

An interview with the AIPN's president

Wednesday, 5th January 2011 by Kyriaki Karadelis

Chris Moyes, president of the Association of International Petroleum Negotiators and founder of the consultancy Moyes & Co, says there's no such thing as a perfect contract, describes his experiences of working in the midst of an African revolution, and explains why oil and gas are here to stay. Interview by Kyriaki Karadelis

Chris Moyes



How did you get where you are today?

I'm a University of Western Australia graduate and my first degree was actually zoology. I was particularly interested in marine biology and wanted to complete my postgraduate work in sharks. In the early 60s when I graduated there were limited funds for marine research - and so I completed geology as a second major and worked for the summer as a geologist at Chevron's operating company, Western Australian Petroleum. I later joined the company full time, spent a lot of time on the rigs. I liked the engineering side and they said I should really do an engineering degree, so I went to Imperial College London and completed my MSc in engineering in the very early 70s. After graduating, Perth was quiet - the boom was still to come - but there were jobs everywhere in the North Sea, so I decided to stay. I met Peter Gaffney from the oil advisory firm Gaffney Cline & Associates (GCA) at a Society of Petroleum Engineers meeting and joined the firm. The first project I worked on was the cross-border

unitising of Frigg Field [a natural gas field in the North Sea on the boundary between the UK and Norway]. I stayed about a year in England, then transferred to Singapore where I was managing director until 1976.

Then two events occurred: the war in Vietnam ended and the Labor government in Australia considered nationalising the oil and gas industry. Energy investment in Asia slowed significantly and we transferred staff. I had some options about where to go, so I went to Dallas where GCA had a fledgling company. A few years later, I was appointed president of Gaffney Cline (US) and remained so until 1983.

In Dallas in 1982 to 1983, the company did two international transactions, which I was team manager on. I found I enjoyed the negotiation aspects, bringing the deal to closure, and decided that's what I wanted to do. I started my current firm in 1983.

So how did Moyes & Co - a consultancy that evaluates economic and business risk for energy projects around the world - come about? Where did the company grow from?

I'd always been interested in the technical basis for the development of fair market value for sub-surface oil and gas assets. We produced a lot of valuations when I was running GCA in Dallas, but it wasn't really an organised process. I asked myself how we got to the value because there wasn't a lot of public data out there.

Then I came across Value Line [an investment research company that provides information on stocks, mutual funds and other securities], and I thought I could do the same for assets. We started doing this, but then over time I could see that the issues relating to assets are very variable, so it was harder to produce.

I think like most entrepreneurs, I wanted to build something that I left behind.

How has the process for evaluating the commercial viability of operating in a country - the economic climate and risk assessment criteria - changed since you started out?

There are many new nations and companies investing in the oil and gas sector forming, there is a lot more data available because of the internet and transparency, many more people involved in the business itself and a lot of indigenous companies. There is more opportunity, but I think surface risk has become much more significant relative to the technical risk, through the need to maintain working relationships in a volatile political and commercial environments.

If you're trying to work with a partner and it's supposed to be an equal relationship, but the local partner happens to be the brother of the president, in one way you've got superior access and in another way there can be issues because it's not necessarily a balanced relationship. There was a big disruption in CIS with one of the big companies, because their agent happened to be married to the daughter of the president. After they divorced, he was no longer effective and couldn't even stay in the country. I think that's where it's got more difficult in terms of the actual business.

But many things have gotten easier with data storage and communication. Nowadays with the iPhone - short of running out of battery power - I don't think there's a country in the world you can't contact me in. On the other hand one is accessible 24/7 and the electronic age allows everyone to have an input so documentation and process can take longer.

Do you work more hours a week than twenty years ago?

Probably, but I'm probably more efficient in terms of what I do. I think it's harder now, certainly for the mature generation. I think youth find it easier to move around because they come through with all the technology and the culture. In other ways I think it's more difficult because they're consultants – they may never have a permanent job belonging to an organisation like my father did. My father was headmaster of a school for thirty-three years and never thought of leaving. I don't think that's an option for many younger people these days.

