BOOK REVIEWS

Regulation of the Upstream Petroleum Sector. A comparative Study of Licensing and Concessions Systems, by Tina Hunter (ed.), (Edward Elgar Publishing, online £85.50, ISBN: 978-1-78347-010-5 (cased), 978-1-78347-011-2 (eBook).

There are 193 members of the UN today.[1] In 2009 they were one less.[2] Among these 192 states, 177 possessed their petroleum legislation, according to late Gordon Barrows, including 111 countries which implemented so-called "Tax plus Royalty" (T+R) systems (either licensing or concession systems (LCS) for subsoil use regulation), 55 states preferred upstream petroleum regulation based on production -sharing agreements/contracts (PSC), and 11 states used combined/hybrid approach (where both T+R/LCS and PSC regulatory systems of the upstream petroleum sector were in place in these states simultaneously). Among 177 states with petroleum legislation, 104 were oil-producing countries (73 states have in place their upstream petroleum legislation, but no commercial oil production), including 55 with T+R/LCS upstream petroleum regulation, 38 with PSC regime and 11 with combined availability of both T+R/LCS and PSC upstream petroleum regulatory regimes.[3]

This is why it would have been rather difficult to present in one book a detailed examination of multiple upstream petroleum regimes worldwide in such multiplicity of states. So the editor organised the book as the selection of few "case countries" which are united in two groups ("mature" and "new" oil producers), accompanied by introductory and conclusive chapters with cross-border, generalised analysis of the issues. So while the editor has limited the scope of the book to LCS only, she, nevertheless, addresses to the dominant part of international petroleum arrangements worldwide.

Thus the book is divided into four parts. Part one is devoted to the general principles of petroleum regulation: its universality in international context and the concept of *lex petrolea* (Ch.1, A.Wawryk) and access to petroleum under the licensing and concession system (Ch.2, T.Hunter).

Part two addresses comparative petroleum regulation in mature petroleum provinces, such as Australia conventional petroleum resources (Ch.3, T.Hunter), UK (Ch.4, G.Gordon and J.Paterson) and Norwegian (Ch.5, E.Nordtveit) continental shelfs, US (Ch.6, O.L.Anderson and C.Kulander) and Canada (Ch.7, K.Fletcher-Johnson) offshore petroleum.

Part three covers comparative petroleum regulation in what is called "developing petroleum provinces" to which such countries were referred as Brazil (Ch.8, E.G.Pereira) and Nigeria (Ch.9, S.W.Amaduobogha), but also, though it is rather a strange selection from the reviewer's perspective, Russian Federation (?) (Ch.10, K.Swendsen and A.Kompaniets) and Japan's offshore (?) (Ch.11, S.Kozuka). The term "developing petroleum provinces" sounds slightly strange when referred to two latter "country cases": Russia is a well and long established petroleum state since the end of the XIX century, when it was ranked Number One oil producer for few years at the edge of XIX-XX centuries, overcoming USA in oil output, and has been one of key oil producers (together with Saudi Arabia and US) nowadays, while Japan is a 100 per cent oil importer with low prospects (to say it diplomatically) to become a noticeable oil producer (to put aside gas-hydrates prospects) in the foreseeable future.

Part four (Ch.12, T. Hunter) entitled as legal issues in petroleum regulation, deals with comparison of access to petroleum in developed and developing licensing and concession systems.

Chapters with "case countries" are organised in the similar logical way which provides a good opportunity for the reader to establish a detailed picture of legal and regulatory framework of petroleum industry development in the examined states. So, Pts 2 and 3 of the book can be characterised as a collection of the chapters with fact-finding country-specific data. These chapters are opened with the relatively short "historical overview" paragraphs followed by detailed description of the legal framework for petroleum activities, including ownership and access to petroleum resources, different forms of petroleum licenses and their key clauses, safety and environmental regulation. In some chapters, in addition to this, more specific topics are examined, inter alia: financial provisions of petroleum arrangements (UK, US), including taxation, third-party access to pipelines, decommissioning of offshore installations which is an important issue for every mature offshore petroleum province (UK), government involvement and state

[1] *http://www.un.org/ru/members/* [Accessed 24 May 2016].
[2] *http://www.un.org/ru/members/growth.shtml#2000* [Accessed 24 May 2016].
[3] The data of the Association of International Petroleum Negotiators (AIPN) and Barrows Co kindly provided to the author by late Mr. Gordon Barrows and introduced by the author in: A.Konoplyanik, "Economic Growth and Investment Regimes in Subsoil Use and its consequences for Russia (Results of Cross-Country Comparison)" OGEL, July 2015, Vol.13, Issue 4, *http://www.ogel.org*; *http://www.konoplyanik.ru* [Accessed 24 May 2016].

participation (Norway, Russia), detailed description of step-by-step development of an offshore oil well in federal offshore lands, royalty valuation and payment, communitisation and unitisation, application of maritime law (US), offshore spill regulation and spill liability (Canada), detailed clause-by-clause description of the first national model concession agreement, including government take, local content requirements, etc. (Brazil), difference between two petroleum regimes applicable in the country—PSC and licenses, and description of Joint Operation Agreements (JOA) in licenses, local content and development of indigenous technology, Petroleum Law reform of 2012 (Nigeria), licence regime after 2011 amendments with focus on production in the Ocean (Japan).

