

**OIL FOR SOIL: TOWARD A GRAND BARGAIN
ON IRAQ AND THE KURDS**

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OIL FOR SOIL: TOWARD A GRAND BARGAIN ON IRAQ AND THE KURDS

EXECUTIVE SUMMARY AND RECOMMENDATIONS

A long-festering conflict over Kirkuk and other disputed territories is threatening to disrupt the current fragile relative peace in Iraq by blocking legislative progress and political accommodation. Two events in particular stand out: a two-month stalemate in July-September in negotiations over a provincial elections law in which Kirkuk's unresolved status was the principal obstacle and, during this period, a campaign by the Iraqi army in and around the Kurdish-controlled disputed district of Khanaqin. To avoid a breakdown over the issue of Kirkuk, the current piecemeal approach should be discarded in favour of a grand bargain involving all core issues: Kirkuk and other disputed territories, revenue sharing and the hydrocarbons law, as well as federalism and constitutional revisions.

Despite some progress, Iraq's legislative agenda, promoted by the U.S. in order to capitalise on recent security gains, is bogged down. The main culprit is a dispute over territories claimed by the Kurds as historically belonging to Kurdistan – territories that contain as much as 13 per cent of Iraq's proven oil reserves. This conflict reflects a deep schism between Arabs and Kurds that began with the creation of modern Iraq after World War I; has simmered for decades, marked by intermittent conflict and accommodation; and was revitalised due to the vacuum and resulting opportunities generated by the Baath regime's demise in 2003. In its ethnically-driven intensity, ability to drag in regional players such as Turkey and Iran and potentially devastating impact on efforts to rebuild a fragmented state, it matches and arguably exceeds the Sunni-Shiite divide that spawned the 2005-2007 sectarian war.

Stymied in their quest to incorporate disputed territories into the Kurdistan region by constitutional means, Kurdish leaders have signalled their intent to hold politics in Baghdad hostage to their demands. At the same time, the Iraqi government's growing military assertiveness is challenging the Kurds' de facto control over these territories. Rising acrimony and frustration are jeopardising the current relative peace, undermining prospects

for national unity and, in the longer term, threatening Iraq's territorial integrity.

Rather than items that can be individually and sequentially addressed, Iraq's principal conflicts – concerning oil, disputed territories, federalism and constitutional revisions – have become thoroughly interwoven. Federalism cannot be implemented without agreement on how the oil industry will be managed and revenues will be distributed. Progress on a federal hydrocarbons law and a companion revenue-sharing law is inconceivable without agreement on the disposition of disputed territories that boast major oil fields, such as Kirkuk. And the constitution review has faltered over failure to settle all those questions, the solutions to which will need to be reflected in amendments reached by consensus.

How to move forward? If there is a way out, it lies in a comprehensive approach that takes into account the principal stakeholders' core requirements. A sober assessment of these requirements suggests a possible package deal revolving around a fundamental "oil-for-soil" trade-off: in exchange for at least deferring their exclusive claim on Kirkuk for ten years, the Kurds would obtain demarcation and security guarantees for their internal boundary with the rest of Iraq, as well as the right to manage and profit from their own mineral wealth. Such a deal would codify the significant gains the Kurds have made since they achieved limited autonomy in the wake of the 1991 Gulf War and especially after April 2003, while simultaneously respecting an Arab-Iraqi – as well as neighbouring states' – red line regarding Kirkuk.

This package entails painful concessions from all sides, which they are unlikely to make without strong international involvement. The UN Assistance Mission for Iraq (UNAMI) has been providing technical support on a range of issues and, since late 2007, has devoted the bulk of its efforts to the question of disputed internal boundaries. It will need stronger backing from the U.S. and its allies, which have an abiding interest in Iraq's stabilisation yet have played a passive bystander role

that has confused Iraqi stakeholders and encouraged them to press maximalist demands. The U.S. should make it a priority to steer Iraq's political actors toward a grand bargain they are unlikely to reach on their own and to secure its outcome through political, financial and diplomatic support.

There is little time to waste. As U.S. forces are set to draw down in the next couple of years, Washington's leverage will diminish and, along with it, chances for a workable deal. This serves no one's interest. The most likely alternative to an agreement is a new outbreak of violent strife over unsettled claims in a fragmented polity governed by chaos and fear.

RECOMMENDATIONS

To the UN Assistance Mission for Iraq (UNAMI):

1. Provide assistance to the principal stakeholders in negotiations aimed at achieving a grand bargain.
2. Delineate an internal boundary between the Kurdistan region and the rest of Iraq by making specific administrative status recommendations for disputed districts or sub-districts, using the criteria employed in its phase one proposal of 5 June 2008.
3. Assist the committee to be established under Article 23 of the September 2008 provincial elections law in recommending rules governing Kirkuk's elections, with seats divided among Arabs, Turkomans, Kurds and Christians according to either a 24-24-48-4 or a 23-23-46-8 per cent formula prior to elections held as caucuses within each community.

To the Government of Iraq and the Kurdistan Regional Government (KRG):

4. Formally request the UN Security Council to empower UNAMI to guide negotiations on a grand bargain.
5. Until such a bargain is reached:
 - a) accelerate negotiations over a federal hydrocarbons and associated laws and avoid unilateral moves – including signing oil and gas contracts and, in the case of the KRG, developing oil and gas fields in disputed territories;
 - b) reach agreement, with UNAMI's technical assistance, on a definition of "disputed territories"; and
 - c) reach an interim agreement, with UNAMI's assistance, for joint administration and security in disputed territories claimed by the Kurds.

To the Government of Iraq:

6. As part of a grand bargain:
 - a) adopt and implement UNAMI's recommendation for an internal boundary between the Kurdistan region and the rest of Iraq;
 - b) establish Kirkuk governorate as a stand-alone governorate or a uni-governorate federal region for an interim period of ten years;
 - c) establish a power-sharing arrangement in Kirkuk, consistent with Article 23 of the provincial elections law, by which senior executive (governor, deputy governor), administrative (directors general and their deputies) and quasi-legislative (district, sub-district and city council) positions are distributed among Arabs, Turkomans, Kurds and Christians according to a 32-32-32-4 per cent formula;
 - d) adopt and implement the recommendations on Kirkuk to be issued by the committee established under Article 23 of the provincial elections law; and
 - e) enact a federal hydrocarbons and companion revenue-sharing law mandating equitable development of oil and gas throughout Iraq, including the Kurdistan region; accepting the KRG oil and gas law; and granting the KRG the right to both manage its own fields and export oil and gas.
7. Ensure provincial elections are held no later than 31 January 2009 as per the new law and in a free, fair, inclusive and transparent manner.
8. Acknowledge publicly as human rights crimes the former regime's Arabisation policy, the 1988 Anfal campaign and gas attacks against Kurdish civilians, most notably at Halabja; recognise the victims' suffering; and offer financial compensation to survivors.

To the Kurdistan Regional Government:

9. Address Turkey's concerns about the PKK's (Kurdistan Workers Party) ability to use the Kurdistan region as a staging area for attacks in Turkey by limiting its movement, preventing it from using the region to launch attacks, denying it access to media and disarming its fighters in areas under effective KRG control;

To the Government of Turkey:

10. In the context of an Iraqi grand bargain:
 - a) establish formal ties with the Kurdistan regional government;

- b) work with the Iraqi government and the KRG to allow oil and gas transport from the Kurdistan region to/through Turkey;
- c) pursue an economic open-border policy with Iraq, including its Kurdistan region; and
- d) encourage investments by Turkish entrepreneurs in the Kurdistan region and cease all military activity inside Iraq so long as the KRG takes the above steps.

To the U.S. Government:

- 11. Promote the notion of a grand bargain and support efforts by UNAMI, the Iraqi government, the KRG and all other stakeholders to reach it.

- 12. Send an unambiguous signal to the Kurdish leadership that it opposes a quest to incorporate Kirkuk but is prepared to establish appropriate security arrangements for the Kurdistan region and, in particular, to offer guarantees to protect any agreed-upon internal boundary.

To the UN Security Council:

- 13. Upon request from the Iraqi government, empower UNAMI to guide negotiations toward a grand bargain.

Kirkuk/Brussels, 28 October 2008

OIL FOR SOIL: TOWARD A GRAND BARGAIN ON IRAQ AND THE KURDS

I. INTRODUCTION

While many areas of Iraq witnessed a return to relative calm in 2008, a brewing conflict over (so-called)¹ disputed territories has broken into the open and begun to contaminate negotiations over pivotal legislation, such as the hydrocarbons law,² and revisions to the constitution.³ While districts whose administrative disposition is disputed can be found in other parts of Iraq, the current fight concerns territories claimed by the Kurds. These stretch in a broad band across five governorates

¹Terminology is a veritable minefield all its own in this conflict. For example, Kurds contend they are reclaiming these territories, while non-Kurds view the Kurds' bid akin to annexation by the Kurdistan region. Kurds accept the term "disputed"; non-Kurds say these territories are disputed only because the Kurds claim them.

²Iraq has a package of four draft laws that together define the terms for future management and development of the country's oil and gas reserves and distribution of income from their sale. The most important is the draft hydrocarbons framework legislation (henceforth, the hydrocarbons law) that would create the basic regulatory and policy development framework. According to released versions, it would set up a federal oil and gas council (FOGC), a powerful decision-making body representative of Iraqi society. FOGC would determine all national policies and plans for the sector and have authority to review contracts. The law would establish criteria for contracts and, importantly, allow foreign participation in the oil sector under proper contractual conditions, while maintaining federal government control. At least in the current draft, it also would give governments of governorates and regions, such as the KRG, the ability to make their own deals in certain cases, although revenues and ultimate control would still be federal. Under the draft revenue-sharing law, the federal government would collect and distribute all revenue, with national priorities such as defence and foreign affairs funded first and the remainder distributed to regions and governorates not part of regions according to population; the Kurdistan region would receive 17 per cent pending a future census. The last two packages of draft laws would reorganise the ministry of oil and establish an Iraqi national oil company (INOC). None of this legislation has been passed.

³For a discussion, see Crisis Group Middle East Report N°75, *Iraq After the Surge II: The Need for a New Political Strategy*, 30 April 2008.

from the Syrian border in the north west to the Iranian border east of Baghdad.⁴ Home to a mixed population of Kurds, Turkomans, Arabs, Shabak and Chaldo-Assyrians,⁵ they are claimed by Kurds as "historically and geographically a part of Kurdistan".⁶ At their heart is Kirkuk, a city and governorate that lie atop an oil field holding as much as 13 per cent of Iraq's proven reserves. The presence of oil has raised both the stakes and tensions, vastly complicating efforts at finding a peaceful solution to Kirkuk's status.

After propelling their *peshmerga* fighters into these territories ahead of U.S. forces and establishing de facto control in April 2003, the Kurdish parties' chief strategy for formally incorporating them into the Kurdistan region has been mostly – albeit not entirely – peaceful and legal.⁷ At key points during the country's constitutional and political development, the

⁴See the map at Appendix B below. One could also include Suleimaniya governorate, which, although recognised in the constitution as belonging to the Kurdistan region, comprises districts that originally belonged to Kirkuk governorate. Kurdish leaders say they want them to become part of Kirkuk to maximise chances Kirkuk will join the Kurdistan region via a referendum.

⁵Moreover, these areas represent a wide array of religions as well: Muslims (both Sunnis and Shiites), Yazidis and Christians (both Orthodox and Catholic).

⁶Kurds repeat this phrase like a mantra. Crisis Group interviews, Kurdistan region and disputed territories, June 2008.

⁷"In 2003, we could have pushed much harder, but we decided to live voluntarily in Iraq, in a voluntary union. We are not Arabs but nevertheless decided to be part of an Iraq that has oppressed us for so long. You should appreciate that". Crisis Group interview, Falah Mustafa Bakir, chief of foreign relations department attached to the KRG prime minister's office, Erbil, 29 June 2008. There is evidence that especially in 2003 a number of so-called "newcomer" Arabs (*Wafidin*), ie, Iraqis settled in these areas by the previous regime as part of Arabisation, either were driven out by Kurdish *peshmerga* forces (in April) or pre-emptively left fearing reprisal. See, "Claims in Conflict: Reversing Ethnic Cleansing in Northern Iraq", Human Rights Watch, 2004, at <http://hrw.org/reports/2004/iraq0804/iraq0804.pdf>. In addition, there have been constant accusations that Kurdish parties have occupied public properties and destroyed population records in disputed territories.

Kurds inserted operative clauses designed to facilitate their quest. In the process they created a legal record attesting to the legitimacy of their claim and the non-violent means deployed to realise it.

Their strongest weapon has been the constitution, which the vast majority of the electorate approved in a referendum in October 2005. Article 140, in particular, provides for successive steps – “normalisation”,⁸ a census and a referendum no later than 31 December 2007 – whose full implementation the Kurds believed would fulfil their ambition.⁹ Qader Aziz, the Kurdistan regional government (KRG) presidency’s Article 140 envoy, identified three guarantees that helped allay the Kurds’ deep distrust of the Iraqi government (in which the Kurdish parties are represented, but as a minority): Article 22 of the 2006 governing accord, which set deadlines for “normalisation”, census and referendum, and which was approved by the council of representatives;¹⁰ the preamble to the constitution, which arguably gives the Kurds an opt-out-of-Iraq clause in case the constitution is not implemented;¹¹ and the December 2007 referendum deadline contained in the article itself.¹²

⁸By “normalisation” the Kurds mean measures to reverse changes to the disputed territories’ make-up that occurred under the former regime’s Arabisation policies. These measures include, most importantly, the return of people forced out of these areas (mostly Kurds and Turkomans), the departure (voluntary, with compensation) of Arabs settled there, restitution of properties and the restoration of these areas’ pre-1968 administrative boundaries.

⁹The Kurds believe that if and when Arabisation is fully reversed, they will have a demographic majority in the disputed territories, which they could then convert into a victory in a referendum on status.

¹⁰In June 2006, the Kurds gave their support to the Maliki government (which emerged from the December 2005 elections) only after certain conditions concerning Kirkuk and other matters had been met. Article 22 stipulates that normalisation in the disputed territories should be completed by 31 March 2007, a census held by 31 July of that year and a referendum organised by 30 November.

¹¹The concluding sentence of the preamble reads: “Adherence to this constitution preserves for Iraq its free union of people, land and sovereignty”. The Kurds have interpreted this to mean that non-adherence, for example through non-implementation of Article 140, would give ground to that union’s dissolution. In this report, references to the constitution are based on the original Arabic version available from the Iraqi presidency’s website, www.iraqipresidency.net. An English translation can be found at www.krg.org/articles/detail.asp?lngn=12&smap=04030000&mr=107&anr=12329 but such translations of the constitution have tended to be very poor. The translations rendered in this report are Crisis Group’s own.

¹²Crisis Group interview, Suleimaniya, 26 June 2008.

Kurdish leaders chose this path because they believed that through their alliance with the U.S. and their presence in the principal state institutions they could force Article 140’s implementation. They also strongly consider that theirs is a just cause to which any reasonable person should subscribe,¹³ whose realisation has suffered unnecessary and unfair delays¹⁴ and which requires no compromise.¹⁵

The Kurds’ chosen method has not brought them the intended results, however. The December 2007 deadline passed without a referendum. Following mediation by the UN Assistance Mission for Iraq (UNAMI), headed by the Secretary-General’s special representative for Iraq, Staffan de Mistura, five top Iraqi leaders agreed to delay Article 140 and accepted UNAMI’s offer to facilitate its implementation during the following six months.¹⁶ No progress was made in the subsequent period, so the 30 June 2008 deadline not only passed without any result, but also without a new extension or even a public statement of any sort. The Article 140 process had died in the eyes of most actors, save the Kurds, who insisted this was merely another delay, not a cancellation.¹⁷

Faced with a political debacle at home,¹⁸ the Kurdish leadership pulled out its trump card: its veto power over

¹³A KRG official said the following regarding the disputed territories: “We want a solution that is satisfactory, just and constitutional, and that provides compensation for past abuses. What have the Kurds got for living with Iraq? The social fabric of society has been destroyed. People should see the Kurds as victims, not as oppressors”. Crisis Group interview, Falah Mustafa Bakir, chief of KRG foreign relations department, Erbil, 29 June 2008.

¹⁴A KRG official said, “we have been patient. To agree to a referendum [via the 2005 constitution] was a major concession”. Ibid.

¹⁵“We reject any compromise. Our cause is just and by compromise the situation will not be solved”. Crisis Group interview, Salam Abdallah, journalist, Khanaqin, 25 June 2008.

¹⁶The five leaders were: Prime Minister Nouri al-Maliki, the three members of the presidency council (President Jalal Talabani, Vice-President Adel Abd-al-Mahdi and Vice-President Tareq al-Hashimi) and the prime minister of the Kurdistan region, Nechirvan Barzani. See wire reports, 17 December 2007.

¹⁷Crisis Group interviews, Kurdistan region and disputed territories, June 2008.

¹⁸The Kurdish leadership has been widely criticised in the Kurdish media for its failure to deliver Kirkuk by deadline, or at all. For example, Shorsh Haji, a UK-based Kurdish writer, reflected broad elite discontent by saying that if the Kurds lose Kirkuk, the leadership should be held responsible, and that if it fails in joining Kirkuk to the Kurdistan region, the people should stop voting for their leaders in elections and never again fall for their promises. *Hawlati* (independent weekly), 9 August 2008.

legislative progress, and even over the government, in Baghdad. A Kurdish official said, “the Kurds could withdraw from Iraq. But Kurdish leaders are not ready to do that. Still, we could put pressure on the federal government as a tactic. We could agree to form a new government only on the basis of its agreement to implement Article 140”.¹⁹ Another official put it even more bluntly: “If I can’t have it my way, I’m going to block your way. If there is no solution to Kirkuk, then there will be no provincial council elections in Kirkuk, no review of the constitution and so on”.²⁰

Even before the June 2008 deadline had passed, the unresolved question of Kirkuk and other disputed territories had started to contaminate negotiations over both critical pieces of legislation, such as the long-awaited hydrocarbons law and the electoral law, as well as the constitutional revision, which has been at a standstill since 2006.²¹ The most dramatic example came with the deadlock over the provincial elections law in July 2008. When the council of representatives tried to pass a bill that would have paved the way for governorate-level elections by 1 October, an ad hoc coalition of legislators headed by members of the minority Turkomans inserted an amendment that sought to remove Kirkuk elections from the mix. They proposed that such elections be held only once parties there had agreed that the three largest communities would divide provincial council seats equally among them, setting aside some for the Christians.²²

Kirkuk’s Arabs and Turkomans oppose provincial elections in Kirkuk, fearing they would lose as a result of what they term demographic manipulations by the Kurds since April 2003. They have learned the consequences of defeat – the Kurds have succeeded in advancing their interests since gaining control over the provincial council in January 2005 – and do not want to repeat the exercise.²³ Instead, they insist on a pre-agreed 32-32-

32-4 per cent power-sharing formula that would divide senior executive positions in Kirkuk governorate as well as seats on both the provincial and city councils equally among Arabs, Turkomans and Kurds, with a small share for the minority Christians. Moreover, they claim that Jalal Talabani, the Iraqi president and an ethnic Kurd, agreed to such a formula when he visited Kirkuk in January 2008.²⁴

By contrast, Kurdish leaders are neutral on whether to hold or postpone elections in Kirkuk; either way, they calculate, they would come out ahead. If elections are conducted, they are convinced they will win; if they are postponed the current council, which the Kurds dominate, would continue to perform its duties. And while they accept the power-sharing formula proposed by Arabs and Turkomans in some instances, they adamantly oppose it as it pertains to the provincial council and accept it for the governorate’s administration only if it pertains to all positions, not just senior ones.²⁵ The Kurdish chairman of the provincial council, Rizgar Ali, said he would consider power sharing on the council but not under the formula proposed by the Arabs and Turkomans: “Yes, we agree with power sharing, but the Kurds should not lose the majority they gained [in the January 2005 elections]”.²⁶

The council passed the law with the Kirkuk amendment over a Kurdish walk-out on 22 July. Subsequently, it was vetoed by two members of the presidency council, Talabani and Vice-President Adel Abd-al-Mahdi (a senior official in the Islamic Supreme Council of Iraq, ISCI, which is allied with the Kurdistan Alliance), who sent it back to the council. There it remained stuck on the

the remaining fifteen being occupied by Turkoman (nine) and Arab (six) parties. These latter parties claim the elections were fraudulent. They have taken their seats on the council but argue the results should not be considered a fair reflection of their strength. At the same time, they oppose new elections without a prior power-sharing arrangement. Indeed, they fear the Kurds will win, due to “demographic manipulations” since April 2003, ie, the large influx into Kirkuk. Kurds claim they were expelled in the course of Arabisation, but others argue that many new residents never lived in Kirkuk, and some came from Turkey and Iran. Crisis Group interview, Hassan Turan, Kirkuk provincial council member, Turkoman Justice Party, Kirkuk, 18 June 2008.