Moyes & Co keeps data on the competitiveness of different regimes. Which is currently the most competitive and why?

I follow Transparency International's corruption perceptions index. I've never had to pay a bribe, but I've worked in some difficult places and sometimes you don't get everything you want. You can't transport the US and Canadian private ownership model out into anywhere else in the world, because it doesn't work like that.

The way the US, or what I loosely call "Westminster law" [the Canadian, UK, American and Australian systems] works is, if you hold the exploitation rights through a granting instrument, you've got a very high probability of being able to defend those rights. So to me, they're the most attractive if you're an oil company and trying to invest.

There are reasons why the UK's not as attractive right now because the costs are so high, but Norway for many companies is very attractive because they pay your exploration costs back. If you want a test of how efficient a government is, look at how VAT is given back to you. In Norway, if you go and buy something and you're leaving the country, you take your VAT to the airport and they'll give you back the 89 kroners you're owed immediately in cash. In England, they give it back on your credit card three months later. In Argentina –at least when I was there - they don't give it back to you at all, because they don't tell you that the VAT refund has to happen before you go through immigration. Once you're through immigration, it's too late.

In Nigeria, despite all the reporting of problems in the press the IOCs have stayed there for decades because the hydrocarbons are there and the fiscal regime is attractive. Indonesia has been a stable fiscal regime since they signed the first production contracts in the world, which was back in about 1968. Those early contracts are still functional, modified and renewed as times have changed. They've changed some local content and environmental laws, but Indonesia is a very attractive place to get a contract and that's why it's always busy.

What are the recent trends in governments' fiscal terms?

Governments are looking at oil and gas prices, particularly the oil price, and thinking that their contracts are not progressive - they don't adjust the take with profitability or price. So the governments are either trying to renegotiate the terms or trying to unilaterally change the terms. We've had progressive terms since the first oil price move in Christmas 1976. For some reason, governments don't pick up on these and I don't know why that is because they're widely published.

The next big change is that a lot of countries are moving towards that idea of: "We own the resource, it's going to be our resource and you're going to be a service company." IOCs are not going to have the right to lift the crude or book the reserves. I don't know if at the end of the day, the industry is going to mind that much. The governments will still need the oil companies because if they stay as an NOC - as a government agency - it's very difficult to compete successfully with the IOCs. The decision skill-sets are different. So I think we're finding a new way for the independents and the nationals to work together and the governments feel they're getting a bigger piece of the overall revenue package.

So tell me about the AIPN, how and why did it come into existence?

It was formed in Houston - in Galveston actually, I think – that's where the first meetings were. First of all it was just meetings and networking events where negotiators got together. Then we started building and writing model contracts. We must be coming on to 26, 27 years old now.

Is there such a thing as the perfect contract?

I'm not sure there's such a thing as a negotiated contract that's perfect. When you negotiate a contract there's a lot of give and take. I think many of the AIPN's experienced members could rewrite a model contract so that it had a slightly different look and feel to it. To me, a contract is not just the programme, the cost oil, profit oil, royalties and taxes. It's much more. You have to ask yourself: "What's the underlying substance behind this contract? How do I work with the other stakeholders? What happens when things change, or go wrong?" It's a smorgasbord of contracts. Your responsible law jurisdiction may be the local area, but your arbitration law may be in Paris and it may be under the International Chamber of Commerce rules, or it may be another form of arbitration - it may be in another language. You may have other agreements that are all wrapped together, negotiated at different times. How do you bind those together? What sort of accounting procedures are you using? Are you using US dollars? Are you using Euros? Do you have to use local currency?

When you're negotiating a contract you're not always going to win all of the things you want, because sometimes the other sides' negotiators put their foot down and say, "I can't accept that."

That's a walk-away so you look at it and say: "OK, I've done the best I can, but it's not perfect."

