."

In Iraq, FSC and a commercial court took many decisions in 2022 and 2023 of direct relation to KRG' oil issues. FSC issued its remarkable decision number 59 on 15 February 2022, settling the appeal launched by the federal government in 2012 against KRG. FSC 59 decision invalidated the legal foundations of the KRG's oil sector independence and affirmed the federal government's exclusive powers over oil exports. In item "Ninth" of 59 decision, FSC referred to and elaborated on the American Court verdict: a vindication of that verdict as well as utilizing it as a case of reference.

Moreover, FSC' January 2023 ruling asserts that the federal government could not legally send funds to the KRG under the terms of the current budget law. The ruling applies to the draft law under consideration, now, by the Parliament as well.

Karkh [district] Commercial Court- KCC, Baghdad, issued rulings in July 2022 annulling the contracts of Norway's DNO, UK-listed Genel, Canada's Western Zagros, and the U.S. firm HKN. In October same year, KCC issued further ruling on three more of KRG' production sharing contracts-PSCs with IOCs of China's- Addax Petroleum, Canada's ShaMaran Petroleum, and UK-listed Gulf Keystone, a total of seven annulled of the KRG's oil contracts with international oil companies.

The Oil Ministry also filed two other lawsuits — including one against Dana Gas, Crescent Petroleum's sister company and partner in the Pearl consortium — which have not been decided yet.

It should be mentioned that FSC decisions are final and implementable, while KCC decisions are appealable before FSC.

ICC award is also significant and powerful. Tribunal Final Award document of the ICC is long, complicated, and very elaborated with, naturally, special legal language and terms.

Final Award Document-FAD comprises 189 pages, with 779 endnotes (the texts of which are not included in the 189 pages, indicating much larger document), many "expert witness" reports and other legal opinions.

FAD is very rich and extremely enlightening with well-structured contents and methodology. The "Tribunal Analysis" on each raised claim and counter claim is invaluable help to understand how and why the tribunal reached its decisions; this is worth reading and studying thoroughly and carefully.

The Tribunal made 22 decisions/awards, 10 of which has specific amounts denominated in \$US; 3 decisions give Iraq \$1.999 billion, while 7 decisions give Turkey \$526.6million, with a net balance of \$1.471billion for Iraq.

Interests on the awarded amounts to each party are premised on interest rates at the average annual US dollar denominated Turkish bond rate compounded annually from to date specified in the award.

Analytically, decisions in favour of Turkey are premised on operational aspects relating to the Iraq-Turkey oil pipeline Agreement-ITOPA, mostly regarding minimum throughput provisions, while decisions in favour of Iraq were premised on Turkey's violation of the said agreement by allowing loading and export of KRG oil, thus causing economic losses to Iraq. Decisions in favour of Iraq relied on two basic issues: first, the transit fees on oil coming from KRG controlled fields were much higher than what was stipulated in ITOPA and second, oil exported by KRG was sold at a discount averaging at \$5.77/barrel, compared with the price had SOMO exported that oil. Data and methodology presented by one expert witness convinced the tribunal to make this award.

In substantive and legal implications, decisions in favour of Iraq have much more impacts and long-term implications than just violating operational provisions of ITOPA. Ironically, when Iraq launched the arbitration case, in 2014, many pro-KRG and Turkey called it "hollow threat", now they call ICC Award a "hollow victory", I disagree with both.

State Budget 2023/25

Two days ago, the Finance Committee of the Iraqi Parliament introduces new provisions and amendments to the draft State Budget for 2023-25. These new provisions and amendments are in line with my suggestions, though I cannot claim credit for that at all.

Reactions from KRG, particularly from Barazani family side and its KDP members, were prompt, angry, opposing, accusing the other their rival Patriotic Union of Kurdistan-PUK (controlled by the Talibany family) and, as always, labelled the Finance Committee decisions unconstitutional and contradict with the deal concluded with the Prime Minister, Al-Sudani. They vowed not to implement them even if the State Budget Law was promulgated! Obviously, they prefer and relied on "personal agreement" more than law-based budget. It seems they intend repeating the experience of 2014 and 2020/22 when no budget laws were passed, but they are unaware of the significant differences and change in circumstance and the legal precedents I outlined above, as the outage of oil pipeline continued since and as a result of ICC award.

Today, the news indicate that the Finance Committee had concluded the draft of the budget law and will refer it to the Parliament for voting; all members of the said committee had endorsed the final draft, excluding Kurdistan Democratic Party-KDP, Barazai controlled party members.

Only time will tell!!

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قرار التحكيم الدولي المتعلق باتفاقية أنبوب النفط بين العراق وتركيا تحليل وتقييم ومقترحات

Posted on 23/24 May 2023

<https://www.mushtarek.org/groups/6135da07aac957001377773e/posts/post/646d0f04d73eb199b4402e78>

<http://www.tellskuf.com/index.php/mq/109285-yr24.html>

<https://akhbaar.org/home/2023/5/301036.html>

مشروع قانون الموازنة العامة للسنوات 2023-2025: ملاحظات وتساؤلات ومقترحات

<https://akhbaar.org/home/2023/4/300651.html>

<http://www.tellskuf.com/index.php/authors/1180-jiad/108822-sa286.html>

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