²⁴ Crisis Group interviews, Turkoman political representatives, Amman, 13 May 2008.

²⁵ Crisis Group email communication, Awad Amin, Kirkuk provincial council member for the Kurdistan Toilers’ Party, 5 October 2008. Kurdish leaders recognise they have monopolised senior executive positions in Kirkuk since April 2003 but contend that Arabs and Turkomans continue to predominate in the middle and lower ranks of the civil service due to job discrimination against Kurds during Arabisation.

²⁶ Crisis Group interview, Kirkuk, 18 June 2008.

¹⁹ Crisis Group interview, Qader Aziz, KRG presidency envoy for Article 140, Suleimaniya, 26 June 2008.

²⁰ Crisis Group interview, Mohammed Ihsan, KRG minister for extra-regional (disputed territories) affairs, Erbil, 20 June 2008. Other Kurdish officials have made similar threats. For example, the KRG prime minister’s foreign relations department chief, Falah Mustafa Bakir, said, “we will not work for the sake of Iraq, or to save Iraq, if Iraq does not work with us on Article 140”. Crisis Group interview, Erbil, 29 June 2008.

²¹ See Crisis Group Report, *Iraq After the Surge II*, op. cit., pp. 27-28.

²² The idea was that the parties representing the main communities would agree to share power equally and that separate elections would then be held within each community for its allocated seats.

²³ Since the January 2005 elections, the (Kurdish) Kirkuk Brotherhood List has held 26 of 41 provincial council seats,

Kirkuk clause, and the council went on summer recess without setting a firm date for provincial elections, despite enormous pressure from the Bush administration.

In late September, UNAMI brokered a compromise. Legislators passed the law, setting elections for fourteen governorates no later than 31 January 2009²⁷ and (in Article 23) stipulating a separate process for Kirkuk without prejudging the eventual power-sharing arrangement. However, while this solved the problem of provincial elections in the rest of Iraq, it did little to break the deadlock over Kirkuk: Arabs and Turkomans continue to press for the 32-32-32-4 formula on the provincial council, which Kurds will be able to block in the yet-to-be-created committee charged with reaching a consensual decision.²⁸

The original proposal to take the Kirkuk question out of the electoral law, which delayed successful passage for more than two months, came from Turkey. Ankara pushed the initiative through its Turkoman allies in the council of representatives. This is an index of the degree to which the Kirkuk question has become internationalised and the influence countries such as Turkey (and, on other occasions, Iran)²⁹ can bring to bear.³⁰

²⁷ The provincial elections law is based on the February 2008 law on powers of governorates not organised in regions. For that reason, it does not cover the three Kurdish governorates that together constitute the Kurdistan region. Provincial elections thus are not scheduled to take place in those three governorates until the Kurdish parliament has passed its own pertinent legislation. With Kirkuk excluded as well, this leaves fourteen governorates in which elections should take place by 31 January 2009.

²⁸ The agreed process is contained in Article 23 of the provincial elections law passed by the council of representatives on 24 September 2008 and approved by the presidency council on 3 October. It stipulates that no elections will take place in Kirkuk until a power-sharing arrangement is in place; the council of representatives is to set up a committee broadly reflecting Kirkuk's ethnic composition (two Kurds, two Arabs, two Turkomans, one Christian) by 1 November 2008; by 31 March 2009, the committee is to make consensus recommendations to the council of representatives on power sharing, violations against public and private property and Kirkuk's demographic changes; the current provincial council will remain in power and the status of Kirkuk governorate unchanged until provincial elections are held; based on the committee's recommendations, the council of representatives will pass a special law for Kirkuk elections; if it does not, the matter will revert to the presidency council, which, with UN assistance, is to "determine the appropriate terms" for provincial elections in Kirkuk.

²⁹ A Kurdish leader compared Iranian policy toward Iraqi Kurds with Turkey's: "The Iranians work surreptitiously, while Turkey acts stubbornly without ever hiding its intentions". Crisis Group interview, Suleimaniya, June 2008. A

In August, amid growing tensions over the elections law, Prime Minister Nouri al-Maliki's government, which had begun to assert itself vis-à-vis non-state actors (Muqtada Sadr's Mahdi Army, al-Qaeda in Iraq (AQI), the Sunni "awakening" councils), turned its sights on the disputed territories. Claiming the state's sovereign rights throughout Iraqi territory, and using an on-going offensive against al-Qaeda in Iraq fighters in Diyala governorate as cover, federal troops pushed into three sub-districts that the Kurds consider disputed and had been under the KRG's de facto control since April 2003; they threatened to displace the KRG in the disputed Khanaqin district as well. If the three sub-districts (Jalawla, Saadiya and Qara Tepe) have a mixed population of Arabs, Kurds and Turkomans,³¹ Khanaqin is heavily Kurdish and is viewed by Kurds as a symbol of Saddam Hussein's expulsion campaign.³²

Maliki's move stunned the Kurds, who saw it as a harbinger of a resurgent central state intent on suppressing them.³³ Moreover, they feared that if they made any concessions in Diyala governorate, Maliki would challenge them next in Ninewa and Kirkuk. Some saw an Iranian

senior KRG official said, "when Iran says 'hello', watch out! By contrast, when Turkey is your enemy, they tell you so, and they mean it!" Crisis Group interview, Erbil, June 2008.

³⁰ A subsequent Crisis Group report will discuss Turkish perspectives toward Iraqi Kurds.

³¹ A Kurdish publicist said that, "objectively speaking, these three districts are majority Arab, not majority Kurdish", Crisis Group interview, Suleimaniya, 22 October 2008.

³² Khanaqin is historically a mixed district of Kurds (both Sunnis and Shiites), Arabs, Turkomans, Christians and Jews, but as a border town, it was emptied of its population during the Iran-Iraq war. After war's end, its Kurdish population was not allowed to return. In April 2003, the KRG sent its *peshmerga* forces and civil servants from Suleimaniya to Khanaqin, where they established control and an administration that was tied to the KRG more than to Diyala governorate. In the relative peace since 2003, many displaced Kurds have returned to Khanaqin, creating new neighbourhoods in the desolate terrain left by the Iran-Iraq war.

³³ Masrour Barzani, KRG President Masoud Barzani's son and head of the security apparatus of the Kurdistan Democratic Party (KDP), said, "what happened in Khanaqin was something bad. The Iraqi Army's entry was not for the purpose of combating terrorism, for Khanaqin is very secure. The army entered for political reasons. Some circles in the federal government believe that disputed territories should be under the federal government's control. However, the idea of disputed territories means that no final decision has been made on their ownership. Why else would they be called disputed territories? Agreement should be worked out between the two sides over their ownership. Khanaqin is the most secure area in the Diyala Governorate. Saddam Hussein's regime tried for many years to seize these areas by force but failed. Now, attempts are being made to take these areas from us by other means". Interviewed in *Al-Sharq al-Awsat*, 18 September 2008.

hand behind Maliki's offensive; others decried the apparent bystander role assumed by the Kurds' U.S. ally.³⁴ But what the two events – severe legislative hiccups over the Kirkuk question and federal military inroads into disputed territories – demonstrated was how central the territorial question has become in Iraqi politics and the risks it poses to longer-term stability.

II. THE DISPUTED TERRITORIES CONUNDRUM

A. TERRITORIES IN DISPUTE

The Saddam regime's ouster reignited a dormant Arab-Kurdish conflict rooted in the Kurds' quest for a homeland with a defined boundary. While the former regime recognised an autonomous Kurdish region in the 1970s, the latter incorporated only three governorates (Sulaimaniya, Erbil and Dohuk), whose population was mostly Kurdish, with a smattering of Chaldo-Assyrians and Turkomans. The current conflict concerns the areas in between these Kurdish governorates and Iraq's Arab heartland, a territory with a profoundly mixed population of Arabs, Kurds, Turkomans, Chaldo-Assyrians and others.

Although this territorial dispute has long antecedents, its current expression is of recent vintage (April 2003).³⁵ The areas in question were not even known as "territories" before the regime's ouster; they had neither a name nor clearly defined borders. The dispute concerns one entire governorate – Kirkuk – and parts of four others – Ninewa, Salah al-Din, Diyala and Waset – whose boundaries (including of their districts and sub-districts) the former regime manipulated and from which it expelled Kurds and other non-Arabs as part of its Arabisation policies.³⁶

While recognising the historical presence of non-Kurds, the Kurds consider these areas to belong to "Kurdistan", an aspiring but notional nation-state that Kurds say stretches from Iraq's borders with Turkey and Iran to a low ridge of mountains, the first one reached when travelling in a north-easterly direction from Baghdad, called Hamrin. The term Kurdistan has clear precedent in history, appearing on various maps from previous

³⁴ Iran has strong influence over the two Shiite Islamist parties in government, ISCI and the Daawa party. Amin Shwan, a Kurdish intellectual, put the Kurdish dilemma as follows: "We are seeing a new rift between ISCI and the Kurds, perhaps because of Iran, which takes a position on Kirkuk. [Iraq's first elected prime minister] Ibrahim al-Jaafari kept stalling on Kirkuk [in 2005] and now Nouri al-Maliki is, too. This means Iran is putting pressure on ISCI, Daawa and Muqtada al-Sadr not to move on Article 140. So the Kurds feel that their only ally is the United States. But the U.S. is not a steadfast ally, and it does not have a policy on the Kurds. The U.S. does not support the Kurds on Kirkuk. It takes a bystander role, limiting itself to protocol announcements, mere niceties, really, and offering only rhetorical support of Article 140". Crisis Group interview, Kirkuk, 18 June 2008. Frustration with the U.S. appeared all around. An Arab leader in Kirkuk said, "from all our meetings with the Americans it is never clear what they want. They don't have a vision or work plan. They only react to events. First they were concentrating on terrorism. Today it's the budget; it's the only thing they care about". Crisis Group interview, Rakan Saeed, Kirkuk deputy governor, Kirkuk, 19 June 2008.

³⁵ The term "disputed territories" did not enter the Iraqi legal lexicon until it was mentioned in Article 58(C) of the 2004 Transitional Administrative Law (TAL), the interim constitution.

³⁶ Arabisation took many other forms as well, such as job discrimination, property confiscation and induced departure. Kurdish parties have produced an extensive documentary record of it and their own victimisation. See, for example, the Patriotic Union of Kurdistan's multi-volume *Ethnic Cleansing Documents in Kurdistan – Iraq* (2004), which is available on CD-ROM; also, Nouri Talabany, *Arabization of the Kirkuk Region* (London, 1995). Arabisation was taken to its bloody conclusion in the 1988 Anfal campaign, when tens of thousands of civilians were removed from Kirkuk-area villages and summarily killed. See Human Rights Watch, *Iraq's Crime of Genocide: The Anfal Campaign against the Kurds* (New Haven and London, 1995).

centuries. But there never was a state called Kurdistan, nor even a region with that name that had internationally recognised borders or borders with any longevity. Successive Ottoman regions such as Mosul Vilayet and Shahrazour, which the Kurds consider coterminous with Kurdistan, were relatively short-lived and even then fit the Kurdish jacket only poorly.³⁷

Kurds have been in a historical fight to assert their independence in an entity with clearly defined borders that roughly equates with what they consider their traditional homeland by virtue of having a majority, or at least significant, Kurdish presence. Until the present day this has been a struggle over land (who owns it? who rules it?), its people (who has the right to live there?) and its resources (who gets to develop these and profit from them?). Ever since the discovery of oil in the 1920s, the struggle has taken on a violent character marked by recurrent Kurdish insurgencies against central rule. These invariably have been met by brutal counter-insurgencies and insidious, ethnically-based policies designed to reduce non-Arab populations, especially the Kurds, who represent the largest and most potent rival national group. Kurds have been eager to break this cycle; they sensed opportunity in post-Saddam Iraq and their alliance with the U.S.

To the Kurds, there is no question what is meant by disputed territories. These are defined, they say, by the 2004 Transitional Administrative Law (TAL),³⁸ which was incorporated into the 2005 constitution.³⁹ Article 53(A) of the TAL states: “The Kurdistan Regional Government is recognised as the official government of the territories that were administered by that government on 19 March 2003 in the governorates of Dohuk, Arbil, Sulaimaniya, Kirkuk, Diyala and Neneveh”.⁴⁰ While this does not define the disputed territories as such, it suggests they are territories that lay outside the

Kurdistan region prior to the regime’s ouster. Moreover, Article 58 refers to “certain regions, including Kirkuk”, in which the “previous regime” carried out “practices in altering the demographic character ... by deporting and expelling individuals from their places of residence, forcing migration in and out of the region, settling individuals alien to the region, depriving the inhabitants of work and correcting nationality”;⁴¹ it also mentions manipulation of administrative boundaries for political ends.

While this language, apart from the explicit mention of Kirkuk, may appear vague, Kurdish officials hold that it has had concrete consequences by which the location of disputed territories can be determined:

The disputed territories are areas that were subject to demographic changes or were cut off from Kirkuk. Why is there an Article 140 office in Khanaqin?⁴² Because it is disputed territory. You could also look at the location of property claims offices, which were established on the basis of a constitutional provision.⁴³ None was set up in Dohuk; it is not disputed territory. The same goes for Hilla [in the mid-Euphrates region]. Dibs [in Kirkuk governorate] does have a property claims office; people living in Altun Kupri go to Dibs to submit their claims.⁴⁴ These are all realities translated from the constitution.⁴⁵

³⁷ Mosul Vilayet incorporated the major Arab city of Mosul and its Arab hinterland. Over time, Kurds migrated to Mosul as they did to other Iraqi cities, including Baghdad. Today, they do not lay claim to Mosul (or Baghdad) as part of Kurdistan.

³⁸ The TAL was the country’s interim constitution, signed on 8 March 2004. Drafted in English rather than Arabic, its original version can be found on the website of the (now defunct) Coalition Provisional Authority, www.cpa-iraq.org/government/TAL.html.

³⁹ Article 143 of the constitution reads: “The Administrative Law of Iraq for the Transitional Period and its Annex shall be annulled upon the seating of the new government, except for what is mentioned in Article 53(A) and Article 58”.

⁴⁰ The territories under KRG control on 19 March 2003 included the entire governorates of Dohuk, Erbil and Suleimaniya and parts of Diyala (Kifri) and Ninewa (Aqri), as well as parts of Kirkuk based on pre-1968 administrative boundaries (Chamchamal).

⁴¹ The term “nationality correction” (*tashih al-jinsiya*) refers to the former regime’s practice of encouraging non-Arabs to register themselves as Arabs in the population register in areas marked for Arabisation, such as Kirkuk, by making certain jobs, permits and property rights there available only to Arabs.

⁴² Following ratification of the constitution in October 2005, the Iraqi government established the Article 140 Committee as well as local Article 140 “offices”. These have been used to collect claims for compensation from both Arab families who have indicated they would be willing to leave the district in which they were registered as part of Arabisation and Kurdish as well as Turkoman families seeking to return to their original places of residence.

⁴³ In early 2004, the U.S.-led Coalition Provisional Authority (CPA), which governed Iraq from May 2003, established the Iraq Property Claims Commission to receive and adjudicate claims for property restitution as a remedy for confiscations carried out by the former regime under Arabisation. The commission opened 32 offices accessible to the public in localities across Iraq, including at least one in every governorate. In March 2006, the commission was rebaptised the Commission for the Resolution of Real Property Disputes and its mandate slightly amended. Iraq Reconstruction Management Office, Commission for the Resolution of Real Property Disputes, information sheet, 24 April 2006.

⁴⁴ Kurds do not take this to mean that Altun Kupri is excluded from the disputed territories. But there are only a limited num-

This definition-by-criteria is not very helpful because, for one, property claims offices are located throughout Iraq, reflecting the widespread nature of property disputes that do not necessarily bear on the question of territorial status. Moreover, location and staffing of Article 140 offices have not been free of controversy.

A more helpful indicator of disputed territories is the list included in the Kurdistan region's draft constitution.⁴⁶ However, this is a one-sided definition that itself is disputed,⁴⁷ and it only reflects territories claimed by the Kurds, not other territories that potentially fall under Article 140, such as parts of Anbar governorate that are claimed by Karbala and Najaf governorates. Kurdish officials say there are 26 disputed territories.⁴⁸

Even if one is to accept the Kurdish constitution's definition as at least indicative of those disputed areas claimed by the Kurds, in each case the question arises:

ber of property claims offices. The example is, therefore, not particularly helpful.

⁴⁵ Crisis Group interview, Rizgar Ali, president of the Kirkuk provincial council, Kirkuk, 18 June 2008.

⁴⁶ Article 2(1) of the draft constitution reads: "Iraqi Kurdistan consists of the Governorate of Dahuk in its current administrative boundaries; the governorates of Kirkuk, Al-Sulaymaniyah, and Arbil; the districts of Aqra, Al-Shaykhan, Sinjar, Tall Afar, Tall Kayf, Qarqush; and the sub-districts of Zamar, Ba'shiqah, Aski Kalak from the Governorate of Ninawa; the sub-districts of Khanaqin and Mandali from the Governorate of Diyala; the district of Badra and the subdistrict of Jassan from the Governorate of Wasit in its administrative boundaries before the year 1968". The phrase "in its administrative boundaries before the year 1968", which appears to apply to more than Wasit, is significant because in the Kirkuk case it would include districts (notably heavily Turkoman Tuz Khurmatu) that currently are in Salah al-Din governorate, which is not explicitly mentioned.

⁴⁷ Some non-Kurds contend that because the constitution fails to specify disputed territories other than Kirkuk, certain mixed-population areas not mentioned by the Kurds could be included, for example the town of Erbil inside Kurdistan, which has a Turkoman population. Crisis Group interview, Hassan Turan, Kirkuk provincial council member for the Turkoman Justice Party, Kirkuk, 18 June 2008, who mentioned a Turkoman party, the Turkoman Nationalists Group (*Tajammu' Qawmiyin al-Turkman*), that claims Erbil is disputed territory. This does not appear reasonable, however, as the Kurdistan region was recognised explicitly by Article 53(A) of the 2004 Transitional Administrative Law (incorporated into the permanent constitution through Article 143). A Chaldo-Assyrian politician contended that Article 140 also should be applied to Dohuk, given its many property disputes. He claimed the old regime had given Chaldean and Assyrian land to Kurds. Crisis Group interview, Kirkuk, 22 June 2008.

⁴⁸ Crisis Group interview, Dindar Zebari, chief coordinator, KRG office for the coordinator for UN affairs, Erbil, 17 June 2008.

What are the criteria to be employed in determining whether an area originally belonged to a notional Kurdistan? Historical maps and documents have been employed by all sides to boost their contradictory cases, thereby underscoring the indisputable fact that there is a dispute. Iraq's 1957 population census has been suggested as a scientific basis for deciding who constituted a majority and where at that time, but that was more than 50 years ago and therefore does not cover half a century of natural population growth and migration unrelated to politically-motivated and ethnically-based demographic changes. It is questionable whether an ethnic group's demographic majority or plurality in a given area so long ago, or at any time in the past, should be the decisive criterion for determining that area's political status today.

Given the emotive power of ethnically-based conflicts that run across centuries, it is unlikely that the struggle between members of not two but three of Iraq's ethnic groups – Arabs, Kurds and Turkomans – will be resolved to their collective satisfaction. The most that can be expected under current circumstances is a temporary agreement covering some geographic areas. This in turn could produce agreement on a Kurdistan region boundary that might buy peace for a generation or more. The UN entered the fray in 2007 with this objective in mind.

B. A NEW UN ROLE

UNAMI began looking at possible alternatives once it became evident in early 2007 that the Article 140 process was unlikely to produce a referendum by the December deadline, and fear arose that non-implementation could raise tensions in the disputed territories – especially in Kirkuk, where stakes are highest – exacerbate Arab-Kurdish tensions and potentially invite military intervention by neighbouring states. This prompted an informal proposal, presented to federal government and KRG leaders, that they should invite the UN to shepherd a process aimed at identifying an acceptable border of the Kurdistan region; it would do this by designating districts along that border as belonging to either federal government or KRG jurisdiction. Each ruling would be based on a number of criteria, including results of the December 2005 parliamentary elections at the district level.