If you put two senior negotiators on the same contract they will have to disagree on agreeing or agree to disagree, because at the end of the day, unless the contract is a disaster, you have to go forward - for the project, and for the country you're investing in. Completing the agreement between parties is the start of a relationship; the contract becomes a living document.

Should the AIPN be renamed the Association of International Petroleum, Unconventional Oil and Gas, and Renewables Negotiators?

We've had that discussion. It was actually on the table - should we look at green? It was put forward by one of the members. There were some fairly strong arguments, but at the end of the day I think the feeling was there is so much work to do in our space - just in hydrocarbons - that to do it well, to try and take on a broader scope of green power, wind power, solar, we didn't think we as an organisation could efficiently handle it. We also felt that there were other organisations that were already looking at that space and it was narrow enough that we didn't think we were going to add to it.

There is also some discussion about whether we should have an unconventional oil and gas committee. Clearly, there are a lot of issues around unconventional oil and gas - current legislation, regulations - and there would have to be a lot of work done to export the unconventional technology and everything else out of the US. I could see enough support for an unconventional committee but I'll be interested to see what their mandate would be.

How has the make-up of the AIPN's members changed since it first began?

Over time, there have been different percentages of lawyers versus commercial members, but now we make a coercive effort in the bylaws and policy documents to balance the legal and the commercial. We also try and balance the membership between the IOCs and super majors and commercial lawyers, so that we have everybody represented to the extent we can. And now, because of the young negotiators groups [the AIPN Young Negotiators was launched in Houston in early 2009 and has since branched out to Brazil and London] and student bodies, we're making a much bigger push to try and engage people much earlier in their careers.

Is it true that there's a gap in the AIPN's membership between the older members and the new recruits, where a generation has been missed?

There is a big age gap in the industry between 35 and 55 - and a really big age gap just underneath 55. I think it's partly because we've been through five big recessions when the industry collapsed and there were a lot of pay-offs. The US certainly paid off hundreds of thousands of people. They went into health care and high-tech where there were places to go, because they're very well trained. But we didn't build the industry up underneath and so it's only just recovering, I think.

In future, I think we're going to get an influx of people from Asia into the oil and gas industry because they're good mathematicians, good engineers. Will that work in law? It will be interesting to see.

The next few questions are personal to you. What's the most exotic or remote location you've worked in?

I've probably been to a hundred countries so I'm not sure about exotic or remote.

There were some interesting trips down into West Africa in the 1970s where they kept my passport while I did work that they approved of, so I could go back home. Once I'd given them the appropriate documentation and report, then I got my passport back. I don't know how serious it was.

They had a revolution while I was there which was quite interesting, because I was working for the government. I was working in the ministry, a small building with no air conditioning, and I was staying in the Russian-built Cosmos hotel. It was wired so they could listen to everything I said on the phone. The minister said to me one Wednesday morning: "We're moving you down to the Meridien [a French hotel, which was a very upmarket resort] for a few days." I asked why and he said: "Just stay down there and don't come to the office till Tuesday. And take some work to do, Christopher." So I did. They had the revolution on Thursday night and I came back on Tuesday and there was a new government. It was fascinating.

Those things do happen. There were two revolutions in the Philippines while I was working there - generally peaceful, but interesting, because you get locked down. People were on the rooftops with machine guns in central Makati. I had 22 people in my apartment for five days. They got very tired of tomatoes and eggs because that was all I had, and a big bag of rice. Eventually, we drove out across through the rebel lines, then through the government lines and dropped people off at their houses on the way. Finally, they dropped me at the airport and I got the next United Airlines flight out of the country. These are the unusual things that happen to you.

Have you learned any lessons in the course of your career that you return to time and time again?

I think one of the things that is useful is to listen, the value of silence. [Pauses]

It's a wonderful negotiating tool. It's white space, being prepared to let the silence go on. Learning the patience to wait for the other side to put their position on the table and trying to understand why it's important to them, what's the factor driving them?