Each country chapter specifically addresses regulatory issues of offshore petroleum activities. But if in the chapters on Australia, Brazil and Nigeria both onshore and offshore petroleum regimes are examined, all other country chapters address in detail legal framework for offshore petroleum development only. Maybe this might be considered as a reason why Russia, Japan, Brazil and Nigeria has been referred to as "developing petroleum provinces" since they have not reached such a scale of offshore petroleum development as other countries examined in this book. Though, nevertheless, such reference is still questionable.

My major personal interest was related to Pts 1 and 4 which present a comparative analysis and generalised view on the issue presented in the title of the book.

In Ch.1 Alex Warwik examines the concept of *lex petrolea* as a type of *lex mercatoria* (or international "law of merchants").

The author started with the clear economic and financial precondition for internationalisation, consolidation and generalisation of petroleum arrangements. He factually proves that their major aim is to mitigate long-term investment risks of upstream projects development to the mutual benefit of the host state (the resource owner) and the subsoil user (petroleum investor) within the globalised energy world. This is a god starting point for his analysis since natural resource extraction projects (both onshore and, especially, offshore) are the most risky type of economic development within material world since they possess the type of risk (geological risk) which does not exist in any other industry in material production.

> "Because these contracts are for very long terms, international oil companies are exposed to sovereign risk, that is, the risk of political events that affect petroleum development. The classic example is the risk of change of government … ." (See p.4.)

This is the essence of the issue: economic lifetime (financial lifecycle) of the upstream petroleum project is usually measured in decades, while political (electoral) cycle in the democratic states lasts for four to eight years, i.e. is few times less than economic lifecycle of the oil development project. These projects are usually immobile (contrary to, say, manufacturing it is impossible to change location of the oilfield). And although oil companies operate globally, petroleum exploration and production activities worldwide are regulated by national legal regimes, which means that differentiation of petroleum regimes between the countries (which choice is the sovereign right of the sovereign state) also add complexity to finding the balanced approach in risk mitigation. So we face objective duplication (if not multiplication) of risks in petroleum development.

I fully agree with the author that "although there is no treaty giving rise to common principles of (petroleum) law, there has been a process of internationalisation (and globalisation) of domestic principles and rules and ways of conducting business, which has led to the development and spread of many legal principles now common to petroleum arrangements around the world. This process of internationalisation (of such principles), on the one hand, reflects the international nature of world oil markets, and, on the other hand, have given rise to an increasing sense that (international petroleum) industry is governed to some extent by "international" or "transnational" petroleum law" (p.5). In my view, this is a classic explanation of the "bottom-up" character of development of multilateral international instruments of trade and investment protection, such as, inter alia, World Trade Organisation (trade) or Energy Charter Treaty (trade and investment protection in energy), and the role of different business associations in the process of consolidation and generalisation of generally accepted business practices, such as, inter alia, Association of International Petroleum Negotiators (AIPN).

> "The idea that there may be a *lex petrolea*, comprised of norms of traditional customary international law of specific relevance to the international petroleum industry, arose in *Kuwait vs AMINOIL*, … though the Arbitral Tribunal [1982] rejected both the contention that such a rule existed, and even if it had, its application to the present case." (See pp.23–24.)

In order to provide the necessary background on the development of *lex petrolea*, the author first briefly describes the internationalisation of petroleum industry within the course of the XX century and demonstrates how common principles of contractual and commercial law of specific application to the petroleum industry, contained in contracts between companies and common clauses in host government contracts, have spread globally. He also explains the importance that international dispute resolution in the international petroleum industry plays as a source of *lex petrolea*, in particular international commercial arbitration and investment arbitration. He then continues with the main discussion of the scope and meaning of *lex petrolea*—the different conceptualisation and meanings attributed to *lex petrolea* by scholars and practitioners, the jurisprudential basis for the doctrine and the very real challenges posed in recognizing the existence of a *lex petrolea*.

In Ch.2 Tina Hunter went deeper into the concept of risk-mitigation by different petroleum arrangements. Further to Daniel Johnson and his "International Petroleum Fiscal Systems and Production Sharing Contracts", she distinguishes two classes of petroleum regulatory systems, generally divisible by the granting of title and by taxation arrangements. The first is contractual systems (risk-bearing and non-risk-bearing service contracts, and production sharing contracts), which are not the main subject of this book and thus deserve only her short description. The second is the licensing and concession system (LCS), which are the main subject of the book and thus are the focus of her chapter. Tina starts with the overview of licensing and concession systems and then provides her step by step analysis of their key principles and stages of the process of awarding licenses (within formal, informal and special licensing rounds) both by bid or auction method (cash bid and/or work programme bid) and by discretionary method ("discretionary" and/or "objective" discretion), which she summarised in the fig.2.1 (p.47).

And in the final Chapter12 of the book Tina Hunter tries to systematise fact-finding data from the "case countries" chapters within the structure of her system analysis of the process of awarding licenses for access to petroleum. She starts with prequalification for application for license. Then she put together from "case counties" chapters allocation of license—their distribution between bid and discretionary systems. Finally, she specifies such issues as special treatment for mature and frontier areas, transparency and stability of the licensing system, and hybridisation—use of PSC and LCS, which is the case of three states analyzed in the book: Brazil, Nigeria and Russia.

The book provides interesting and useful reading and will be a helpful source of information and food for thought both for the scholars and practitioners in the international petroleum industry. It's worth reading it. From my view, it will be logical to complement this book by the second volume providing, further to comparative study of licensing and concession systems in this volume, similar comparative study of production-sharing contracts in the second volume.

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