The premise was that the great majority of Iraqis living in these districts would have voted according to their ethnicity, given that most parties are either predominantly Arab or Kurdish or Turkoman. In so doing, it was believed, they would indirectly have suggested their preference for that district's territorial and politi-

cal status.⁴⁹ The district-based results have not been made public but were available to UNAMI through its association with the Independent Electoral Commission of Iraq (IECI) that organised the 2005 elections.⁵⁰

The way forward had two stages: formal expansion of UNAMI's mandate and a more prominent UNAMI role once the referendum deadline had passed. On 10 August 2007, the UN Security Council adopted Resolution 1770, instructing UNAMI and the special representative for Iraq, "at the request of the Government of Iraq", to "advise, support, and assist ... the Government of Iraq and the Council of Representatives ... on the development of processes acceptable to the Government of Iraq to resolve disputed internal boundaries".⁵¹ A month later, Secretary-General Ban Ki-moon appointed Sweden's Staffan de Mistura to replace Ashraf Qazi of Pakistan as his special representative for Iraq. De Mistura's first public act was to persuade Iraqi leaders to delay implementation of Article 140 given that they were going to miss the deadline. This cleared the way for a fresh approach.

UNAMI could not have assumed this new role without active U.S. backing. As part of the surge, Washington's strategy had undergone a remarkable makeover in 2007, including an alliance with former Sunni Arab insurgents, who set up awakening (*sahwa*) councils.⁵² This alliance had consequences for U.S. relations with its post-2003 allies, the ruling parties. The Kurds in particular felt the impact keenly. A series of events in the second half of the year suggested that the U.S. began to shift from supporting the Kurds' approach on Kirkuk (ie, that the issue should be resolved via Article 140) to backing a negotiated settlement.

The Security Council resolution was the first such event. It instructed UNAMI to identify "processes" (ie, not solely the Article 140 process) that were "acceptable to the Government of Iraq" (no mention of the KRG) to resolve "disputed internal boundaries" (ie, rather than the status of disputed territories, as the constitution demands). In permitting processes other than Article 140, the international community, and particularly Washington as the resolution's lead author, appeared

to signal a departure from exclusive reliance on the constitution.

The Kurds thus took two hits: rhetorically, the UN did not feel bound to a constitution that the Kurds, in its operative clauses on the disputed territories, had phrased in their self-interest; practically, the outcome of UN efforts would be unpredictable, unlike the Article 140 process, which the Kurds had carefully designed to produce incorporation of all the disputed territories they claim into the Kurdistan region. For example, negotiations could force a territorial compromise in which the Kurds would obtain only some of the disputed territories, perhaps excluding Kirkuk; or they could perpetuate the status quo. Moreover, negotiations would take time, while the Kurds had hoped to rush the process based on Article 140's deadline.

The Kurds suffered a second setback in early December, when the parties' representatives in Kirkuk were led to accept a U.S.-mediated, limited power-sharing agreement with local Arab politicians.⁵³ In an apparent quid pro quo, the U.S. brought these politicians, whom it had mistrusted for being allied with insurgents, into the political process after leaders of the Al-Jabour tribe set up an awakening council in the Hawija district in November and began attacking local members of al-Qaeda in Iraq.⁵⁴ Kurdish leaders had long resisted coming to an accord with Arab or Turkoman parties that did not reinforce the paramouncy of Article 140. The 2 December agreement, however, made no reference to that article.

In part, this could be explained by its focus on power sharing rather than territorial status, but this had never before prevented the Kurds from inserting Article 140 language. Delighted by the first locally negotiated compromise agreement in all of Iraq since the start of

⁴⁹ That Iraqis voted according to their ethnicity and thereby signalled preferences for their district's status is questionable – and has indeed been challenged by Arab and Turkoman politicians. (See below.)

⁵⁰ The IECI only released the nationwide results by electoral list.

⁵¹ UNSC, S/RES/1770, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N07/456/04/PDF/N0745604.pdf?OpenElement>.

⁵² For analysis, see Crisis Group Middle East Report N°74, *Iraq After the Surge I: The New Sunni Landscape*, 30 April 2008.

⁵³ The two sides agreed to set up a city council on which the three main communities would each take six seats and the Christians three, and to share positions in Kirkuk's executive branch and civil service on a 32-32-32-4 per cent formula. As part of the accord, the Kurds also committed themselves, inter alia, to transferring Kirkuki detainees from prisons inside the Kurdistan region to Kirkuk; an end to illegal arrests by "unofficial security agencies" (a reference to security agencies of the Kurdistan Democratic Party, KDP, and Patriotic Union of Kurdistan, PUK); the departure of these security agencies; and the creation of a broadly representative national security directorate in Kirkuk. "Text of Final Agreement between Kirkuk Brotherhood List and the Iraqi Republican Group List", Kirkuk, 2 December 2008, in Crisis Group possession.

⁵⁴ Crisis Group interview, Husein Ali Saleh al-Jabouri, head of the Hawija awakening council and the Hawija district council, Kirkuk, 22 June 2008.

the surge, Secretary of State Condoleezza Rice travelled to Kirkuk to congratulate local leaders. To the Kurds, the very fact they had been brought to sign it indicated an end to the no-questions-asked alliance with the U.S. over Kirkuk.

This message was brought home even more jarringly, in Kurdish eyes, by the start of a mid-December Turkish bombing campaign targeting suspected hideouts of the Kurdistan Workers Party (Partiya Karkerên Kurdistan, the PKK) in the Kurdistan region.⁵⁵ While Turkey declared it had only the PKK in its sights, Kurdish commentators alleged that the KRG was the real target,⁵⁶ and that Washington must have agreed to the bombing.⁵⁷ The Kurds saw the event as a signal the U.S. was setting limits on Kurdish autonomy and thus reaffirming Iraq's territorial integrity, as well as a reminder that U.S. support was contingent on Kurds' willingness to subscribe to America's agenda, for example with respect to the awakening councils.⁵⁸ U.S.

⁵⁵ Although Turkey had pursued the PKK inside Iraq in the past, no such attack had taken place after 2003, reflecting in part the sharp deterioration in U.S.-Turkish relations following the Ankara parliament's 1 March 2003 denial of transit to U.S. forces on their way to Iraq: with the U.S. in effect sovereign in Iraq, Turkey could not cross the border without an explicit U.S. green light.

⁵⁶ For example, Azad Aslan, editor of the KDP's English-language paper, said, "Turkish air strikes on Southern Kurdistan a few days ago indicate the determination of the Turkish state to destabilise [the] Kurdistan Region and terrorise the Kurds in the north. The military does that with the pretext of PKK". *The Kurdish Globe*, 17 December 2007. A Turkish journalist close to Kurdish leaders said, "The Iraqi Kurdish leadership is obsessed by the fear that Turkey's real intention is not to go after the PKK in northern Iraq but to put them out of business. This is why the KRG is sceptical of Turkey's constant demands concerning the PKK's presence inside its territory and is unmotivated to act against the PKK in cooperation with Turkey". Crisis Group interview, Cengiz Çandar, Istanbul, 23 January 2008.

⁵⁷ They based this claim on overarching U.S. security control in Iraq and the fact that Ankara and Washington had come to an agreement on security coordination against the PKK a month earlier, the precise terms of which were not disclosed. On 5 November 2007, Prime Minister Recep Tayyip Erdoğan met President George W. Bush at the White House. Coordination and cooperation against the PKK was defined in four fields: The U.S. would share operational intelligence, assist in capturing PKK leaders and returning them to Turkey, seek to close PKK camps to cut logistics support and coordinate on Turkey's military operations in northern Iraq.

⁵⁸ The blow was hardly softened by Rice's Kirkuk visit, two days after the first Turkish bombing raid: KRG President Masoud Barzani pointedly refused to meet with her in Baghdad. Middle East Online, 18 December 2007. For an argument that the window of opportunity opened to the Kurds with the establishment of the U.S.-led safe haven in 1991 and widened

officials routinely deny the existence of a grand plan to dampen Kurdish ambitions in the disputed territories and have stressed the need for all parties to act within the constitutional framework.⁵⁹ At the same time, the U.S. also has asserted its strong backing for the UN's efforts to find a solution that, by force of circumstance, will differ dramatically from the Kurds' favoured course.⁶⁰

In June 2008, three weeks before the new referendum deadline expired, UNAMI presented the Iraqi government with what it termed phase one of a three-step process "regarding possible processes to resolve disputed internal boundaries". Still testing the waters, UNAMI selected four "sample" districts as part of a strategy "to develop a methodology which could be applied to these and other disputed areas for the consideration of the Government of Iraq". And it emphasised, in de Mistura's words, "the Government of Iraq alone has the sovereign responsibility to decide on the process and methodology used to address disputed internal boundaries. UNAMI's aim in preparing and presenting this analysis is merely to contribute to the development of processes to resolve these complicated and sensitive issues".⁶¹

The proposal was interesting for its selection of districts, its choice of criteria that would yield the data for assessing their appropriate status, its judgment in each specific case and, not least, its style of presentation, which sought to avoid conflict over UNAMI's role through diplomatic ambiguity. For example, rather than making express recommendations, UNAMI chose indirect phrases that showed deference to Iraqi sover-

with the 2003 invasion of Iraq started to close in 2007, see Joost R. Hiltermann, "To Protect or to Project? Iraqi Kurds and Their Future", *Middle East Report*, no. 247, summer 2008.

⁵⁹ For example, the State Department declared in July 2008: "[T]he issue of Kirkuk is one that's been carved out in the Iraqi constitutional process, and there is a political constitutional process to deal with issues surrounding Kirkuk.... [T]here is a political and constitutional framework that is established in which the Iraqis are going to resolve finally questions relating to Kirkuk". Daily Press Briefing, Washington DC, 29 July 2008.

⁶⁰ The Kurds are quick to point at a perceived U.S. role in events that do not directly involve the U.S. For example, a Kurdish writer accused Washington of allowing the Iraqi army in August 2008 to enter Khanaqin, a disputed area controlled by the Kurdish parties, as revenge for Kurdish obstructionism on the hydrocarbons law. Opinion piece by Twana Ahmed in *Kurdistani Nwé* (a daily affiliated with the PUK), 4 September 2008.

⁶¹ "UNAMI presents first analysis to GOI to help resolve ... disputed internal boundaries", UN News Centre, 5 June 2008, at www.un.org/apps/news/story.asp?NewsID=26930&Cr=iraq&Cr1=unami. The online version does not include the discussion of the four districts and future steps.

eignty and awareness of its own limited mandate.⁶² Moreover, its proposals involved the four districts' administrative affiliation with governorates, not (at least explicitly) their territorial status under either the federal government's or the KRG's authority; by proposing administrative arrangements, it steered clear of highlighting, and potentially exacerbating, the toxic Arab-Kurdish conflict. Nevertheless, UNAMI's suggestions were indeed recommendations, which in the Kurdish street were widely interpreted as decisions.⁶³

The four "initial" districts were Aqri (or Akre), Hamdaniya, Makhmour and Mandali. Of these, Aqri lies within the Kurdistan region, and as such the KRG does not deem it disputed (see below). UNAMI chose it because, while it has been administered by Dohuk governorate since 1991, it belongs formally to Ninewa governorate; UNAMI's view was that its administration should be transferred formally to Dohuk, a belated procedure of no material impact, a simple codification of existing reality. The other three districts were under Iraqi government control until April 2003 and as such are more typical of disputed territories (especially as defined by the Kurds). Since the Baathist regime's fall they have experienced varying degrees of Kurdish control: direct and formal in the case of Makhmour, which is heavily Kurdish and administratively belongs to Erbil governorate (even if it was administered by Ninewa in 1991-2003), and less so in highly mixed Hamdaniya and Mandali.⁶⁴

⁶² On Hamdaniya, for example, UNAMI phrased its recommendation as: "[T]he Government of Iraq may wish to continue administration of the Hamdaniya District by the Ninewa Governorate". On Mandali it was even more indirect: "Administration of Mandali sub-district by the Diyala Governorate would be a continuation of the historical administrative arrangement".

⁶³ Crisis Group interviews, Kurdistan region, 16-30 June 2008. The Kurds tend to have a dim view of Iraqi sovereignty. A Kurdish writer agreed that UNAMI had issued only recommendations but, he said, "the Kurdish people are reminded of Lausanne", the 1926 treaty that overturned the 1923 Treaty of Sèvres, which the Kurds claim promised them an independent state. "The Kurds fear that because they are the weaker party, they will become victims of conspiracies". Crisis Group interview, Salam Abdallah, Khanaqin, 25 June 2008.

⁶⁴ Disputed districts not already administratively under one of the three Kurdish governorates (Erbil, Sulaimaniya and Dohuk), that is all except Makhmour, as well as Aqri (if it is considered disputed), have suffered from neglect since April 2003. In theory they were administered by the governorate in which they were, but if the Kurds were in charge, the governorate appeared less likely to extend a budget and services, unless the Kurdish parties themselves had a strong influence in that governorate. The people of Khanaqin district, for example, in Diyala governorate, have complained of neglect since

UNAMI recommended that Makhmour district be administered by Erbil, except for its sub-district of Qaraj, which has a significant Arab population and which, it suggested, could be attached administratively to a neighbouring district and governorate (presumably either Ninewa or Kirkuk).⁶⁵ And UNAMI proposed that Hamdaniya continue to be administered by Ninewa governorate and Mandali by Diyala governorate.

The choice of districts indicated a preference, in the first stage, for areas that could be considered non-controversial: on their merits their assignation would be unlikely to provoke a strong backlash, mainly because they were either clearly and predominantly Kurdish (Aqri and Makhmour minus Qaraj) or decidedly not so (Hamdaniya and Mandali). Moreover, in an effort to present a semblance of balance, UNAMI chose two districts that it assigned, in effect, to KRG and two to federal government authority.

UNAMI's criteria included (in the order in which it listed them): a district's administrative history, changes since March 2003, government service delivery, demographics and the December 2005 parliamentary elections, socio-economic conditions (as indicators of control), claims and compensation (as indicators of previous manipulation), and security conditions. They focused on the extent to which Arabisation (rather than non-ethnically-based state-building processes) had changed administrative and demographic realities. While they included recognition of the December 2005 election results as at least suggestive of the local population's political preferences, UNAMI played down the utility of past electoral data in predicting voting behaviour in a referendum on a given area's status.⁶⁶ And instead

2003 and claim that whatever aid they received came from Suleimaniya (in particular, salaries for civil servants transferred from there to Khanaqin) or resulted from the pressure of the president of the Diyala governorate council (not an executive position), who is a Kurd. Crisis Group interviews, Khanaqin, 24-25 June 2008. In Makhmour district, which technically falls under Ninewa governorate but in effect is administered by Erbil, the complaints were the same. Crisis Group interviews, Makhmour, 21 June 2008.

⁶⁵ Kirkuk's undecided status may be the reason UNAMI did not specify to which governorate Qaraj should be attached. Qaraj lies on the border with Kirkuk governorate, so adherence to Kirkuk would make administrative sense. However, if Kirkuk were to join the Kurdistan region, the federal government might want to attach Qaraj to Ninewa instead.

⁶⁶ UNAMI stressed that the 2005 election results "should not be construed as indicating a preference by the population for changing administrative jurisdictions". Moreover, it "recognised that many complaints have been made regarding the conduct of those elections in these areas, including allegations of fraud, intimidation, and irregularities". "UNAMI presents first analysis", *op. cit.*

of a referendum, for which UNAMI felt it had not been given sufficient time and which raised serious security concerns, it polled the population's preferences via a series of local consultations.

C. RESPONSES TO UNAMI'S PROPOSALS

The moment UNAMI published its proposal on 5 June, it was met with a round of public condemnations – an outburst of Arab Iraqi, Kurdish and Turkoman/Turkish nationalism united in rejection of the international intercession that had been invited for want of a locally generated solution.⁶⁷ This initial response showed the difficult road ahead even as it unintentionally underlined UNAMI's impartiality. Discussions with key stakeholders, however, bear out that underneath the denunciations lay what appeared to be acceptance of UNAMI's approach as the only viable one.

Kurdish leaders expressed disappointment only with specific recommendations, not the overall perspective. They criticised UNAMI's criteria, which they claimed did not reflect prior agreement. For example, Mohammed Ihsan, the KRG official responsible for the disputed territories file, referred to "a methodological paper" that, according to him, all sides had accepted in late 2007 and posited that UNAMI's views would be based *primarily* on the district-level results of the December 2005 parliamentary elections.⁶⁸ Likewise,

⁶⁷ Prior to UNAMI's involvement, all parties had made clear they welcomed a UN role on Kirkuk, even if they doubted its credibility and impartiality. Many invoked the UN's entanglement in a corruption scandal during the food-for-oil program in the 1990s. Others saw it as a regime tool during that period. However, they also recognised the lack of a viable alternative after 2003 and especially once the U.S. lost favour as an honest broker when civil war engulfed the country, a condition it managed to reverse only partially with the surge. After the June 2008 announcement of phase one, some of that past was alluded to. For example, a KRG official said, "the report is disappointing. We had expected a better understanding of the issues. We had a bitter experience with the UN before and were promised that this time it would be a better UN. When the UN came to us, we said it should help us in implementing Article 140. ... They met with people they should not have met, however: they should not have brought in neighbouring states. We hope the next report will be better". Crisis Group interview, Falah Mustafa Bakir, chief of KRG foreign relations department, Erbil, 29 June 2008.

⁶⁸ Crisis Group interview, Erbil, 20 June 2008. Ihsan claimed the paper had been signed by the same five officials who had agreed to delay implementation of Article 140 in late 2007 (see fn. 16 above). He offered to give Crisis Group a copy of the paper but has not. There is no evidence that if such a paper exists it was signed by those five leaders. No other stake-

holders mentioned they had seen it or approved the methodology it supposedly endorses.

Qader Aziz, Masoud Barzani's special envoy on the Article 140 process, asserted: "Our agreement with de Mistura was that if the referendum didn't work out, we would rely on the December 2005 elections instead. But he didn't even do that in his recommendations".⁶⁹

Like any aspect of the disputed territories question, use of the 2005 elections results is problematic. As Kurds see it, those elections provide persuasive guidance about an ethnic group's preference to join the Kurdistan region or stay under Baghdad. Thus, they say, if in Mandali district the Kurdish list received 25 per cent of the votes, this means that 25 per cent of the population are Kurds; on this basis it would be difficult to question UNAMI's recommendation to keep Mandali under the administration of Diyala governorate (ie, under the federal government). By the same token, if only 5 per cent of the population of Zummar district in Ninewa governorate voted for Arab parties and the rest for the Kurdish list, then logically Zummar should be attached to the Kurdistan region.⁷⁰ Kosrat Rasoul Ali, the KRG vice president, called on UNAMI to publish the district-level election results.⁷¹

However, non-Kurdish politicians question use of the 2005 results, contending that the elections were marred by fraud and preceded by demographic changes that stacked the electoral deck:

We agree that if an area is 70 per cent Kurdish, it should go to the KRG. But we say that all these [disputed] areas have been subject to demographic manipulation [since April 2003]. So we would need to first reverse those changes. Only then could we go back to determining these areas' status. Moreover, if you use elections as a basis for this, the Kurds will have all the more reason to manipulate the next elections. There were many complaints about the 2005 elections.⁷²

For now, the Kurds appear to have decided that while they will quibble about specific elements of the phase one recommendations, they will not take a formal position. They publicly criticised inclusion of Aqri⁷³

holders mentioned they had seen it or approved the methodology it supposedly endorses.

⁶⁹ Crisis Group interview, Suleimaniya, 26 June 2008.

⁷⁰ Crisis Group interview, Mohammed Ihsan, KRG minister for extra-regional affairs, Erbil, 20 June 2008. In fact, Arabs in Zummar achieved not 5 but 21.3 percent of the vote and the Kurdish parties 73 per cent (still a clear majority).

⁷¹ Crisis Group interview, Suleimaniya, 23 June 2008.

⁷² Crisis Group interview, Hassan Turan, Kirkuk provincial council member, Turkoman Justice Party, Kirkuk, 18 June 2008.

⁷³ By including Aqri district and assigning it to the KRG, Kurdish officials say, UNAMI did no favour, because it has

and the suggestions made for Qaraj, Hamdaniya and Mandali, areas they consider historically part of Kurdistan regardless of current population make-up (which, they say, results from demographic manipulation). Instead, they first want to see the whole package, ie, all three stages, including Kirkuk. As Kosrat Rasoul Ali put it:

UNAMI was supposed to give us technical support, not to provide political solutions. This proposal only complicates things further. We are now waiting for phases two and three; perhaps they will be better. We cannot reject the project until we have seen everything. In fact, it would be better to reveal all three stages at once and not deal with Kirkuk separately.⁷⁴

Other Kurdish officials have echoed this approach. A senior KRG official said, “we don’t oppose the report, but we want to deal with UNAMI’s proposals as a single package. And then we will compromise”.⁷⁵ In other words, they appear to be suggesting a possible territorial deal.