Try sitting in a meeting and watching the clock and see how long before someone breaks the silence. Sixty seconds of silence will break 90 per cent of people in a meeting. I remember something said in a negotiation I worked on in the Middle East - the government side, and the tribal leaders said to the senior negotiator from the oil company: "We're in no hurry, you've got all the money, but we have all the time. We don't have to do a deal today, tomorrow, next year. We can wait."

Do you have any favourite business or negotiating sayings?

"Don't tell me you've got a problem, tell me what your solution is."

It's one of the things I look for in young negotiators - don't come and tell me it's broken, come and tell me it isn't working how it should, but this is how we fix it. One is not constructive and the other one is. I think you've always got to look for the solution in life.

And that's true in contracts. If you've got a hurdle and you can't get through it, go and do the next one and then come back and look at it again and talk about it some more, try to find the solution. Most problems go away if you talk about them.

What do you see as the biggest issue affecting the oil industry right now?

The biggest issue affecting the IOCs is access to exploration lands, oil and gas. I think we can deal with most of the other issues.

Clearly a big issue within the industry and particularly the offshore industry is going to be our interaction with the environment around us and fellow human beings. That's going to be a big concern. It is an industry run by human beings, so we're going to have accidents. You need the safety factors in place. I'm not sure over-regulation necessarily helps, but I think it's more educational training that's needed. It's just like the office environment that you work in - if you tell your staff I'm not going to tolerate harassment in any form, you've got to educate people as to why that makes a good environment to have. I'm a great believer in optimisation of people. That means you give them the environment they want to work in but they have to do the work. I think that's one of the challenges. Finding people, educating people, keeping people.

The EU recently announced plans to enforce Europe-wide safety standards for offshore exploration. What do you think about the idea of centralised safety standards?

One needs centralised guidelines - but at the same time I'm trying to de-centralise the AIPN and move it out to regions, give the regions power to address their own issues.

There are bigger issues in the European Union perhaps, and I'm sure it already has its own issues of bureaucracy. I think countries probably have to have some say in how the safety regulations are going to affect them and their ability to develop and produce hydrocarbons.

What about similar regulations for the offshore oil and gas industry as regards protection of the environment?

I think putting regulation in that you can't enforce is a waste of time. It's useless to pretend that regulation is going to work if you can't enforce it. In Singapore they say you can't chew gum, and they can enforce it. But if you put in a regulation that says you can't drive faster than 50 miles an hour, but everybody's driving at 80, why is the regulation there? So if you put in a regulation that says you can't flare gas, you've got to enforce it, otherwise the regulation is a waste of time. It's like a border control. If you don't enforce your borders, you don't own them. You've actually got to do something about it.

Also, we have a problem in the US because there are federal regulations and state regulations. If you want a state that's tough then go to California. They have a limited oil and gas industry that really hasn't grown over the years. They import oil, basically - and they drive a lot. Texas has an extraordinarily well-managed railroad commission that runs the oil and gas industry. And we have some federal rules that sit on top of it, but we don't really have an overarching federal regulation that looks after the minutiae of the oil and gas industry everywhere. It's more run at the state level and I would have thought most countries and most provinces need some degree of that so that they can either encourage or discourage regulation and know how the industry is going to interact with them. It's a bit like windmills. If you have a nice view across the beaches of Cornwall, would you like a hundred windmills out there? Or, if the farmer behind you has land rights and he says, "I'm going to put a wind farm right down the ridges, three thousand acres," is that a federal issue or is that a local issue?

I think part of reducing pollution is management and education. My wife is Swiss and when we first met in 1981, she was already recycling glass into the different colours. We don't do that widely in all of Western Europe yet. A lot of offices don't recycle in London, it's just too much trouble. If you teach kids to recycle, they'll recycle, and I think that's part of the issue in the industry; you need common sense. If you teach people to look after the environment, then they'll know that pouring oil on the ground is not a good idea. If you clean up behind you so that what you leave behind is not a mess, more or less as you had it before, then you've done your job.