Arab politicians appeared of different minds about UNAMI’s proposal, perhaps reflecting a lack of internal cohesion and debate. Rakan Saeed, the deputy governor of Kirkuk appointed following the December 2007 Arab-Kurdish agreement, called it a “partition plan”: “We reject it. UNAMI did not consult us. We spoke with them but not specifically about majorities and minorities in these districts”.⁷⁶ The better way forward, he suggested, was for UNAMI to seek

consensus on Kirkuk provincial elections. Feeling re-empowered through U.S. support of the awakening councils, Kirkuk’s Arabs hope to perform a good deal better in provincial elections than they did in January 2005 when many, for one reason or another, stayed away from the polls. Through greater representation on the council, they intend to push back Kurdish power in Kirkuk and complicate the quest to incorporate it into Kurdistan via Article 140, UNAMI’s method or otherwise.

Another Arab leader was more positive, calling the proposal “balanced”, but he echoed Kurdish leaders in stating that what matters, in the end, is Kirkuk.⁷⁷ Likewise, the head of the Hawija awakening council indicated he liked aspects of the proposal, for example concerning Qaraj, but expressed disquiet at what he described as Kurdish efforts to “buy people in Qaraj, as well as in Hawija and in Baghdad”.⁷⁸

Perhaps the strongest opposition came from the Turkomans. Hassan Turan, a Kirkuk provincial council member, criticised UNAMI for its reliance on the December 2005 election results (see above) and accused de Mistura of pro-Kurdish bias in calling to delay Article 140’s implementation (rather than considering it null and void) and unilaterally naming the disputed territories.⁷⁹ However, he supported UNAMI’s general

been within the Kurdistan region and under direct KRG control since 1991; in their view it is not disputed. In the absence of an agreed definition of a disputed territory, however, an area is bound to become one the moment a party disputes it. The Kurds had mentioned Aqri as a disputed district that belonged to the Kurdistan region and could be settled early on in the years before UNAMI’s involvement. In 2008 UNAMI briefed Kurdish officials about the intended inclusion of Aqri in the first phase, meeting no objection. Those officials’ turnaround came only after the proposal’s announcement in June was publicly derided in Kurdistan.

⁷⁴ Crisis Group interview, Suleimaniya, 23 June 2008.

⁷⁵ Crisis Group interview, Karim Sinjari, KRG minister of state for the interior for the KDP (there are parallel state ministers, due to the unfinished process of integrating the two Kurdish administrations, an outcome of their internecine conflict in the mid-1990s), Erbil, 29 June 2008. He also said, “we are open to debate. Everything should be resolved through negotiations”.

⁷⁶ Crisis Group interview, Kirkuk, 19 June 2008. UNAMI has countered the charge it did not consult with Saeed about these four districts by saying it discussed only Kirkuk with him, a matter within his jurisdiction, not districts in other governorates. Crisis Group email communication, 28 September 2008.

⁷⁷ Crisis Group interview, Sa’doun Fandy, head of the Arab Consultative Council, Kirkuk, 22 June 2008.

⁷⁸ “They have lots of money”. Crisis Group interview, Husein Ali Saleh al-Jabouri, Kirkuk, 22 June 2008. A Chaldo-Assyrian politician similarly expressed support for UNAMI’s proposal, lauding its recommendation on Hamdaniya as “close to reality” and expressing hope it would make a similar recommendation regarding Tel Qaif, a district with a significant Chaldo-Assyrian population that could be joined with Hamdaniya, he suggested, to form a “local administration”, or possibly even a separate governorate, under Articles 116 and 125 of the constitution. Crisis Group interview, Kirkuk, 22 June 2008. Article 116 states: “The federal system in the Republic of Iraq is made up of a decentralised capital, regions and governorates, as well as local administrations”. Article 125 states, under the title “Local Administrations”: “This constitution shall guarantee the administrative, political, cultural and educational rights of the various national groups, such as the Turkomans, Chaldeans and Assyrians, and all other groups. This shall be regulated by law”.

⁷⁹ Crisis Group interview, Hassan Turan, provincial council member, Kirkuk, 7 October 2008. In an earlier interview, he explained de Mistura’s alleged pro-Kurdish bias as follows: “De Mistura has a theory that he should always appease the Kurds, lest they use force, triggering civil war and foreign intervention. This theory is wrong. The Kurds are not in a position to use force. They only threaten this – for media purposes. Were they to use force, they would lose everything

approach, as long as it sought the council of representatives' approval of a definition of disputed territories and dealt with all of them (i.e., including areas far from Kurdistan, such as Anbar/Karbala/Najaf and Baghdad vs. Salah al-Din over Dujail). For UNAMI to fail to address all disputed internal boundaries, he said, would "raise suspicions about its motives".⁸⁰

The federal government's position remained unclear. An independent Kurdish member of the Kirkuk provincial council, who said he embraced UNAMI's proposal, called on the government to show its hand:

We should press Maliki on whether he is prepared to implement UNAMI's recommendations: Are you ready to deal with this? We should test his will and that of the presidency council. This is an international document; it's serious. We cannot just reject it out of hand. This is a big game with big players.⁸¹

There is no indication that the Maliki government, to which UNAMI addressed its "first analysis", has taken any steps to act on the proposals. Most likely it decided to wait for phases two (Tel Afar, Tel Qaif, Sheikhan and Sinjar districts in Ninewa governorate and Khanaqin district in Diyala governorate) and three (Kirkuk),⁸² which UNAMI now says have been combined into a single report it hopes to release by late November 2008. In any case, non-action would make sense: the government has a stake in the status quo insofar as the Kurds are at a natural disadvantage in having to prod the government to action.

In July, UNAMI's awaited proposal on Kirkuk was overtaken by the imbroglio over the provincial elections law and, following this in August, the Iraqi army's move into disputed districts in Diyala governorate. It seemed that the combination of greater assertiveness by the Maliki government and the relatively passive U.S. role had dealt a setback to Kurds' prospects in Kirkuk and other disputed territories they claim without resolving anything. Once again, UNAMI was expected to produce fresh proposals to break the deadlock. Although after two months it helped defuse the crisis over the provincial elections law by proposing a separate mechanism for Kirkuk, the experience drove home the need to search for a "grand bargain" that would include settlement of the hydrocarbons question and the constitution review.

they have gained since 1991". Crisis Group interview, Kirkuk, 18 June 2008.

⁸⁰ Crisis Group interview, Kirkuk, 18 June 2008.

⁸¹ Crisis Group interview, Awad Amin, Kirkuk provincial council member nominally for the Kurdistan Workers' Party, Kirkuk, 19 June 2008.

⁸² This includes districts adjoining Kirkuk currently administered from other neighbouring governorates, for example Tuz Khurmatu in Salah al-Din governorate. The restoration of Kirkuk governorate's pre-1968 boundaries, first authorised by Article 58 of the TAL, has proven to be one of Iraq's most intractable political problems, given the stakes involved: should some of Kirkuk's original districts that are heavily Kurdish (such as Chamchamal, as opposed to Tuz Khurmatu, which is heavily Turkoman) return to Kirkuk, and should a referendum be held, Kurds would use their new absolute majority to attach Kirkuk to the Kurdistan region. The process is complicated by the question whether restoration should apply only to Kirkuk's pre-1968 boundaries or to all eighteen governorates' pre-1968 boundaries (for example, including those of Anbar/Najaf/Karbala); and whether all of Kirkuk's pre-1968 districts should be considered or only some, for example those that are predominantly Kurdish.

III. ESCALATING CONFLICT OVER OIL

As Iraq's single source of income, oil and gas play an inordinate role in politics, with questions revolving over who owns it, manages it, controls exports and gets what share of revenue.⁸³ Since April 2003, these have become incendiary, as the country has started to decentralise in a situation of ethnic and sectarian violence, widespread corruption and crime (including oil smuggling), and profound mistrust. The emergence of a powerfully autonomous Kurdistan region, in particular, has brought the oil questions to the fore. The Kurds, whose territory was neglected for decades, are eager to develop it but, lacking their own sources of income, wholly depend on the federal budget. Complicating matters, their relations with Baghdad are strained, their annual 17-per-cent budget allocation is contested, and they complain they do not receive the amount to which they are entitled, or do not receive it on a timely basis.

To escape this vice, the KRG has been keen to develop two potential sources of income: oil wealth suspected to exist in the Kurdistan region and, by incorporating disputed territories, the proven oil reserves of Kirkuk and whatever oil and gas may be found in other disputed areas. This has presented new hurdles. The Article 140 process has stalled, and the KRG's ambition to produce its own oil and gas has been frustrated by the absence of a federal hydrocarbons law and a companion revenue-sharing law that would create the institutions and rules for managing and developing the country's mineral resources and distributing income from their sale.⁸⁴ Negotiations over these laws have sputtered on aimlessly since the federal oil ministry and

the KRG tabled two competing, incompatible drafts of a hydrocarbons law in early 2007. The KRG then passed its own oil and gas law in August 2007 and unilaterally began signing contracts with foreign companies in order to establish basic infrastructure for exploration and production.

This further aggravated relations with Baghdad (which in 2008 responded by signing its own unilateral contracts for oil and gas fields in the rest of the country), while highlighting the KRG's next obstacle. Even if it succeeds in pumping oil, it will be unable to sell it unless it secures access to the export pipeline that runs to Turkey's Mediterranean coast. Given its fears of oil-fuelled Kurdish independence, however, Turkey is loath to permit the KRG to export through its territory without a federal hydrocarbons law that would tie the Kurdistan region more closely to the Iraqi state.

In an earlier report, Crisis Group argued that "a transparent, efficient and equitable framework for the management of oil and gas wealth arguably is the most important building block of a new Iraq", and that the absence of such a framework discourages international investment in the oil industry and encourages actors such as the KRG to go it alone.⁸⁵ Negotiations over a hydrocarbons law have stalled over a deep rift concerning the state's role in the economy, as well as the struggle between Kurdish and Arab nationalism. Kurds want to minimise the federal state's role in managing the oil sector and claim final say over the development of fields on their territory. This reflects deep mistrust of Baghdad based on both distant and recent historical experience, including use of oil wealth by successive regimes to oppress them and the erratic release of agreed budgetary resources by the current government. Moreover, the Kurds appear to be seeking enhanced economic self-reliance to maximise their autonomy and, perhaps, chances of future secession.

Most other Iraqis, by contrast, including some Shiite political leaders such as Prime Minister al-Maliki, do not view the re-emerging state as a threat. They seek to strengthen it economically and institutionally and to dominate it. They oppose Kurdish nationalism and favour instead so-called resource nationalism, a sentiment that has expressed itself especially in the debate over who owns the oil (and thus in whose territory a given field is located) and whether foreign companies can be paid for their services in oil rather than money (see below).

⁸³ Iraq is awash in money. With 115 billion barrels in proven oil reserves and production averaging 2.4 million b/d (though some say only 1.7 b/d), it capitalised on prices which soared above \$100 per barrel for much of 2008. Anticipating \$80 billion in oil revenues for the year, the council of representatives boosted the country's \$48 billion budget to \$70 billion via a supplementary spending bill in August. *The Economist*, 16 August 2008. An estimated 93 per cent of the \$48 billion budget was based on oil income, calculated conservatively at \$57 p/b for crude. Agence France-Presse, 15 July 2008. The lower output figure of 1.7 billion b/d is based on U.S. sources in Iraq cited by a Western official. Crisis Group interview, Amman, 17 October 2008.

⁸⁴ The revenue-sharing principle is supported by all sides (and enshrined in the constitution) but has been held up by deadlock over the hydrocarbons law, as the Kurds insist on passing the relevant legislation as a single package. In practice, revenues are shared at the moment, with the Kurds receiving 17 per cent of the budget, but no law guarantees this in the future or sets the distribution formula or mechanism.

⁸⁵ Crisis Group Report, *Iraq After the Surge II*, op. cit., pp. 4-5.

The struggles over nationalism and the state's role have created a link between the otherwise separate fights over oil and disputed territories. Not only does the unresolved status of disputed territories claimed by the Kurds that are thought to contain rich oil deposits complicate negotiations over the hydrocarbons law, but the Kurds' frustrated quest for Article 140's implementation has pushed them to withhold cooperation on both the oil law and a range of unrelated legislation. Moreover, in its efforts to reverse decades of Arabisation-related neglect and outright discrimination, the KRG has matched de facto control over some of the disputed territories with initial steps to explore and develop whatever oil and gas resources these possess. Disputes over oil and territories are thus intertwined, and the conflict has now become intractable and combustible.

A. DEVELOPING KURDISTAN'S OIL WEALTH

The KRG faces huge challenges in unlocking the region's untapped wealth. Short on required skills, resources and political support from Baghdad, it has embarked on a journey both lone and long to carve out Kurdish autonomy with a self-reliant economic base.

What the region has is potential.⁸⁶ Although exact figures are elusive,⁸⁷ some Kurdish officials are bullish that substantial quantities of oil and gas will be found. Ashti Hawrami, the KRG's minister of natural resources, said, "I'm not expecting to find another Kirkuk [as much as fifteen billion barrels]. But I think I will find a lot of fields that add up to Kirkuk".⁸⁸ Others were

⁸⁶ See map in Appendix D below.

⁸⁷ The region has no listed proven reserves, as these are determined by actual drilling, mapping and continuous production. The little production that has taken place must have given the KRG some proven reserves, but data has not been made public. Mostly, however, the KRG has incomplete and untested data on the basis of which it would be difficult to make reasonable estimates. Crisis Group email communication, international energy expert, 27 September 2008.

⁸⁸ Quoted by Neil King, Jr., "Wildcatters plunge into North Iraq", *The Wall Street Journal*, 9 July 2008. An international energy expert said, "A lot of oil will be found, but a lot of companies will not find oil". Crisis Group interview, Istanbul, January 2008. Before 1991, when the Kurds wrested control of the Kurdistan region from the central government in the aftermath of the Gulf War, drills had been struck at only four locations inside the region: at Taq Taq, Demirdagh, Chamchamal (gas) and a dry field near Dohuk. An Iraqi oil expert said that geological surveys had identified many prospective structures and that a number of locations had been designated for drilling but that recurrent Kurdish rebellions after 1961 had prevented any further development. Crisis Group interview, Amman, 19 October 2008.

less optimistic: "Yes, KRG oil is important to us, but it won't be an alternative for Kirkuk oil".⁸⁹

In 2008, still very little production has taken place, all of it from a single field, Tawke, in Dohuk governorate. Managed by DNO of Norway, it has been pumping a modest 10,000 barrels a day (b/d), reportedly for local consumption, but possibly for illegal export by truck to Iran.⁹⁰ Oil experts say DNO could quickly ramp up production tenfold if an export channel became available.⁹¹ Exports are blocked, however, by the KRG's conflict with the federal oil ministry and the concomitant failure to agree on a hydrocarbons law. Should that issue be resolved, KRG officials reportedly have predicted that total production of all of the region's fields could reach one million b/d by 2013. Although independent oil experts use the more conservative figure of half a million b/d by 2013, they are optimistic that the region offers great commercial opportunity.⁹²

Kurdish leaders' drive to develop this hydrocarbons wealth is propelled by several motives. First, the KRG wants to increase its economic leverage vis-à-vis the federal government, on which it depends for the bulk of its income.⁹³ The federal government allocates 17

⁸⁹ Crisis Group interview, KRG official, Suleimaniya, 21 October 2008.

⁹⁰ In July 2008, *The Wall Street Journal* reported that "dozens of tanker trucks" lined up at the Tawke field to transport "some 7,000 barrels a day" that it claimed were "pumped straight from the wellhead for the local market". King, op. cit. In the absence of local refineries, it would make sense to export this oil; without a hydrocarbons law, it would be smuggling. There are some indications this may be happening. At least one Kurdish eyewitness reported seeing tanker trucks entering Iran from Kurdistan in late May 2008 and again in late July, when he himself crossed the border. He said the traffic began in March 2008 and was halted after July following a U.S. protest to the KRG. Crisis Group email communication, Kurdish traveller, 5 October 2008. There is plenty of precedent for this: in the 1990s, an estimated 100 Iraqi tanker trucks, each with a 36,000-litre capacity, crossed to Jordan daily in a tolerated violation of UN sanctions. The same occurred on the Iraqi-Turkish border.

⁹¹ Crisis Group interview, international energy expert, Erbil, 16 June 2008. DNO's discovery of oil in the Tawke field was first announced by the KRG on 11 June 2006. Other than DNO, only Genel Enerji has struck oil so far (in Taq Taq) and could start producing the moment it can export.

⁹² Crisis Group interview, international energy expert, Amman, 27 January 2008. Ashti Hawrami, KRG minister of natural resources, said he expected exports of 250,000 b/d by the end of 2009. Quoted by King, op. cit.

⁹³ About 95 per cent of KRG revenues are derived from the federal government. Denise Natali, "Kurdish Crude", *Soma* (PUK-associated English-language weekly in Suleimaniya), 14-27 December 2007.

per cent of its budget to the Kurdistan region annually, but this amount is reduced significantly by deductions (mostly to cover “sovereign expenditures” relating to the federal government’s operations)⁹⁴ and has been challenged by political parties that contend the Kurds constitute a smaller percentage of the Iraqi population.⁹⁵ Even if the KRG shares revenues from its own oil exports with the federal government, as it has said repeatedly it will, it could use this income as collateral against any attempts by the federal government to withhold funds to which the KRG deems itself entitled.⁹⁶

Becoming less economically reliant on the central government is viewed as all the more critical given the KRG’s urgent need to provide its people with basic utilities, such as power and fuel (and, stemming from this, clean water, sewage disposal and the like). All these have been in short supply, causing popular discontent. The region has no refineries and few significant power stations.⁹⁷ By selling oil and gas the KRG could gen-

erate funds to build such essential infrastructure and then provide the raw materials for it. This would end its debilitating dependence on imports of refined fuel from Turkey and elsewhere, often at prices unaffordable to ordinary citizens.⁹⁸

Finally, to the extent that Kurdish leaders harbour aspirations for independence, they want a strong economic base, which the region’s hydrocarbons wealth would afford. Although they have declared publicly that they wish to remain within Iraq, they have made sufficient threats – relating to non-implementation of Article 140 and other aspects of the constitution – to persuade many Iraqis that the Kurds merely are waiting for the opportunity to bolt.⁹⁹ Under this perspective, what matters most to the KRG is not a fair share of revenues (which they still need today but would be irrele-

⁹⁴ These expenditures cover the operations of the council of representatives, the presidency, the council of ministers, the federal supreme court and a number of federal state agencies. They also cover operations under Article 110 of the constitution, which outlines the federal government’s exclusive authorities, including defence and foreign policy. It is unclear how much the KRG receives after deductions – some observers suggest 14 per cent. Natali, *op. cit.* In turn, Natali, asserts, the federal government has accused the KRG of failing to pay its fair share of revenues from the Iraqi-Turkish border crossing it controls at Ibrahim Khalil. A senior KDP official claimed: “The region of Kurdistan’s budget is well-known to be 17 per cent of Iraq’s total revenue. Large sums are deducted from this sum, however, and only 14 per cent of Iraq’s revenue reaches the region. Part of our budget is deducted under the name of sovereign allocations for the Iraqi Army. The Regional Guard forces and the Peshmerga are identified as part of Iraq’s defense system, that is, they are part of the Iraqi armed forces. When we demand appropriations for these forces, however, the federal government says ‘no’ and claims that these forces are part of the region of Kurdistan, and their appropriations should come from its budget. The federal government uses a double standard with us. In obligations we are part of Iraq, but when it comes to rights, we are sidelined. When we are asked to carry out certain tasks, we do so and are always prepared to help, but when we demand our rights, we are ignored”. Masrour Barzani, head of the KDP’s security services, interviewed in *Al-Sharq Al-Awsat*, 18 September 2008.

⁹⁵ During January 2008 budget negotiations, some parties tried to change the Kurds’ 17 per cent allotment. They failed but inserted a clause into the budget law that it will be revised once a census is held. *The Los Angeles Times*, 14 February 2008.

⁹⁶ For example, rather than transferring its oil revenues to the federal government, the KRG could keep this amount and simply deduct it from its annual federal budget allotment.

⁹⁷ While the region does not have an oil refinery, the KRG reportedly has plans to build a number of small ones. Crisis

Group interview, Stafford Clarry, adviser to the KRG prime minister, Erbil, 19 June 2008. The challenges are enormous, however, as refineries are expensive and take time to construct. An international energy expert summed up: “A refinery with a capacity of 100,000 b/d would cost half a billion dollars or more. You would have to build it near an export line to add value. To find half a billion dollars is tricky, as is finding people to build it. The skilled-labour market is scarce. In the Gulf they are working flat out, and for companies there a half-a-billion-dollar refinery in Kurdistan is not sexy enough. Moreover, to finance it, the KRG would have to provide financial guarantees, but the KRG gets all its money from Baghdad, which won’t help. Instead the KRG is telling oil companies that as part of their contract they have to build small refineries with a capacity of 20,000 b/d. This hasn’t started yet. It’s not within these companies’ expertise, nor in their commercial interest: such refineries would be for local consumption, not export, so to the oil companies they add no value”. Crisis Group interview, Erbil, 16 June 2008. The KRG signed a contract with Crescent Petroleum/Dana Gas of the UAE to lay pipelines to ferry gas from the Khormor field to power stations in Erbil and Suleimaniya. In October 2008, they announced they had started pumping gas at Khormor. *Agence France-Presse*, 4 October 2008.

⁹⁸ Turkey buys Iraqi crude, refines it and sells fuel products back to Iraq, including the Kurdistan region – obviously at a much higher price. Moreover, smugglers have taken advantage of fuel subsidies in Iraq to buy up large quantities of fuel from government agents, smuggling it across international borders to sell for a profit in a neighbouring state, then buying fuel on the open market there and selling it on the Iraqi black market at a price diverging widely from the official one. The estimated loss to Iraq is between \$2.5 and \$6 billion a year, 10 to 20 per cent of the budget (in 2006). Crisis Group interview, Greg Muttitt, co-director of Platform (an NGO in the UK), Amman, 5 July 2006.

⁹⁹ In the Kurds’ eyes, the constitution’s non-implementation could be cause to dissolve the state. The last sentence of its preamble states: “Adherence to this constitution preserves for Iraq its free union of people, land and sovereignty”.

vant upon independence), but ownership and control of oil fields.

In pursuit of these objectives, the KRG has carried out an aggressive strategy to attract foreign investment, spearheaded by Ashti Hawrami, its minister of natural resources, who was appointed in May 2006. When talks over a federal hydrocarbons law broke down in 2007, the Kurdistan national assembly passed its own oil and gas law, based on the KRG's interpretation of the federal constitution,¹⁰⁰ the law, and the model contract it includes, has been touted (by industry representatives) as among the best in the industry.¹⁰¹

Thus equipped, the KRG proceeded to renegotiate a handful of contracts it had concluded earlier¹⁰² and

sign fresh contracts with companies willing to take the plunge. By September 2008, it had sealed more than twenty contracts.¹⁰³ Given the risks involved (the uncertain presence of commercially recoverable oil and gas, the absence of infrastructure, the lack of a financial system and the inability to export in the absence of a federal hydrocarbons law),¹⁰⁴ the first takers tended to be small companies lacking requisite resources or capabilities to single-handedly set up an industry. Though they were able to start exploration through test drills and, in at least one case, pump oil, their signatures had a primarily symbolic and political, rather

¹⁰⁰The "Oil and Gas Law of the Kurdistan Region – Iraq" (6 August 2007) and the KRG's model contract are available in Kurdish, Arabic and English at www.krg.org/articles/detail.asp?rnr=107&lngnr=12&smap=04030000&anr=20267. The law's final section, "Necessitating reasons", states: "This Law was issued to develop the petroleum wealth of the Region in a way that achieves the highest benefit to the Kurdistan people and all Iraqi people, using the most advanced techniques of market principles and encouraging investment, in a manner consistent with the provisions of Articles 111, 112, and 115 of the Federal Constitution, to promote and adhere to the highest standards of transparency, accountability, and fairness in the petroleum sector, to provide special petroleum revenue allocations for all citizens of the Region, for the future generations of the Region, for those who suffered as a result of the previous regime in Iraq[,] for the natural environment of the Region; and to facilitate cooperation on petroleum management with the Federal Government[,] provided that revenue is shared equitably, as required by the Federal Constitution".

¹⁰¹"The industry recognises the KRG's oil and gas law as a first-class piece of legislation. The drafts that preceded it were terrible". Crisis Group interview, international energy expert, Istanbul, January 2008. The expert represents the oil industry and has commercial interests in Iraq and elsewhere.

¹⁰²Before the Kurdish parliament passed its own oil and gas law a year later, the KRG (and before it the parallel administrations run by the PUK and KDP) had signed six contracts with foreign oil companies, including one before the U.S. invasion. They include: a January 2003 PUK contract with Pet Oil of Turkey (later joined by Prime Natural Resources of the U.S. and Oil Search of Australia); a January 2004 PUK contract with Genel Enerji of Turkey (later joined by Addax Petroleum of Switzerland); a July 2004 KDP contract with DNO of Norway; a May 2006 contract with Western Zagros of Canada; a 2006 contract with Crescent Petroleum/Dana Gas of the UAE; and a 2006 contract with A&T Petroleum of Turkey (a subsidiary of Pet Oil) and Prime Natural Resources (later joined by Oil Search). Pet Oil was forced to renegotiate its 2003 contract at least three times: "In 2005 we were told that it would be impossible to keep our area [Pulkhana], so we agreed to revise the commercial

agreement. Later we learned that the PUK was negotiating with another company, Western Zagros, over the same area. ... Then we were told that our Pulkhana structure was located in the Arab part of Iraq, so the PUK gave us the Shakal structure instead, on the Talabani [PUK] side. We revised the agreement once again and had to settle for much lower terms. ... In 2006 we were given another structure, called Bina Bawi, on the Barzani [KDP] side for which we signed a new contract. ... In August 2007 the Kurds passed their own oil and gas law, which has a clause stating that all previous contracts should be made consistent with the law. So in March 2008 we revised our two contracts, and our shares dropped again. For the moment we do not expect another change, but if the federal oil law is passed in Baghdad, they may tell us to revise our contracts yet again". Crisis Group interview, Ali Ak, general manager Pet Oil, Ankara, 3 June 2008.

¹⁰³The precise number depends on how one counts. Some companies have more than a single contract area, and some contracts involve more than one company. The following companies had oil and gas contracts with the KRG in September 2008: DNO (Norway), Addax Petroleum (Canada/Switzerland), Genel Enerji (Turkey), Western Zagros (Canada), Pet Oil (Turkey), Prime Natural Resources (U.S.), Oil Search (Australia), Crescent Petroleum (UAE), Dana Gas (UAE), Norbest (an affiliate of TNK-BP of Russia), OMV Petroleum Exploration (Austria), Hunt Oil (U.S.), Hillwood International Energy (U.S.), Perenco (France), Aspect Energy (U.S.), Gulf Keystone Petroleum (UK), Texas Keystone (U.S.), Kalegran/MOL (Hungary), Reliance Energy (India), Heritage Oil and Gas (Canada), Sterling Energy International (U.S.), Niko Resources (Canada), Vast Exploration (Canada), Groundstar Resources (Canada), Korea National Oil Corporation (South Korea) and Talisman Energy (Canada). The KRG awarded four blocks to the Kurdistan Exploration and Production Company (KEPCO), which it owns, on condition it bring international companies as partners into its contract areas. See map in the Appendix.

¹⁰⁴Regardless of the inability to export as long as Iraq does not have a federal hydrocarbons law, small companies are prepared to sign contracts with the KRG because it enables them to put expected oil reserves on their books, which raises their stock. Crisis Group interview, international energy expert, Istanbul, 2 June 2008.

than economic, significance.¹⁰⁵ The KRG pointed to these contracts as evidence that the region was worth foreign investment and to instil a competitive spirit based on the presumption that if the pickings promised to be rich, no medium-sized oil company would dare stay away.

The KRG used the announcements of initial discoveries to lure larger companies, including through shared contracts of previously allocated blocks and by allotting new ones.¹⁰⁶ If some of the initial investors were muscled aside by bigger competitors,¹⁰⁷ this only increased the KRG's leverage. Its ultimate aim was to bring in major oil firms. As an oil expert put it, "Ashti Hawrami does not want small companies in the Kurdish region right now. He wants more experienced companies. He wants to create facts on the ground".¹⁰⁸ The majors have been reluctant, however, given the uncertain investment climate in the Kurdistan region and, more importantly, the federal government's threat that any company signing with the KRG would be barred from bidding for contracts with the federal ministry of oil, which controls the much larger oil fields of southern Iraq (see below).

The KRG covets contracts with larger companies for their greater resources but also, perhaps more importantly, for their political clout.¹⁰⁹ The KRG president's

Article 140 envoy, Qader Aziz, said, referring to Kurdish leaders, "they believe that if big companies come to Kurdistan, they will protect the region, because they are supported by big countries".¹¹⁰ *The Wall Street Journal* summed it up:

Kurdish officials look at the flurry of oil contracts they're signing as a two-pronged insurance policy. By cutting deals with companies from countries as diverse as Australia, Britain, France, India, Russia, South Korea, Turkey and the U.S., the Kurds say they hope to win international political support in case things go awry with Baghdad. And in case Iraq were to break up, the Kurds would have their own abundant revenue stream. "Has this been deliberate? It certainly has", says a beaming Mr Hawrami, the Kurdish natural-resources minister.¹¹¹

While arguably this strategy makes sense, it runs up against the stark fact that the Kurdistan region is landlocked and realistically can hope to export its oil and gas only via Turkey. Doing so requires permission from the federal government to pump Kurdish crude through the Kirkuk-Baiji-Ceyhan pipeline. In the current stalemate, however, the KRG cannot expect Baghdad's cooperation. Even if the KRG were to circumvent that obstacle by building its own strategic pipeline through the Kurdistan region to the Turkish border, it would still need Turkish permission for transit to the Mediterranean.¹¹² Some KRG officials appear to be banking on

¹⁰⁵"The KDP's contract with DNO is mostly a political statement". Crisis Group interview, international energy expert, Amman, 28 November 2006.

¹⁰⁶Medium-sized oil companies that have signed contracts with the KRG include Hunt Oil, OMV, Reliant Oil, Talisman and TNK-BP, a Russian firm half-owned by BP. For a map of the KRG's block allocations to internationals, see <http://media3.marketwire.com/docs/klm.pdf>; for a KRG map of "discovered fields", <http://media3.marketwire.com/docs/dfm.pdf>.

¹⁰⁷For example, Western Zagros was forced to share its block with Talisman, which signed a contract with the KRG in June 2008. Crisis Group interview, international energy expert, Istanbul, 5 July 2008. The smaller companies' interests are not necessarily harmed, and they may hope to be bought out by larger companies once these find the Kurdistan environment more permissive.

¹⁰⁸Crisis Group interview, oil expert, Istanbul, 2 June 2008.

¹⁰⁹The KRG's September 2007 contract with Hunt Oil is a special case. Its chief executive officer, Ray Hunt, is a major financial supporter of President Bush and a member of his foreign intelligence advisory board. The KRG may have courted Hunt Oil so as to pre-empt criticism of its approach and set a useful precedent. The deal provoked a storm of controversy in the U.S. but was not cancelled. Documents show State Department officials publicly opposed the deal, preferring companies to wait until a federal oil law was signed. But the company went ahead, apparently with support from other branches of the U.S. government, including the Commerce

Department. *Washington Post* Investigations (blog), 3 July 2008, at http://blog.washingtonpost.com/washingtonpost-investigations/2008/07/dems_administration_knew_more.html.

¹¹⁰Crisis Group interview, Suleimaniya, 26 June 2008.

¹¹¹King, "Wildcatters", op. cit.

¹¹²Theoretically, the KRG has two options in exporting its oil, assuming agreement is reached under a federal hydrocarbons law. Either it needs to build two branch lines, one from its promising Taq Taq field to Kirkuk (60km), the other from its producing Tawke field near Zakho to the Kirkuk-Ceyhan line (a mere 6km). DNO already built a pipeline from Tawke to the Kirkuk-Ceyhan line, but it remains empty in the absence of permission to export. Given the sensitivities, DNO has not even publicly announced this pipeline. Alternatively, the KRG is considering constructing its own strategic pipeline from Taq Taq to Zakho that would likewise link up with the Kirkuk-Ceyhan trunk line near the Iraqi-Turkish border. This is complicated by terrain and a history of conflict: It would have to cross low mountains and, in some places, minefields. Crisis Group interview, international energy expert, Erbil, 16 June 2008. If the Kirkuk field starts producing at maximum capacity (up to one million b/d; see below) and the KRG reaches its one million b/d target, a second pipeline would be needed for the additional volume; presumably it would run from Taq Taq to Zakho and then to the Mediterranean parallel to the existing Kirkuk-

Ankara's eventual agreement given its own pressing energy needs.¹¹³ An energy expert said:

If the KRG is right about its projections of one million b/d in five years, then economics may dictate that Turkey circumvent the Iraqi government and deal directly with the KRG. Turkey requires 800,000 b/d of crude. It produces only 43,000 b/d itself, and this is both poor quality and relatively expensive oil. If the KRG could produce enough to satisfy Turkey's needs, it would be very tempting to Turkey.¹¹⁴

Ankara officials have ruled this out. They see the federal hydrocarbons law as an essential building block of a unified Iraq that would include the Kurdistan region and say they will oppose exports of Kurdish crude until that law is in place.¹¹⁵ For all practical purposes, therefore, Kurdish oil largely remains bottled up pending resolution of the hydrocarbons law tangle, just at a time when many of the contracting companies are primed to start production.

B. OIL IN KIRKUK AND OTHER DISPUTED TERRITORIES

Inflaming the debates over oil and the disputed territories is the issue of oil *in* those disputed territories, especially Kirkuk. "If Kirkuk had no oil, no one would fight over it", said Qader Aziz, KRG President Masoud Barzani's Article 140 envoy.¹¹⁶ Kirkuk has been fought over since Royal Dutch Shell found oil there in the early 1920s, coincident with the rise of the Kurdish national movement from the Ottoman Empire's ashes.¹¹⁷ The Kurdish struggle for freedom

from alien rule went hand in hand with a quest to make that freedom economically sustainable. While the Kurdistan region's oil reserves might be sufficient to provide it with a great deal of economic self-sufficiency, the size of Kirkuk's reserves would undoubtedly do so, increasing the stakes for everyone. Speaking of Iran's and Turkey's red line over Kirkuk's incorporation into the Kurdistan region, a KRG official contended: "They see Kirkuk as a base for Kurdish independence. And we as Kurds also know that without Kirkuk we will not have a good future".¹¹⁸

The Kirkuk "super-giant" oil field contains as much as 13 per cent of Iraq's proven reserves (fifteen billion out of 115 billion barrels),¹¹⁹ though estimates vary.¹²⁰ Like many of Iraq's oil fields, however, Kirkuk's has been poorly maintained (even mistreated), relies on outdated technology for extraction (vertical versus horizontal drilling), has been damaged by the re-injection of "dead" crude and saline water incursions and is rapidly depleting. Over time, in other words, its value and that of Kirkuk as an oil-bearing region will diminish.

Opinions are divided over the timeframe. Some claim that Kirkuk, like many current oil fields, will run out within twenty to 50 years.¹²¹ This has given Kurdish leaders ammunition for their argument that its oil is irrelevant to their quest for either Kirkuk or independence. In their view, the matter is moot, since they agree that under the constitution the KRG would be obligated to jointly manage the Kirkuk field with the

Ceyhan line. Crisis Group interview, international energy expert, Istanbul, 5 July 2008. See map in Appendix D below.

¹¹³ Crisis Group interview, academic who follows oil-related issues, Erbil, 16 June 2008.

¹¹⁴ Crisis Group interview, international energy expert, Istanbul, 5 July 2008.

¹¹⁵ A senior Turkish official said, "We cannot do much without Iraqi government authorisation. We cannot afford a breach of trust. So before the Kurds can export their oil and gas through Turkey, there will have to be a federal hydrocarbons law". Crisis Group interview, Istanbul, 21 July 2008. A subsequent Crisis Group report will discuss Turkish perspectives on Iraqi Kurds.

¹¹⁶ Crisis Group interview, Suleimaniya, 26 June 2008.

¹¹⁷ For example, Neywshirwan Mustafa Amin, a leading Kurdish intellectual and former PUK leader asserted that the Kurds' first attempt to take (back) Kirkuk was in 1919, when Sheikh Mahmoud faced off with the British colonial power. In 1931, Sheikh Mahmoud prepared to attack British and Iraqi forces in Kirkuk but was defeated and sent into Iranian

exile. Crisis Group interview, Suleimaniya, 23 June 2008. While true, the Arab-Kurdish conflict gathered momentum only after the ascent of the Baath party, with its Arab nationalist ideology, in 1968 and the start of Arabisation, which focused on Kirkuk and its oil wealth. Denise Natali, "The Kirkuk Conundrum", forthcoming in *Ethnopolitics*, vol. 7, no. 4 (November 2008).

¹¹⁸ Crisis Group interview, Suleimaniya, 21 October 2008.

¹¹⁹ United Press International, 28 November 2007.

¹²⁰ Some industry sources put the total at ten billion barrels, or 8-9 per cent of Iraq's proven reserves. *Platts Oilgram News*, 25 August 2008; and *Oil & Gas Journal*, 1 January 2008. An Iraqi oil expert with specific knowledge about Kirkuk claimed that the field contains more than 15 billion barrels, not including the nearby "giant" Bai Hassan field, and that much remains to be explored and developed. Crisis Group interview, Amman, 19 October 2008.

¹²¹ A Western oil expert claimed Kirkuk is "in rapid decline", in part because large quantities of oil (in particular, viscose fuel oil that did not have a ready market) are thought to have been re-injected into the field, without knowledge of where or how and contrary to international standards. He estimated \$3.7 billion and four to five years of work (in a stable environment) would be needed to reverse the decline. Presentation by Wayne Kelly at the U.S. Institute of Peace, Washington DC, 9 August 2005.

federal government, if and when Kirkuk is incorporated into the Kurdistan region, and share revenues with all Iraqis. For example, Karim Sinjari, the KRG's minister of state for the interior, contended: "Kirkuk is very important to us. It has nothing to do with oil. The oil question has been solved in the constitution. The oil fields would stay under the federal government regardless of whether Kirkuk joins the Kurdistan region....[Moreover], we have sufficient oil in the Kurdistan region for now to survive for years. Erbil is sitting on a sea of oil".¹²²

Others argue that the Kirkuk field is "unlikely to run out soon" and is "potentially one of the largest producing fields in the world".¹²³ Just as importantly, this perception, correct or not, is shared by Turkey which sees Kirkuk's oil as a worrisome stepping stone toward an independent Kurdistan on its borders. Moreover, the notion that its oil will run out within the next few decades could be one reason why the KRG is in a hurry to incorporate Kirkuk (another being to capitalise on the KRG's relative political strength in Iraq today), ie, before there is nothing left on which to build an independent state.

The Kirkuk field, which for now remains under federal government control, is proving its worth, after many post-2003 setbacks. Although it is still producing below capacity, this is mostly because of problems in protecting the 79-km pipeline from Kirkuk to Baiji (north of Baghdad), where it links up with the main line to Ceyhan.¹²⁴ In early 2008, Kirkuk was producing an average of 600,000 b/d, about two thirds of its pre-war

capacity, the majority (400,000-450,000 b/d) of which was exported via Ceyhan according to demand.¹²⁵ The remainder was sent to Iraq's largest refinery complex, in Baiji, for domestic market processing.¹²⁶

A specific dispute has arisen over one part of the Kirkuk oil field, Khurmula dome, which juts into Erbil governorate.¹²⁷ In November 2007, the KRG awarded a service contract to build a refinery for oil derived from Khurmala dome to the newly established, KRG-owned Kurdistan National Oil Company (KNOC).¹²⁸ Later that month and again in June 2008, the KRG's guard troops reportedly blocked federal government workers from upgrading the field.¹²⁹ The stakes are high, as the field could be producing as much as 70,000 b/d for local consumption. This could partly address the Kurdistan region's pressing fuel needs once the refinery comes on-stream.¹³⁰

The KRG has argued that because the field extends into Erbil governorate, it is inside the Kurdistan region rather than in disputed territory, so the Kurds have full

¹²² Crisis Group interview, Erbil, 29 June 2008. Likewise, the PUK's representative in Ankara declared: "For us it's not a question of oil. Kirkuk oil will run out in 50 years or so. We don't need Kirkuki oil for our independence". Crisis Group interview, Bahros Galali, Ankara, 1 June 2006.

¹²³ Crisis Group interview, international energy expert, Amman, 27 January 2008. Implementing a large enhanced oil recovery (EOR) program could make a big difference in rate of decline and output but would require major investment.

¹²⁴ From 2004 to the middle of 2006, no Kirkuk oil was exported, because of pipeline sabotage. "The Kirkuk-Baiji pipeline...is now protected on either side by a ditch, a dirt barrier, a fence topped with razor wire, and three more rolls of razor wire on the ground. There are two guardhouses at every road crossing; the government has recruited local tribesmen suspected of mounting many past attacks to man them and conduct patrols. Oil has flowed freely since the construction of these defences began [in mid-2007]". *The Economist*, 16 August 2008. A Turkoman member of the Kirkuk provincial council said the pipelines are protected by Iraq's Oil Protection Forces, which pays local Arab tribes to protect sections through their territory. The line has been safe since local Arab tribes set up awakening councils in late 2007. Crisis Group interview, Hassan Turan, Kirkuk, 18 June 2008.