Is the Gulf of Mexico still an attractive place for exploration since the blow out?

Yes. It's very attractive. Highest rate of success in the world. We'll learn from the problem and we'll have to move forward. Stopping isn't a solution long term. We need hydrocarbons.

One of NATO's senior commanders, James Jeester, recently said that global warming could lead to a race for resources in the Arctic akin to a new cold war. What are your thoughts?

I suppose he's referring to the melting of the Arctic and that it will open the area up to exploration. I don't know that it'll cause a race as the technology needed in the Arctic is available to only the super majors. There aren't really any national oil companies that are rushing around trying to drill wells in 5,000 feet of water. It's difficult. It looks good to say: "Boy, we're going to be our own national oil company and operate in 5,000 feet of water and drill all these wells." It looks really good until you have a problem - and the problem might be five straight dry holes or it may be that you lose control of well bore. Then the hype is not so attractive.

If you're going to go into global warming and the race for resources, I think there's a couple of things that clearly, we're concerned about. Countries are concerned again about security, as was Winston Churchill when he changed the Royal Navy's vessels from coal to oil. He diversified the chain of supply because coal was all English so there wasn't an external supply risk. I think that's one of the solutions.

When we talk about global warming, we're taking a whole lot of data that we're getting faster and faster but we still can't predict the weather tomorrow. We're trying to understand something that we actually can't model and we're looking at local fluctuations. I'm not disputing that we're seeing some of the glaciers melting. But that's happened before; Greenland has been a sheep farm. The reason the Crusades started was because the Normans all moved south into France as they had an ice age in the 800s and 900s and the temperature dropped five degrees. We've had periods in the last 2,000 years of human knowledge when we've had ice ages where it's got significantly colder and when it's been significantly warmer. We are talking about plus or minus three to five degrees. So I'm not entirely convinced - not 100 per cent convinced - that we are the sole cause. But we're a cause certainly.

If you look at the ice cores from the Arctic and the Antarctic, there are some very disturbing relationships between temperature and carbon dioxide and nitrous oxide having a strong correlation over thousands of years. In recent times the gas concentrations have been rising exponentially. One wonders about the cause and effect and the true relationship, if the gas concentrations are a leading indicator the Earth and life on it is facing some difficult and potentially traumatic changes.

There's no question there is a correlation going back hundreds of thousands of years between temperature and carbon dioxide. But which one came first? If we went back to the coal age or if we had a major volcanic eruption like Krakatoa again, it would drop the temperature by three degrees over a great deal of the Earth. There are solutions for you, though they're not palatable to most of mankind. Yet, if we don't change, Mother Nature may impose her own solutions.

I think before we try to solve global warming, we should probably address areas we can solve in a few years, manage and minimise consumption and pollution. I think we need to look at consumption and provide incentives to use less and disincentives to inefficiently use excess. Governments can do that quite easily with tax and VAT adjustment - so if your washing machine is twice as efficient, uses less and recycles water, etc, you get a tax break on the VAT. They did it in Australia and they went from one environmentally efficient washing machine using less water on the market to 12, in eight months. You pay US\$10 or US\$11 a gallon in London for gasoline and we pay US\$3 for the same gasoline in America, and in Venezuela it's 20 cents. If you put 10 cents a gallon on gasoline, in a lot of places it's going to be a problem. It's not going to be popular, but you could do it. We could tax cars just as easily - a £1 per horsepower or £10 per horsepower annual tax, as the Swiss do. It's going to make people really think about smart cars, electric cars, public transport because if you don't have tax on electric cars, then an awful lot of people are not going to buy a V-8 any more. Of course the car industry's going to have a problem with that. They're going to have to re-tool very quickly.

Once we've curbed consumption, we're going to have to take a big hard look at what are the alternatives we've got to energy supply. Do we want to go back into nuclear which has its own downside? The Chinese are screaming along with wind power and solar. I'm not convinced these sources are economic in many situations without significant subsidies and backup from fossil fuels when there is no sun or wind. I think they will probably be more expensive than hydrocarbons for many years. And what happens when governments propose to remove the subsidy as Spain has just proposed?

So you think the biggest issue lies with consumption and mismanagement of resources as opposed to increasing temperatures?

It's more that we can quickly and efficiently address consumption, resource allocation and pollution with defined goals as compared to the more hazy question of temperature management. I think water is going to be a really, really big issue over the next fifty years, bigger than hydrocarbons. The great Euphrates valley, the breadbasket of the Iron Ages, is now becoming desertified. They're not growing anything in many parts, they're not rearing sheep or camels, because the

water's been dammed up in the upper part of the Euphrates and the Tigris, and I can find fifty rivers where that's a problem. Western Australia had compromised fresh water aquifers in the populated areas when I left in 1971. We were mixing sea water into it - salt water into the water table! They run desalination plants in Western Australia. Desalination plants produce carbon dioxide.

Long after we go extinct - and this is a personal philosophy, I don't think we're any different from the dinosaurs or other living forms - I think Mother Nature will just get on with doing whatever Mother Nature's going to do with the world. We're not living in harmony, we're living in a relationship that's not balanced, and I think she will counterbalance what we're doing if we're doing anything.

I don't think we're green, I don't think we're very eco-friendly, I don't think we're looking out for the species. I think that's why I don't like big dams that change ecosystems across thousands of square miles. I don't think burning the rain forest is a good idea, it's really stupid but at the village level they need new fertile land. We need to be careful before we start terra forming because we don't fully understand the consequences. We don't know what the cause and effect is - but if governments cannot address population growth and give them a sustainable lifestyle, it's going to be very difficult to change that. Much of the timber industry in the third world is controlled by the military, opaque companies that you cannot track the ownership of, and the government. Enough said? A billion people out there that have absolutely nothing. They don't make a sustainable modern living off a forest. They make a living when a forest is gone, and they've got earth they can till for a brief period of time till the chemicals have been used.

Maybe in three more generations, we'll figure the answer out. Remember when they bought in regulation against acid gases produced from coal? Power companies said it was the end of their industry. What they found was if they captured the gases off the coal stacks, they could re-use the heat and we had co-generation. Before we knew it, they were saving money, while stopping acid rain.

They've got these little electric turbines in the gas pipelines now because when you draw gas down at your house, the turbine rotates and generates electricity - so they're using your drawdown of the gas to generate electricity. That's really clever.

The World Trade Organization's deputy director-general recently suggested that the WTO should consider enforcing restrictions on multi-billion dollar subsidies for polluting fuels such as oil and coal. What's your reaction?

There's an argument that cheap energy enhances a country's commercial competitiveness, but then Norway, Australia and Germany are competitive in many things and their energy is not cheap.

When will the day come that renewables take over from oil and gas as the primary source of energy globally?

I don't think we're going to get rid of hydrocarbons as the major source. I think we're there for a hundred years unless someone has a physics breakthrough.

I don't think we could change the way a lot of this world works - and until we move the general population away from consumption, it's going to be very hard to wean the world off what we do. The Australians are moving along. The incandescent light bulb is banned - they've moved to fluorescent so you can't get an incandescent light bulb legally into the country any more. But V-8 engines are still sold. We haven't gone to four cylinder cars from six cylinder or eight cylinder cars; there isn't the embracement or the financial incentive to reduce consumption.

I think oil and gas negotiators as a group deal with environmental requirements because it's in all our contracts and there's a lot of support for best environmental practices, best industry practices. There's always been an embracement of local content, local education. I think, reasonably, we're doing as much as we can. Can we do a lot more? Yes, provided the rest of the world come along and embrace it.