¹²⁵ Crisis Group interviews, Manaa Alobaydi, director general of the North Oil Company, Kirkuk, 27 December 2007 and 24 January 2008.

¹²⁶ In 1999, production was 900,000 b/d after a long period of low activity due to bomb damage during the Iran-Iraq war (1980-1988) and UN-imposed sanctions in the 1990s. "Iraq managing to increase production", Alexander's Gas & Oil Connections, *News and Trends: Middle East*, vol. 5, no. 3 (21 February 2000). Before the 2003 invasion, some 700,000-800,000 b/d were sent through the pipeline to Ceyhan. Current plans are to increase production to one million b/d by 2010, most for export. Dow Jones Newswires, 11 June 2006.

¹²⁷ Kirkuk has four producing oil fields, of which the Kirkuk field is the largest. The others are Bai Hassan, Jambour and Khabbaz. These three additional fields have combined estimated reserves of as much as four billion barrels and potential production capacity of 220,000 b/d. *Platts Oilgram News*, op. cit. The Kirkuk field has four domes: Baba on Kirkuk city's outskirts, Avana in Dibs, Khurmala north of Dibs and Zab north of the Greater Zab, a non-producing field. There are also three discovered but undeveloped fields: Hamrin, Ismail and Judaida, which have been estimated to have combined reserves of 2.5 billion barrels, *ibid.* See map in Appendix D below.

¹²⁸ KRG media release, 6 November 2007, www.krg.org/articles/detail.asp?lngnr=12&smap=02010100&rn=223&anr=21217. KNOC was established under the KRG's 2007 oil and gas law.

¹²⁹ United Press International, 28 November 2007 and 17 June 2008.

¹³⁰ Ashti Hawrami said: "We have shortages of fuel products. Every winter we are suffering. All we are doing is solving that problem by utilizing the crude oil, that's all". Quoted in United Press International, 28 November 2007.

rights to it.¹³¹ Moreover, the KRG says, the Khurmala dome has never produced and so is a new field over which the KRG should have full management rights under the constitution. Lastly, it argues, it should not matter whether the KRG or the federal government pumps the oil (and either exports it or, once a refinery is built, refines it and sells it on the local market); either way it would benefit the Iraqi people: “We are not stealing the oil”, Ashti Hawrami proclaimed. “It’s our oil; it’s Iraqi oil; we’re entitled to it. If Baghdad can do better, be my guest....Come work with us – no problem at all. But they cannot be coming here to stop us from doing it. That is not the spirit of the constitution or cooperation”.¹³²

Iraqi officials dispute these claims. They argue that Khurmala dome is an integral part of the Kirkuk field, which is recognised to be part of the disputed territories and remains under the federal government at least until a settlement is reached. Moreover, they say, it is not a new but an actively producing field that has been pumping 35,000 b/d since August 2004; as such, it does not fall under the KRG’s exclusive jurisdiction per Article 112 of the constitution.¹³³

The conflict arises out of the incendiary intersection of oil, territory and facts on the ground. As stated earlier, the definition of disputed territories is ambiguous and their location itself disputed. Could parts of the three Kurdish governorates be considered disputed? The KRG appears to argue not. “You show me the green line in the constitution”, said Ashti Hawrami, referring to the line of control at the time of the U.S.-led invasion in

April 2003 that separated the Kurdistan region from the rest of Iraq, including the disputed territories. “You show me a green line that officially anybody signed on to. There are many green lines. But what counts really is what is currently under the KRG authority”.¹³⁴

Yet, in other circumstances, the KRG has acknowledged that districts that were attached to Kurdish governorates as a result of Arabisation but previously belonged to Kirkuk governorate, such as Chamchamal (attached to Suleimaniya), should be restored to Kirkuk,¹³⁵ thereby contradicting the principle that land inside Kurdistan cannot be disputed. There are a number of fields, both producing and prospective, that either straddle or skirt the green line.¹³⁶ This suggests that as long as the green line remains undemarcated, conflicts such as that over Khurmala dome will continue to arise.¹³⁷

¹³¹ Ashti Hawrami said, “Khurmala Dome is not in a disputed area. It’s in Kurdistan, period....People say KRG are not allowing them [federal workers] to work in Khurmala. What that really says is it’s under KRG control, and we’d like to get it back from them”. Quoted in United Press International, 17 June 2008.

¹³² Quoted in United Press International, 28 November 2007.

¹³³ In December 2004, the Iraqi oil ministry awarded a contract to the Iraq-based KAR group to provide engineering and equipment for developing Khurmala dome. Iraq’s oil minister, Hussain al-Shahristani, said Khurmala was “one of the three domes of the Kirkuk field, which is a producing field”. Quoted in United Press International, 17 June 2008. The director general of the North Oil Company declared more specifically that it has been producing 35,000 b/d since 14 August 2004. Faxed letter to Crisis Group, 3 March 2008. The constitution does not define a “producing” or “current” versus a “future” field, but the KRG’s oil and gas law defines a “current” field as “a Petroleum Field that has been in Commercial Production prior to 15 August 2005”, and a “future” field as “a Petroleum Field that was not in Commercial Production prior to 15 August 2005, and any other Petroleum Field that may have been, or may be, discovered as a result of subsequent exploration”.

¹³⁴ Quoted in United Press International, 17 June 2008. Hawrami had earlier said, “there is no hard line drawn somewhere that says this is KRG controlled territory and these are disputed territories, it is all gray areas. We provide the security; administratively we run the towns and villages in that area. It is and has always been under control of KRG, under our security”. He also noted, however: “Assuming we go a step further and say it is not, say it transpires later on we were wrong for some reason. Well the contract is an Iraqi contract anyways, and whoever controls that region can administer the contract. It is no problem”. Quoted in United Press International, 28 November 2007.

¹³⁵ Article 140(1) of the Iraqi constitution instructs the executive authority to implement Article 58 of the interim constitution, the TAL, Article 58(B) of which states, in part: “The previous regime also manipulated and changed administrative boundaries for political ends. The Presidency Council of the Iraqi Transitional Government shall make recommendations to the National Assembly on remedying these unjust changes in the permanent constitution”. Kurdish leaders repeatedly have made clear that they want districts previously belonging to Kirkuk to be restored.

¹³⁶ Fields not already mentioned that appear to straddle the green line include Demirdagh in Erbil governorate and Jabal Kind, which is located on the boundary between Dohuk and Ninewa governorates. The Ain Zalah and Raffan fields in Ninewa governorate appear to lie close enough to the green line to have the potential to spark conflict. See map in Appendix D below.

¹³⁷ The Chamchamal gas field also straddles the green line but is not yet technically a field, as no commercially recoverable gas has been found. Three wells have been dug, two dry; a third showed traces of hydrocarbons but appears unable to produce more than 100 b/d – insufficient to be commercially viable (the industrial minimum output for viability is 2,000 b/d). Further exploration could yield better results. Crisis Group interview, Manaa Alobaydi, director general, North Oil Company, Kirkuk, 24 January 2008. A similar but unconfirmed case of a field in the Kurdistan region but ex-

Indeed, another already has. It involves part of a concession given to Hunt Oil of the U.S. in an area of Dohuk governorate.¹³⁸ Although the exact area of the awarded blocks remains unclear, the contract provoked controversy, because some said that one (K7, “Ayn Sifna”) protrudes from the KRG’s jurisdiction into disputed territories in Ninewa governorate.¹³⁹ Hawrami has justified the contract by arguing that regardless of the structure’s precise location, revenues will accrue to the federal government and be shared fairly through its annual budget; the KRG’s actions would, therefore, not harm the federal government’s interests.¹⁴⁰ Moreover, contracts issued today can be cancelled tomorrow (though presumably not without a cost to the government).

In the Ayn Sifna case, however, if the block does in fact extend into disputed territory, the KRG would be disregarding its own August 2007 oil and gas law, which prevents the KRG from issuing contracts in disputed territories without the federal government’s consent. Instead, it appears to be relying on an unapproved August 2006 draft, which entitles the KRG to manage oil fields in all areas claimed by the Kurds

tending into disputed territories involves the Khormor gas field, which straddles the green line between Suleimaniya and Salah al-Din governorates. The contract was awarded to the UAE’s Dana Gas and Crescent Petroleum, which announced the start of production in October 2008. Khormor was known as “Al-Anfal” during the old regime, a particularly cruel name, as the genocidal Anfal campaign was fiercest in the area of this oil field, around the town of Qader Karam in the Germian region.

¹³⁸ A similar conflict could arise over two other possible blocks (K17 and K43) awarded to the KRG-owned KEPCO for joint development with yet-to-be-contracted international oil companies and located in areas directly adjacent to disputed territories.

¹³⁹ See *Middle East Economic Survey*, 15 October 2007. The validity of such claims is difficult to determine, as the edges of geological structures do not align with politically determined geographic boundaries. It is easily conceivable that oil fields inside the Kurdistan region would protrude into adjacent areas. See the block map in Appendix C for the approximate location of the block awarded to Hunt Oil.

¹⁴⁰ Crisis Group email communication, Ben Lando, United Press International, 18 March 2008. While this sounds fair, revenues from local production are not being shared due to a dispute over the price of KRG-pumped oil. The federal government values it at the international market price; the KRG, perhaps not unreasonably, insists its value is the price at which it is sold on the local market. The conflict may have its origin in suspicion KRG oil is smuggled abroad to fetch a higher price. (See above.)

that are likely to join the Kurdistan region pursuant to Article 140.¹⁴¹

While the KRG may provide economic justifications for developing fields in the disputed territories and rationalise its unilateral policy by stating it would not adversely affect the federal government’s financial interests, its overriding motive appears to be to stake a claim to these areas, thereby prejudging their ultimate disposition. As such, the policy inevitably raises tensions. Matching the KRG’s unilateralism in kind, the federal oil ministry announced in early October 2008 that it was putting up for tender fields in disputed areas of Diyala governorate.¹⁴² Obviously, the federal government can make the same economic arguments (that it is not harming the KRG’s financial interest) and is further supported by the fact it has sovereignty in these areas at least until their status is resolved.

As the August 2008 Khanaqin events showed, territorial conflict can arise anywhere in the disputed areas, with oil playing an important factor, particularly as prospective field boundaries and their reserves become better understood. The oil potential of areas other than Kirkuk is unknown; very little new exploration, let alone development, has occurred there or in the rest of the country. Iraq never had the incentive to prospect for new fields when it had three giant ones producing the maximum allowed for export under its OPEC quota at the time. Nor has the potential been mapped. Oil is said to be present in at least Khanaqin,¹⁴³ Makhmour¹⁴⁴ and

¹⁴¹ The 7 August 2006 draft was overtaken on 22 October. A memorandum noted the new draft would “not give the Minister the power to administer petroleum operations in the Disputed Territories except by agreement with the Government of Iraq”.

¹⁴² It reportedly concerns three oil fields (Qamar, Gullabat and Naudoman) and one gas field (Khashm al-Ahmar). *Petroleum Intelligence Weekly*, 6 October 2008. See map in Appendix D for locations.

¹⁴³ The Khanaqin field reportedly started production along with the Kirkuk field in 1927. The local oil company was said to employ 400 people and the associated refinery another 500-600 when both were closed in 1983 because of the Iran-Iraq war (Khanaqin is a border town). Until then, the field had been producing a modest 10,000 b/d for domestic consumption. Crisis Group interview, Muhammad Amin Hassan Husein, Khanaqin district manager (*qaym maqam*), Khanaqin, 24 June 2008. The field’s name is Naft Khana. Other fields in the Khanaqin district are Nau Doman and Chia Surkh. See map in Appendix D below.

¹⁴⁴ In addition to the Kirkuk field’s Avana dome, there are two oil fields in Makhmour: Qarachaug and Makhmour. Wells dug in the 1980s and 1990s are no longer producing. Crisis Group interview, Rokiya Muhammad Salih, Makhmour municipality director, Makhmour, 21 June 2008.

contested areas of Ninewa.¹⁴⁵ Without progress in negotiations over the status of disputed territories, these areas will be flashpoints for future conflict between the KRG and the federal government.

C. THE BATTLE OVER THE HYDROCARBONS LAW

Kurdish officials are buoyant over their success in finding oil and claim that their region's oil wealth will benefit all Iraqis since the KRG has agreed to share revenues. The president of the Kurdistan national assembly, Adnan Mufti, said, "our oil policy is right. We don't want to go begging the federal government for help. We want to be economically strong and share our wealth with the rest of Iraq and jointly rebuild the country".¹⁴⁶ Likewise, Karim Sinjari, minister of state for the interior, after complaining that "we want to increase Iraqi exports [by pumping oil in the Kurdistan region], but the federal government says it's enough", declared: "We want to rebuild Iraq, but for this we need money. There is not a single good road between Basra and Zakho. If oil exports were to be increased, we could rebuild Iraq for the good of all Iraqis".¹⁴⁷

Such outwardly warm feelings have not been reciprocated by the federal oil ministry, which has taken a dim view of the KRG's unilateral actions. Oil Minister Hussain al-Shahristani declared the KRG's contracts null and void, blacklisted companies doing business with the KRG and threatened to do the same with those contemplating similar moves.¹⁴⁸ Moreover, he has blamed the KRG for blocking progress on the hydrocarbons law by unilaterally issuing production-sharing contracts and has announced that, in response, the federal government would have no choice but to issue contracts for oil fields under existing law, a Saddam-era legacy that favours the kind of central control over the oil industry that is anathema to the Kurds.¹⁴⁹

As stated above, negotiations over a new hydrocarbons law have stalled over deep differences about the

state's economic role, as well as a struggle between rival nationalisms. On one side stand the Kurds. They are pursuing broad autonomy to shake off decades of ethnically based neglect, discrimination and underdevelopment. To accomplish this, they seek the right to extract their own oil without interference from a central state that has historically thwarted their economic self-reliance and well-being. They want a fair share in revenues from all Iraq's oil and gas but, more importantly, full control over their mineral resources. They do so not only because of the secondary economic benefits of having a full-fledged oil industry (infrastructure, investments and employment), but also because the KRG requires direct control should it seek independence. An energy expert stated:

The Kurds care about owning and managing the oil industry more than about revenue sharing because they want to establish sovereignty and build up a record over time of examples in which the KRG has exercised effective sovereignty and use this as a basis for a claim of independence under international law.¹⁵⁰

If and when the Kurds achieve independence, revenue sharing, along with all agreements enshrined in federal law and the constitution, would become moot. As Crisis Group previously argued:

The Kurds have repeatedly asserted that it should not matter who controls the oil fields – the federal government or the KRG – and therefore whether the disputed territories are incorporated into the Kurdistan region, because the KRG has agreed to transfer revenues from oil sales from fields in the Kurdistan region to the federal government. But although this may not matter today, it will if and when the Kurdistan region seeks or declares its independence: Why would an independent Kurdistan agree to transfer oil and gas revenues to a neighbouring state, Iraq, if these revenues are a key to its own survival?¹⁵¹

The Kurds need a federal hydrocarbons law to gain access to viable export channels. However, they appear willing to do without one, at least for now, if terms are unsatisfactory regarding control and management. Among other objections, the KRG opposes the establishment of a federal oil and gas council empowered to veto contracts and rejects the oil ministry's proposed annexes classifying producing and non-producing oil fields. It contends that these measures, respectively,

¹⁴⁵ For information on fields in the north, including the Kurdistan region and disputed territories, see www.thefreelibrary.com/IRAQ+-+The+Main+Fields+In+The+North-a0132031663.

¹⁴⁶ Crisis Group interview, Erbil, 28 June 2008.

¹⁴⁷ Crisis Group interview, Erbil, 29 June 2008.

¹⁴⁸ Shahristani declared: "All these contracts have no legal base and do not fit with the existing laws, nor with the draft [oil law] which has been agreed.... We hold these firms to be legally responsible ... and we have warned them that they will bear the consequences", Reuters, 24 September 2007.

¹⁴⁹ Agence France-Presse, 19 September 2008.

¹⁵⁰ Crisis Group interview, energy expert, Istanbul, 25 May 2008.

¹⁵¹ Crisis Group Report, *Iraq After the Surge II*, op. cit., pp. 7-8.

would give too much power to the federal government relative to the regions and assign fields to the federal government that instead should fall under the KRG's control.¹⁵²

On the other side stands a group of officials inside and outside the federal government who, raising the banner of Iraqi nationalism, express concerns first that the future law will permit a sell-out of the country's natural resources to foreign nations and companies through production-sharing contracts and, secondly, that the extreme decentralisation permitted by the constitution will spark unregulated competition between federal regions over oil production for export and thus undermine Iraq's unity.

As the past five years have shown, Iraqi nationalism is a potent force. It has tripped up the U.S. more than once, and it has deep roots. In 1972 it led to nationalisation of the petroleum industry. The resulting law prevented any foreign or private-sector interest from acquiring equity in oil and gas still in the ground. As a result, the oil ministry has issued only technical service contracts since that time. These pay foreign companies a fee for their services rather than a share of the oil they pump. The February 2007 draft law, by contrast, provides for so-called risk-reward contracts, also known as production-sharing contracts (PSCs). These would grant foreign oil companies equity shares of oil produced from the fields as compensation for their investments, their work and the commercial and political risks they assume.¹⁵³

Although the oil ministry has started to back away from PSCs in light of rising opposition (from trade unions to oil experts),¹⁵⁴ both drafts of the federal hydrocarbons law permit them, and indeed the KRG insists on them.¹⁵⁵ The KRG and foreign companies each favour PSCs for their own reasons. Companies prefer to be paid in oil because it swells their holdings and thus raises the value of their shares.¹⁵⁶ The KRG considers

PSCs an indispensable tool for exploration, which is the Kurds' top priority, having had no development in their region whatsoever.¹⁵⁷ The KRG uses the 2005 constitution to argue that Iraq's nationalisation of oil has been superseded by market principles (Article 112),¹⁵⁸ which allow for PSCs, and that the KRG's 2007 oil and gas law renders contradictory federal laws inoperable (Article 115).¹⁵⁹ Moreover, the Kurds say, PSCs enhance performance: a company will seek to increase its oil intake by pursuing maximum exploration, so Kurdistan will receive more oil to export.¹⁶⁰ Finally, those favouring PSCs argue they attract the best companies for technology and management expertise.

Critics charge that PSCs are the worst kind of contracts because they lock in fiscal and legal terms for an extended period – 32 years in some KRG contracts – and freeze the political, legal and economic situation that existed at the time of signature; this could have a long-term adverse impact on human rights and

company 10 per cent of the oil it pumps, and it takes out 100,000 b/d, then it walks off with 10,000 b/d, which at current prices and over twenty years is a huge amount of money". At an average of \$100 p/b, the company would earn \$7.3 billion in twenty years. Crisis Group interview, Erbil, 16 June 2008.

¹⁵⁷ A critic has said that PSCs "are often used in countries with small or difficult oilfields, or where high-risk exploration is required. They are not generally used in countries like Iraq, where there are large fields which are already known and which are cheap to extract". Greg Muttitt, "Oil Privatisation by the back door", *Niqash Analysis*, 26 June 2006, at www.niqash.org. This is precisely the Kurds' point: They live in a part of Iraq that historically has suffered from neglect, is now autonomous and aspires to economic self-reliance, so consider developing their oil industry, unhindered by federal restrictions, as essential.

¹⁵⁸ Article 112(2) states: "The federal government and the governments of the producing regions and governorates shall jointly formulate the necessary strategic policies to develop oil and gas wealth in a way that yields the greatest benefit to the Iraqi people and relies on the most advanced techniques of market principles and investment promotion".

¹⁵⁹ Article 115 states: "All powers not stipulated as exclusive powers of the federal government are powers of the regions and governorates not organised in a region. With regard to other powers shared between the federal government and regions' governments, the law of regions and governorates not organised in a region shall have precedence in case of dispute".

¹⁶⁰ For an economic analysis by a KRG consultant, see Pedro van Meurs, "Maximizing the value of government revenues from upstream petroleum arrangements under high oil prices", 7 June 2008, at www.krg.org/articles/detail.asp?smap=02010100&lngnr=12&asnr=&anr=24710&trnr=223.

¹⁵² For a discussion, see Crisis Group Report, *Iraq After the Surge II*, op. cit., p. 8.

¹⁵³ The five main types of risk companies take in oil and gas projects are explained in Greg Muttitt, "Nationalizing Risk, Privatizing Reward: The prospects for oil production contracts in Iraq", *International Journal of Contemporary Iraqi Studies*, vol. 1, no. 2 (September 2007), pp. 145-146.

¹⁵⁴ For a discussion, see Greg Muttitt, "Investor Rights vs Human Rights: The implications of oil contracts in the Kurdistan Region of Iraq", *Kurdish Human Rights Project Legal Review*, no. 13, June 2008, pp. 58-60.

¹⁵⁵ For a discussion of the controversy over PSCs, see Crisis Group Report, *Iraq After the Surge II*, op. cit., pp. 6-7.

¹⁵⁶ This is referred to as "booking reserves". According to an international oil expert, "For example, if a contract gives a

the environment and would seriously encroach on the KRG's, and Iraq's, sovereignty.¹⁶¹

This critique merges with a second – that the extreme decentralisation permitted by the constitution pre-empted a central oil strategy that would prevent over-development of oil and gas resources. Instead, it spurred unbridled competition by sub-state entities possibly no larger than a single governorate, with the overall result of tearing up the country. As Tariq Shafiq, a former senior oil executive, put it, referring to an earlier draft of the KRG's oil and gas law:

The KRG draft petroleum law is tantamount to a sovereign act and, in effect, is a move in itself and by its implications that could encourage fast, unplanned, uncontrolled devolution. This will exacerbate these damaging trends by inducing similar provincial moves among the “haves”, opening the way to border disputes with the “have-nots”..... This draft law is not in conformity with the foremost objective of the constitution to preserve the unity of its people, land and sovereignty.¹⁶²

¹⁶¹ Muttitt, “Investor Rights”, op. cit. “[T]he oil contracts are set to lock in this [Iraq's] weak rights framework for their entire duration. The contracts contain ‘stabilisation clauses’, which require the government to compensate investors for any costs incurred as a result of changes in the law, including human rights and environmental law. This threat of economic compensation is likely to discourage future governments from using regulation to protect the rights of its citizens”. Ibid, p. 54. PSC critics say windfall profits to oil companies that they associate with PSCs contradict the constitution's call for maximum benefits to the Iraqi people. Tariq Shafiq, an Iraqi oil expert and founder of the Iraqi National Oil Company (INOC), argued, based on the KRG's draft August 2006 law: “[W]hile the draft law's fiscal terms and conditions for the PSA [ie, PSC] are impressive, KRG's record from its PSA agreements shows windfall profit to the investing contractor. This contravenes Iraq's national constitution which requires maximum return to the nation”. *Middle East Economic Survey*, vol. 49, no. 37 (18 September 2006).

¹⁶² *Middle East Economic Survey*, 18 September 2006, op. cit. Muttitt has claimed, citing Iraqi experts such as Tariq Shafiq, that “a fully regionalised and therefore fragmented oil industry, on the lines suggested by the KRG, would be unable to function successfully at a technical level”. They argued, he said, that “much of the oil infrastructure (such as pipelines, refineries and export terminals) is necessarily shared between regions, and so requires central management; that effective economic, geological and industrial management requires central coordination (rather than competition between Regions); and that the Regions simply do not have the technical expertise or capacity to develop their oil industries independently”. “Investor Rights”, op. cit., p. 57.

The consequences of not having a hydrocarbons law are severe. Without a law, oil “super-majors”¹⁶³ will continue to resist investing in Iraq, however attractive the prospects may be, given the risks of operating in a lawless environment. For its part, the KRG needs access to a strategic pipeline, which only a federal law could provide. Any hope to pump oil straight from the Kurdistan region to Turkey is, literally, a pipedream. Turkey, which will do nothing to promote Kurdish independence, will request an Iraqi certificate of origin for any oil flowing through its pipelines.¹⁶⁴ The federal oil ministry will not issue one without a federal law to which the KRG is party.

The problem is pressing – DNO (Tawke) and Addax/ Genel Enerji (Taq Taq) are primed to start pumping – but far from resolved. While rumours have circulated that the federal oil ministry may be prepared to issue an export license in the case of these two companies, because their contracts preceded the 2007 conflict over the hydrocarbons law and issuance of the KRG's own oil and gas law, there also are signs that under such circumstances, the KRG may rebuff the oil ministry to avoid the implicit inference that its later contracts are illegal.

The KRG's inability to export will soon be costing it \$1.7 million a day (\$620 million a year), based on 100,000 b/d at \$100 p/b and current budget allocations. This would be extremely damaging to the KRG's prestige and credibility at home, given pressing needs. It could have the same effect on the federal government, which would be losing \$8.3 million a day (just over \$3 billion a year) from the same sales. An oil expert said, “the government is cutting off its nose to spite its face”.¹⁶⁵ This truth would hit home even harder once both the KRG's discoveries and its output capacity increase, even at more moderate prices.¹⁶⁶

¹⁶³ The “super-majors”, all publicly traded, are ExxonMobil, Chevron, Royal Dutch Shell, Total, Conoco-Phillips and BP. Powerful state-owned companies known as the “New Seven Sisters” include Saudi Aramco of Saudi Arabia, JSC Gazprom of Russia, CNPC of China, NIOC of Iran, PdVSA of Venezuela, Petrobras of Brazil (partly privatised) and Petronas of Malaysia.

¹⁶⁴ Crisis Group interview, Ali Ak, general manager, Pet Oil, Ankara, 3 June 2008.

¹⁶⁵ Crisis Group interview, independent energy expert, Erbil, 16 June 2008.

¹⁶⁶ A future conflict could arise over an acceptable production balance between Iraq's southern fields and the KRG's, namely if and when overall output rises to such a level that OPEC would reinstate a production quota for Iraq. If, for example, the quota was 3.4 million b/d, a decision would have to be taken about how much the federal government and the KRG would each be allowed to produce to fill it.

While simple economic calculus would suggest that, as another oil expert said, “it is in no one’s interest to land-lock a million barrels of oil a day”,¹⁶⁷ the KRG and federal government are trying very hard to do precisely that. Unable to come to terms, they are unilaterally pursuing diametrically opposed policies that foretell a head-on collision. Both are holding their breath to see who can hold out the longest – the federal government by blocking the KRG’s exports, or the KRG by blocking legislative progress – and both may suffer due to their stubbornness.

IV. POSSIBLE COMPROMISE SOLUTIONS

A. A TERRITORIAL COMPROMISE

Although far short of the grand bargain scenario described below, a simpler compromise should be considered, one involving a territorial trade, as this is the bargain the KRG appears to be seeking. No one has expressly mentioned what would amount to a land swap, but statements made following UNAMI’s release of its phase-one proposal suggest that the KRG at least would contemplate a deal in which majority-Kurdish areas would join the Kurdistan region, and majority-Arab/Turkoman areas would remain under federal government control. How else to interpret the KRG’s insistence, once it learned of UNAMI’s June 2008 recommendations, to see the whole package before staking out its position?

The key is Kirkuk. Both Arab and Kurdish officials seem to fear that by agreeing to certain territorial trades early on, they would lose their leverage to, respectively, retain/regain Kirkuk. For the KRG, the imperative is that Kirkuk become part of Kurdistan. Its vice-president, Kosrat Rasoul Ali, said as much when he declared in response to UNAMI’s June proposal, and after asserting that Kurds form the majority in both Hamdaniya and Mandali: “Let them [the Arabs/Turkomans] take Hamdaniya and Mandali. Kirkuk is the issue”.¹⁶⁸

In other words, the KRG’s maximalist demand for all territories that it claims historically had a Kurdish majority appears to be part of a bargaining strategy for securing Kirkuk at the expense of districts in which the Kurds constitute much less than the majority. As a Kurdish member of the federal council of representatives put it, “Kirkuk is a pressing issue for Kurdish politicians of both parties. It has more far-reaching results than demands on the other disputed territories. We rather exaggerate the latter so as to gain leverage for negotiations on Kirkuk”.¹⁶⁹

While UNAMI’s approach could lead to an outcome the KRG might accept – gaining Kirkuk and majority-Kurdish districts, but not majority-Arab/Turkoman and totally mixed districts other than Kirkuk – it is unlikely to do so. No Arab or Turkoman (except perhaps for the handful who joined the Kurds’ Kirkuk Brotherhood List) would agree to trade away Kirkuk

¹⁶⁷ Crisis Group interview, independent energy expert, Istanbul, 5 July 2008.

¹⁶⁸ Crisis Group interview, Suleimaniya, 23 June 2008.

¹⁶⁹ Crisis Group interview, a Kurdistan Alliance member of the council of representatives, Amman, March 2008.

for other districts. Their ability, via the federal government, to block progress on Article 140 implementation has made this abundantly clear. The government's growing assertiveness in the second half of 2008 vis-à-vis its rivals, including the Kurds, is making the situation even more intractable.

If, as logic suggests, the territorial-compromise approach is bound to get stuck on Kirkuk, the question becomes whether the KRG's position on Kirkuk is immutable or part of its bargaining strategy. The emotional hold Kirkuk has on Kurdish elites in particular suggests a middle ground will be hard to find. That said, the KRG has been unable to make headway in bringing Kirkuk into the Kurdistan region, and that reality might soon sink in.¹⁷⁰ This could point the way toward a more viable compromise: deferral of Kirkuk's ultimate status in exchange for what, today, is of greatest practical importance to the Kurdistan region: extensive political and economic autonomy, open trade routes and a secure, UN-delineated and U.S.-guaranteed internal boundary.

B. A GRAND BARGAIN

Any grand bargain would need to meet all stakeholders' minimum requirements, address their red-line concerns and be sustainable. Core demands, therefore, need to be clear.

Claims to Kirkuk notwithstanding, what the Kurds arguably need most is protection for the Kurdistan region from a potentially powerful central state and surrounding countries, as well as a chance for the region to flourish by trading freely with the outside world. The KRG could meet these objectives by pursuing the following policy objectives: delineation of its internal boundary with the rest of Iraq, an advanced degree of political autonomy, significant economic leverage vis-à-vis the federal government, a decentralised Iraq to prevent the re-emergence of a powerful central state and peaceful relations with neighbours Syria, Turkey and Iran.

UNAMI is trying to solve the internal boundary question; its next proposal could be released as early as the end of November 2008. Should Iraqi actors agree with it, the federal Kurdistan region would receive both the boundary and the recognition it needs. Moreover, an overall deal could be supplemented with in-

ternational protection, perhaps in the form of a U.S. military base, as some have suggested, or of a U.S. commitment to the KRG it will seek to prevent or punish any attempt to violate the boundary. The KRG already won extensive autonomy in the 2005 constitution; no KRG official has suggested it should be increased. In economic terms, however, the KRG has yet to make strides. If it cannot have control over the Kirkuk field, it would need to gain economic leverage through the right to manage, develop and export the oil and gas of the Kurdistan region. An international energy expert offered this advice to the KRG: "Give up what you haven't got to get something that you want: Give up Kirkuk to gain full control over oil and gas in the Kurdistan region".¹⁷¹

Moreover, the KRG will need to be reassured that constitutionally mandated decentralisation will not be reversed, should a powerful central government rise again.¹⁷² And the KRG needs better relations with its neighbours. Economic ties with Turkey in particular have improved since 2003; the Ankara government prefers friendly dealings with a Kurdish autonomous entity ensnared in a web of economic relations over perennial enmity with an undeveloped, unhappy Kurdistan that would be uncooperative on issues of intense Turkish concern. Still, this relationship could become stronger yet if the KRG were to take strong action against the PKK.¹⁷³

¹⁷¹ Crisis Group interview, international energy expert, Amman, 28 November 2006.

¹⁷² Many Kurds saw in the Maliki government's August-September 2008 actions in Khanaqin and its sub-districts a harbinger of a resurgent central government intent on stifling Kurdish aspirations (even if military pressure was directed at areas outside the Kurdistan region), as it has often over the past century. For example, Mahmoud Othman, a veteran Kurdish leader and lawmaker, declared: "The Khanaqin issue is a very small part of the conflict with the Maliki government because the conflict is about whether Iraq is a federal country in which those who are participating in the government are making decisions together, or whether it's a central government as in the past, run by the Prime Minister and his party". Quoted on Sbey.com, an independent Kurdish web-based news agency linked to Kurdish leader Neywshirwan Mustafa Amin, 2 September 2008.

¹⁷³ The KRG recognises that Turkey is likely to be its only significant economic partner for some time, as well as a necessary bridge to the West. Fuad Hussein, chief of staff to KRG President Masoud Barzani, said, "It is up to us to be close to Turkey. We like its model of democratic values. By force of geography, Turkey is our window on the West. We want to have an economic open door. Turkey won't find any other friends in Iraq, so our relationship will be mutually beneficial. De facto, the Kurds are friends of the Turks and can protect Turkey's interests, something the Turkomans

¹⁷⁰ Signs are that this is happening. A KRG official was outspoken: "The Kurds had a historical opportunity to bring Kirkuk into Kurdistan, but our leadership lost this opportunity". Crisis Group interview, Suleimaniya, 21 October 2008.

Iraq's Arabs, the great majority of the population, appear to prize the country's territorial integrity above all;¹⁷⁴ they, therefore, would reject Kirkuk's incorporation into the Kurdistan region if this increased the Kurds' chances to become independent. Moreover, a strong nationalist current opposes surrendering any part of what is considered national treasure, its mineral wealth. Next, Iraqi Arabs, like the Kurds, want to be at peace with their neighbours after almost three decades of war and turmoil and be able to trade with them. In Kirkuk itself, Arabs want predominantly Arab districts outside the city, such as Hawija, to remain part of the governorate¹⁷⁵ –

cannot do. Plus both of us are friends of the West, so everything is aligned. We have much in common". Crisis Group interview, Salah al-Din, 28 January 2008.

¹⁷⁴This is true even of ISCI, which (jointly with the Kurdish parties) has advocated a region formation process that would gut critical central state powers. In its view, division into regions would not lead to dissolution. See Crisis Group Middle East Report N°70, *Shiite Politics in Iraq: The Role of the Supreme Council*, 15 November 2007, pp. 17-18. Iraqis are deeply divided over the extent to which Iraq should be decentralised, if at all. Crisis Group Report, *Iraq After the Surge II*, op. cit., pp. 11-14.

¹⁷⁵An Arab politician said, "Although my village is nearer to Tikrit [the capital of Salah al-Din governorate], I belong to Kirkuk. It has nothing to do with oil. We never had any benefit from oil under Saddam Hussein. We have co-existed for a long time in Kirkuk. Our economic links are with Kirkuk". Crisis Group interview, Sa'doun Fandy, head of the Arab Consultative Council, Kirkuk, 22 June 2008. A Chaldo-Assyrian politician agreed: "Hawija is historically, geographically and administratively part of Kirkuk. In 1957 [the monarchy's dying days], Tikrit was a *qadha* [district] in Baghdad governorate, and Hawija was a *qadha* in Kirkuk". Crisis Group interview, Kirkuk, 22 June 2008. Even a Kurdish intellectual originally from Kirkuk asserted: "In Ottoman times, Hawija was part of Shahrazour [a predominantly Kurdish region that Kurdish nationalists use as the historical basis for their claim to independence]. At the beginning of the twentieth century, [Kurdish leader] Sheikh Mahmoud was recognised as *the* local authority, who was in conflict with the nascent Iraqi state. In the 1920s the Obeidi tribe came to Hawija and asked Sheikh Mahmoud for permission to settle there, and this was agreed by consensus. The Jubour tribe came later, and neither were they rejected. They settled on agricultural land that no Kurd wanted. Sheikh Mahmoud had asked Kurds to settle there but there were no takers. I don't know why: It is a very rich area. After the tribes settled, the government set up an irrigation project to help increase agricultural production. Arabs started coming to the city [Kirkuk] to sell their produce. Over time they settled there and began to intermarry with Turkomans and Kurds, and they were well-respected because all of this was based on consensus. What changed the situation was [regime-driven] Arabisation in the 1970s". Crisis Group interview, Suleimaniya, 26 June 2008.

contrary to ideas aired by Kurdish politicians.¹⁷⁶ And they want Kirkuk to stay under the federal government, preferably as a stand-alone governorate, though some politicians appear willing to contemplate a one-governorate federal region (with extended powers, as per the constitution)¹⁷⁷ under certain conditions.¹⁷⁸

The primary concern for Iraq's Turkomans, many of whom were born in towns in disputed areas, such as Kirkuk, and who have limited representation in Baghdad, is to be protected from both a powerful central government and a strong Kurdish regional government. They represent a Turkic outpost in an intense borderland struggle between Arab and Kurdish nationalism and feel squeezed. Their preferred option is for Kirkuk to be a stand-alone governorate (as it was in Iraq's 2004 interim constitution, the TAL) or a one-governorate federal region.

The dispute over Kirkuk to some extent has been internationalised, in part due to fear that Kirkuk's absorption into the Kurdistan region could pave the way to Kurdish independence, a red line for the region's three neighbours. Given this stake and their spoiling capacity, the latter's views should be taken into account. Turkey, Iran and Syria share a strong preference for Iraq's territorial integrity and notably for the Kurdistan region's solid anchoring in the central state, for example via the hydrocarbons and revenue-sharing laws. They want Kirkuk and its oil wealth to stay un-

¹⁷⁶The PUK's Neywshirwan Mustafa Amin, among others, has suggested Hawija become the capital of a new (Arab) governorate. Crisis Group interview, Suleimaniya, 23 June 2008. Others, such as Nouri Talabany, an independent member of the Kurdistan national assembly, have proposed it become part of neighbouring Salah al-Din governorate. Crisis Group interview, Erbil, 17 June 2008.

¹⁷⁷While governorates hold extensive powers under the February 2008 law on governorates not organised into a region compared to the pre-2003 period (for example, to elect and remove governors, prepare the governorate budget and manage oil and gas wealth), governorates that choose to become a stand-alone region or join other governorates to form a multi-governorate region hold even greater powers under the 2005 constitution, including to adopt a constitution and establish internal security forces.

¹⁷⁸An Arab leader in Kirkuk said, "Kirkuk should be a stand-alone governorate linked to Baghdad. We don't want Kirkuk to be a federal region, because we are afraid the Kurds would then seek to isolate and sever Hawija from Kirkuk. This is why we want to keep the link with the centre. It is the only objection we have to Kirkuk's status as a stand-alone region. If we had guarantees Hawija would stay with Kirkuk, we would no longer object, but the better guarantee is to keep the Baghdad link, as in Baghdad [the council of representatives] we can protect our interests". Crisis Group interview, Sa'doun Fandy, Kirkuk, 22 June 2008.

der federal government authority. They also aspire to strong trading relations with the Kurds. Turkey in particular is keen to buy and/or export the KRG's oil and gas and increase its companies' investments there; it sees development of the KRG's own mineral resources as a lesser long-term threat than inclusion of Kirkuk in the Kurdistan region. States such as Turkey and Iran also insist that the KRG crack down on violent non-state actors using Iraqi Kurdistan as a safe haven, notably the PKK and its Iran-focused sister organisation PJAK.¹⁷⁹

To protect their core interests, all actors will have to give something up. The KRG would have to defer its exclusive claim to Kirkuk. However, it could maintain the status quo in Kirkuk – demographic plurality and de facto political control – while continuing the process of normalisation, which should be placed under international supervision to review changes made since April 2003 and prevent any future demographic manipulation.

In addition to compromising on Kirkuk, which would allay the fears of Iraqi Arabs and the three neighbours, the KRG would almost certainly have to severely constrain the PKK. In exchange, trading channels could be widened,¹⁸⁰ and neighbouring states would stop interfering in the Kurdistan region's affairs, whether directly or by proxy. Finally, the KRG would have to bring its contracts with international oil companies in line with a new federal hydrocarbons law.

Arabs would have to agree that certain majority-Kurdish districts join the Kurdistan region via a UNAMI-guided process and that the KRG be allowed, under the new

hydrocarbons law, to manage its own oil and gas industry, consistent with a federal strategy and guidelines. They also would need to acquiesce in a special status for Kirkuk and perhaps certain other disputed territories that would reduce the federal government's direct control. To permit the Kurdistan region's development after decades of neglect, the federal government would have to grant the KRG an agreed and guaranteed share of the federal budget, as well as the right to issue contracts, as long as it renders these contracts consistent with standards outlined in the federal hydrocarbons law.

The federal government should publicly acknowledge the original crimes that added impetus to the Kurds' demands over Kirkuk: Arabisation, the 1988 Anfal campaign and the gas attacks against Kurdish civilians during the tail-end of the Iran-Iraq war, most notably at Halabja.¹⁸¹ Playing down these events or denying them outright would do little to dampen the Kurds' ambitions. Instead, the government should publicly recognise the former regime's crimes and their victims and offer financial compensation to survivors.

For its part, Turkey would have to accept new realities, first and foremost the existence on its border of a Kurdistan region of unprecedented power and wealth. In exchange for concessions on Kirkuk and the PKK, and once a federal hydrocarbons law is in place, Turkey should actively promote open trade with the Kurdistan region and in particular purchase and/or export its oil and gas. This means dampening ultranationalist sentiments opposed to any type of relationship with Iraqi Kurds. An agreement endorsed by Iraq's various communities and accepted by Turkey would be particularly important to Turkomans, whose survival as a small minority depends on a national consensus and a lessening of nationalist tensions in ethnically diverse areas.

The status of Kirkuk and its internal power arrangements will be among the most complex issues to address.¹⁸² Many Kirkukis point out that, as a multi-ethnic city, Kirkuk requires a multi-ethnic solution.¹⁸³ As Crisis

¹⁷⁹ PJAK is the Party of Free Life for Kurdistan (Partiya Jîyana Azadîya Kurdistanê), which has bases in the Qandil mountain range in the Kurdistan region, from which its fighters have launched raids into Iran.

¹⁸⁰ Fully and successfully settling the PKK question in Kurdistan likely depends on an overall political solution to the Kurdish question in Turkey. In its absence, the KRG could limit the PKK's freedom of action, as proposed in Crisis Group Middle East Report N°64, *Iraq and the Kurds: Resolving the Kirkuk Crisis*, 19 April 2007, pp. 16-19. A KRG official, who referred to the first meeting between Turkish officials and KRG Prime Minister Nechirvan Barzani in Baghdad on 1 May 2008 as a "breakthrough", said, "We understand the PKK is a problem. But there is no military solution. We want good relations with Turkey based on mutual respect. We don't allow Kurdish territory to be used by anyone against any neighbour. But the KRG will take no further steps against the PKK. Turkey faced a lot of difficulties in the latest operations [in February 2008]. If Turkey were to adopt a political solution toward the PKK, we would help with that". Crisis Group interview, Falah Mustafa Bakir, chief of the KRG foreign relations department, Erbil, 29 June 2008.

¹⁸¹ See *Iraq's Crime of Genocide*, op. cit., and Joost R. Hiltermann, *A Poisonous Affair: America, Iraq, and the Gassing of Halabja* (Cambridge, 2007).

¹⁸² If Kirkuk were to become a stand-alone entity, its territory would cover the bulk of the geological structure of the Kirkuk oil field, as well as the Bai Hassan and Jambour fields.

¹⁸³ Crisis Group interview, Rakan Saeed, deputy governor, Kirkuk, 19 June 2008. Saeed, an Arab, pointed out that Kirkuk has accommodated various groups over time: "Kirkuk is originally a Turkoman city; the plurality of its inhabitants were Turkomans, living inside the city. When oil was found, members of all communities were attracted. You can see from the city's composition how urban migration took place:

Group proposed in an earlier report, one possible compromise is for Kirkuk to become either a stand-alone governorate administered by the federal government but with significant de facto ties to the KRG, or a uni-governorate federal region with (under the constitution) enhanced powers.¹⁸⁴ In any comprehensive deal, moreover, the window on Kirkuk's possible incorporation into the Kurdistan region should be kept ajar via a mechanism designed to determine the area's status following an interim period, given Kurdish sensitivities. In the past, Crisis Group has suggested ten years.¹⁸⁵ There are growing voices among Kurdish elites in (or from) Kirkuk advocating this kind of solution, even though they continue to believe Kirkuk eventually will join the Kurdistan region.¹⁸⁶

During the interim period, power should be shared between Kirkuk's main communities. This is a principle to which all have agreed.¹⁸⁷ The challenge will be to find a specific formula they can accept as well. As noted above, when President Jalal Talabani made a visit of great symbolic and political significance to Kirkuk in late January 2008, he met with representatives of all sides and reportedly committed that appointments to major administrative positions would be allocated

Arabs in the southern and western parts, Kurds in the north and east".

¹⁸⁴ See Crisis Group Report, *Iraq and the Kurds*, op. cit., pp. i-ii, 17-19. Even as a stand-alone governorate, Kirkuk would have greater powers than as part of the highly centralised Kurdistan region – a point not lost on Kurdish officials in Kirkuk. Natali, "The Kirkuk Conundrum", op. cit. Its economic strength would be further enhanced if formerly Kirkuk districts such as Chamchamal and Kalar, in Suleimaniya governorate, were to be restored. Both have enormous potential oil and gas resources. For this reason, KRG leaders may have to think twice about their earlier proposal that former Kirkuk districts be reattached, as the 2004 TAL and 2005 constitutions prescribe. Crisis Group interviews, Erbil, 16-17 June 2008, and Kirkuk, 18-19 June 2008.

¹⁸⁵ See Crisis Group Middle East Report N°56, *Iraq and the Kurds: The Brewing Battle Over Kirkuk*, 18 July 2006.

¹⁸⁶ Crisis Group interviews, Amin Shwan, Kurdish intellectual, Kirkuk, 18 June 2008, Nouri Talabany, independent member of Kurdistan national assembly originally from Kirkuk, Erbil, 17 June 2008. An alternative would involve placing the Kirkuk oil field in a virtual quarantine or neutral zone, in which all stakeholders would have joint rights under a federal hydrocarbons law, with the federal government holding ultimate sovereign rights. The administrative status of Kirkuk governorate and city would become less emotionally charged and could be settled more easily. Crisis Group interview, international energy expert, Istanbul, 5 July 2008. It is an interesting, insufficiently explored idea worthy of discussion by stakeholders in grand bargain negotiations.

¹⁸⁷ Crisis Group interviews, political leaders of all four communities, Kirkuk, 18-19, 22 June 2008.

on the 32-32-32-4 per cent basis between, respectively, Arabs, Kurds, Turkomans and Christians. The KRG had already agreed to this formula for the yet to be created Kirkuk city council¹⁸⁸ but has rejected it for the provincial council, on which the Kurds currently hold a majority. Arabs and Turkomans, in turn, have rejected elections to the provincial council. Under Article 23 of the September 2008 provincial elections law, a committee is to present a consensus-based recommendation on the form of provincial elections in Kirkuk.

A compromise solution could involve something between an election and a power-sharing arrangement: a caucus election within each community for a fixed number of council seats,¹⁸⁹ with the number of seats tilting further toward the Kurds. Indeed, a formula for such a quota-based election would have to recognise the Kurds' political and demographic power, without giving them an absolute majority, while allowing the Christians to hold the critical swing votes: either 24 Arab – 24 Turkoman – 48 Kurd – 4 Christian, or 23-23-46-8.¹⁹⁰ For all other levels in the governorate (ex-

¹⁸⁸ In an accord brokered by the local U.S. provincial reconstruction team and signed on 2 December 2007, Kirkuk's Arab and Kurdish leaders agreed to a series of items, including creation of a 21-member city council, with seats allocated by the 32-32-32-4 formula. The Turkomans were not party to the agreement but in September 2008 agreed to the council and appointed one of their own as council chairman (an Arab was his deputy). Arabs, Kurds and Turkomans took six seats each, Christians three.

¹⁸⁹ Under the 2008 provincial powers law, each provincial council should have 25 seats plus one for every 200,000 inhabitants. Kirkuk governorate is believed to have 1 million to 1.2 million inhabitants, or five-six extra seats for a total of 30 or 31. A possible distribution could therefore be seven Arabs, seven Turkomans, fourteen Kurds, three Christians (22.5-22.5-45-10 per cent).

¹⁹⁰ This is the formula used, in more or less those percentages, in 2003-2005, before the first elections. In 2003, the CPA established a 30-seat provincial council in Kirkuk with eleven Kurds, seven Christians, six Arabs and six Turkomans. Crisis Group noted in a previous report that the Christian Chaldo-Assyrians played a pivotal role in reducing tensions. Considered non-threatening by the larger communities, they mostly remained on the sidelines, keeping a low profile and mediating when asked. "When the groups in Kirkuk cannot agree on something, they agree that a Christian should represent them", said a Western observer. Crisis Group interview, Kirkuk, 3 November 2004. The seven Christians voted with whatever community threatened to be a minority on a given issue, thus preventing controversial – but also important – decisions from being taken. When Arabs and Turkomans united in the council, for example, the Chaldo-Assyrians tended to side with the Kurds. "We don't want to change the status quo", said an Assyrian politician. "We will seek to maintain it at all cost. Kirkuk is a bomb about to go off, and we don't want to be the trigger – or the victims". Crisis Group

ecutive positions, district, sub-district and city council seats, as well as senior directorate positions), the 32-32-32-4 formula would be applied.

In outline, a grand bargain would essentially be an “oil-for-soil” deal – the KRG gives up or defers its exclusive claim on Kirkuk governorate in exchange for the right to manage its own oil and gas industry and export what it produces. It would contain the following elements:

- **Territory.** UNAMI would guide a process to delineate a contiguous internal boundary for the Kurdistan region by making specific recommendations to the federal government to allocate districts and sub-districts to either a governorate in the Kurdistan region or their current governorate, based on the criteria it used in its phase one proposal of 5 June 2008. Kirkuk governorate would become a stand-alone governorate, or single-governorate region (to be determined), on an interim basis for a period of ten years. During that interim period, power would be shared and a mechanism would be established with UN assistance to determine the governorate’s ultimate status. The federal government would submit UNAMI’s recommendations as a yes/no proposal to a popular referendum in the areas concerned and implement it, if and when approved, consistent with Article 140 of the constitution.
- **Resources.** Parliament would approve and the executive enact a federal hydrocarbons law (and companion revenue-sharing law) that provides for equitable development of oil and gas throughout Iraq, including the Kurdistan region; accepts the Kurdish oil and gas law; and recognises the KRG’s right both to manage its own fields and to export oil and gas.
- **Powers.** The devolution of powers to the Kurdistan region would remain as stated in the 2005 constitution.
- **Constitution.** The constitution would be amended to reflect the above compromises on territory and resources, as well as Kirkuk’s status. In addition, all sides would agree to a ten-year moratorium on the formation of federal regions south of the Kurdistan region and a constitutional limit on the size of such regions to three governorates (Baghdad excluded, which would remain a decentralised capital).¹⁹¹

interview, Srood Mattei, Erbil, 2 November 2004. Crisis Group Middle East Report N°35, *Iraq: Allaying Turkish Fears Over Kurdish Ambitions*, 26 January 2005, pp. 4-6. While not a recipe for effective governance, sharing power may help restore trust between communities and the parties claiming to represent them.

¹⁹¹ Crisis Group has argued for an asymmetric federalism that would preserve Iraq while meeting basic Kurdish aspirations

- **International Support.** The UN Security Council would endorse UNAMI’s recommendations, as well as the federal government’s decisions concerning the above.
- **Turkey-KRG Relations.** The KRG would restrict the movement of PKK personnel in the Kurdistan region, disarm its fighters in areas under effective KRG control and prevent them from using the region as a staging area for armed attacks in Turkey.¹⁹² Turkey would establish formal ties with the KRG, put in place an economic policy of open borders with Iraq (in effect the Kurdistan region), encourage investment by its companies in the Kurdistan region and allow the KRG to export oil and gas to its Mediterranean port of Ceyhan.
- **Elections.** Provincial elections would take place as per the provincial elections law approved in September 2008, by 31 January 2009. Elections to the Kirkuk provincial council would be carried out once election rules have been set in a separate law and a power-sharing arrangement for key positions has been put in place as part of a UNAMI-guided process, according to Article 23 of the provincial elections law.

and offering necessary minimum protections to all communities. Arab Iraq would be divided into fifteen decentralised governorates, relying on present boundaries, which would enjoy significant powers and fair access to oil revenues. This approach has significant merit: as a form of federalism, it is accepted by all main players; it allows a workable and fair formula for sharing oil revenues, a principle all advance; it confirms the Kurdistan region, another consensus point; it circumscribes the state’s powers, addressing fears of excessive central rule; and by dividing Arab Iraq into geographically-defined entities, it is non-ethnic and non-sectarian and would prevent one community’s domination. Most importantly, it could hold the country together without posing an existential threat to any single community. A variation would be to limit the size of regions to three governorates and delay the process of region formation for ten years. See Crisis Group Middle East Report N°60, *After Baker-Hamilton: What to Do in Iraq*, 19 December 2006, pp. 15-18.

¹⁹² Crisis Group has recommended that the KRG state publicly it will not tolerate the PKK in the Kurdistan region unless it agrees to abandon its armed struggle and disarms, and in the meantime: (a) continue to contain and isolate it and deny it freedom of movement within the region; (b) halt all supplies to it; (c) shut down its media operations and prevent journalists from visiting it in the Qandil mountain range; and (d) in response to a Turkish amnesty for lower- and mid-level cadres, allow senior leaders, once disarmed, to integrate into the Kurdistan region and similarly agree to absorb any refugees from the Makhmour camp who refuse to return to Turkey. Crisis Group Report, *Iraq and the Kurds*, op. cit., p. ii.

- **Power sharing in Kirkuk.** Senior executive (governor, deputy governor), administrative (directors general and their deputies) and quasi-legislative (district, sub-district and city council) positions would be distributed among Arabs, Turkomans, Kurds and Christians according to a 32-32-32-4 per cent formula. Provincial council seats would be divided among these communities according to either a 24-24-48-4 or a 23-23-46-8 per cent formula prior to elections, which should be held as caucuses within each community for the designated seats.

The U.S. has an important role to play to make the grand bargain a reality. It should move beyond mere support of UNAMI's effort to communicating to all stakeholders what it considers necessary parameters of a solution as negotiations on the full range of fundamental concerns – power, resources, territories – reach the end-game. This would have to include an unambiguous signal to the Kurdish leadership that Washington will not support its quest to incorporate Kirkuk but instead would be prepared to establish appropriate security arrangements for the Kurdistan region if its leaders agreed to at least defer their exclusive claim to Kirkuk at this time.

The odds against a grand bargain are enormous. Iraqi parties still hold to incompatible positions, and potentially destabilising factors abound. Washington's policy will be in a transitional stage until sometime in the first half of 2009, when a new administration settles in and frames its approach. Iraq will go through two critical electoral exercises in the span of a year: provincial elections by 31 January and a parliamentary contest before the end of 2009. Integration of the awakening councils' members into the security apparatus and bureaucracy remains doubtful, their loyalty uncertain. And Kirkuk's undecided status will continue to be a lightning rod for rival Kurdish and Arab nationalisms, struck with each unilateral move, whether in the form of military manoeuvres, oil contracts signed or wells dug somewhere in the disputed territories.

These obstacles notwithstanding, there is little time to waste. The current effort to reach agreement on a hydrocarbons and related laws as well as on the constitutional review is unlikely to succeed; the same goes for efforts to determine a workable and consensus-based power-sharing arrangement in Kirkuk. Meanwhile, U.S. leverage inevitably will diminish as its forces begin to leave Iraq.

V. CONCLUSION

Difficult negotiations over a provincial elections law in July-September 2008 were only the latest indication of the centrality of the Kirkuk question. A minority in Iraq, the Kurds have deployed all available legal and institutional mechanisms to facilitate their quest for Kirkuk. Still, they have failed to overcome the odds. The result has been a growing political standoff that is immediately destabilising – witness developments in and around Khanaqin in August-September – and, perhaps even more dangerously, challenges the foundations of the post-2003 order.

The territorial dispute stems from a deeper Arab-Kurdish conflict that has its origins in the state's creation almost a century ago and has yet to be settled, whether through accommodation or by force. At its core it is a struggle between rival nationalisms with conflicting territorial claims to border areas, which the two groups claim based on historical demographic presence rather than on established boundaries, which never existed. Today, the goal should be a negotiated, consensus-based accommodation enshrined in the constitution, ratified in a referendum and guaranteed by the international community.

Deadlocked negotiations over the hydrocarbons and related laws, the architecture of federalism and the constitution review, together with growing tensions in disputed territories such as Khanaqin, suggest that these negotiations ought to shift from their focus on single issues to a grand bargain. A comprehensive approach will demand painful compromises from key stakeholders – principally Arabs and Kurds – who will be unable to provide their constituencies all they had promised them. It also will require overcoming deeply entrenched fears and mistrust. In the words of a KRG official:

The disputed territories and natural resources – these are part of our national question. We prefer a peaceful solution via dialogue, but we cannot clap with one hand. The Iraqi situation is highly complex, and the Arab leaders have their own problems. If Iraq became more stable, then what would the Arabs think? Historically, whenever the Arabs were weak, they made deals with the Kurds. Then once they gained strength, they abrogated them. Even if the international community is supporting us today, the fear is there.¹⁹³

¹⁹³ Crisis Group interview, Osman Haji Mahmoud, KRG minister of state for the interior for the KDP, Suleimaniya, 26 June 2008.

The parties' challenge is to agree on an overarching formula regarding all core areas of concern that will allay their respective fears. The grand bargain proposed in this report aims at such an outcome and, as such, could be an important step toward rebuilding and stabilising the Iraqi state. However, if talks toward a compromise should fail, whatever peace and legiti-

macy is gained from twin elections in 2009 will be frittered away, and violence may once again take the place of politics and negotiations.

Kirkuk/Brussels, 28 October 2008

APPENDIX A

MAP OF IRAQ



APPENDIX B

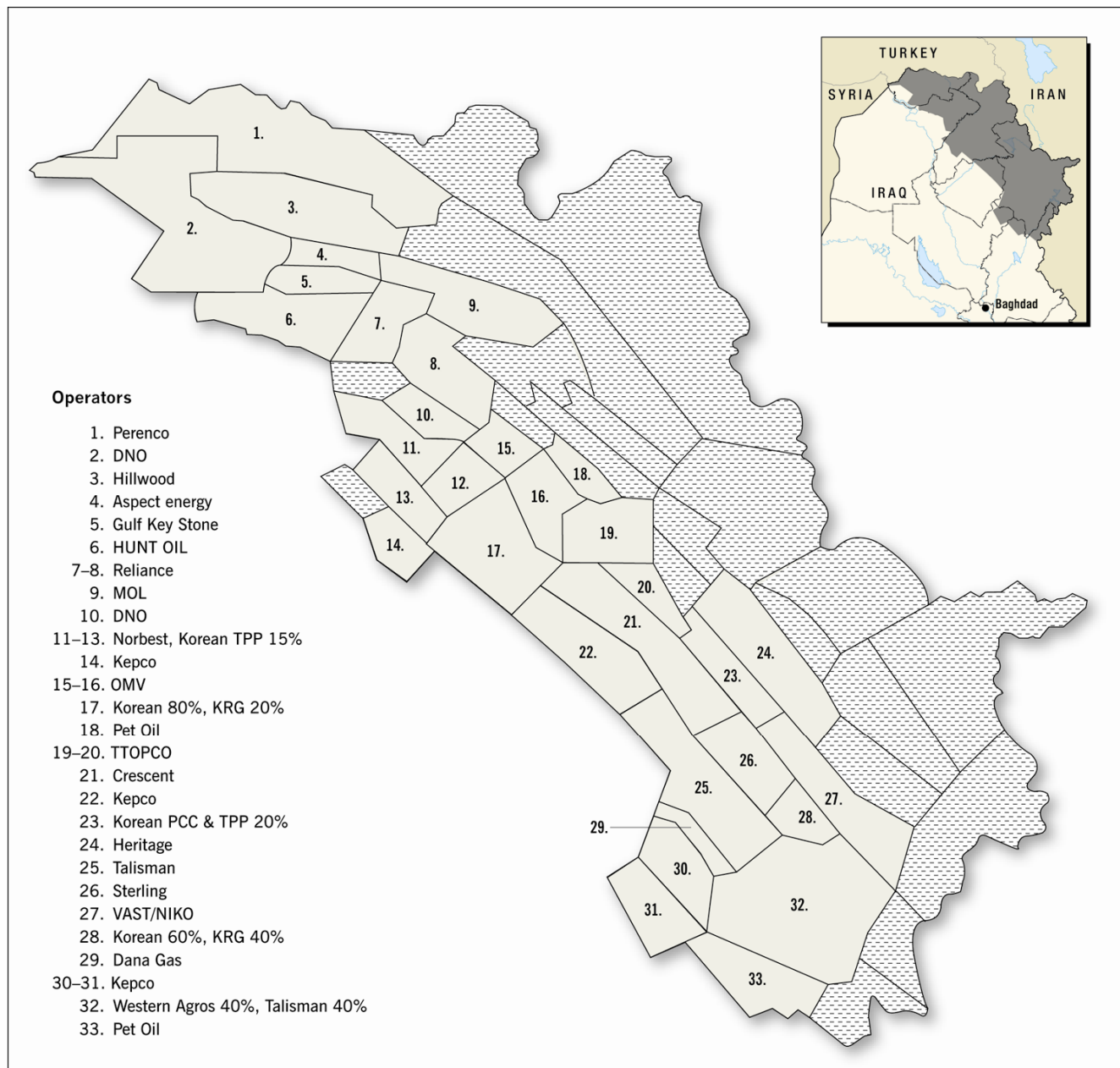
DISPUTED TERRITORIES CLAIMED BY THE KRG



This map was produced by the International Crisis Group. The location of all features is approximate.

APPENDIX C

OIL AND GAS CONCESSIONS IN THE KURDISTAN REGION



This map has been produced by the International Crisis Group. The location of all features is approximate.

Oct. 2008

APPENDIX D

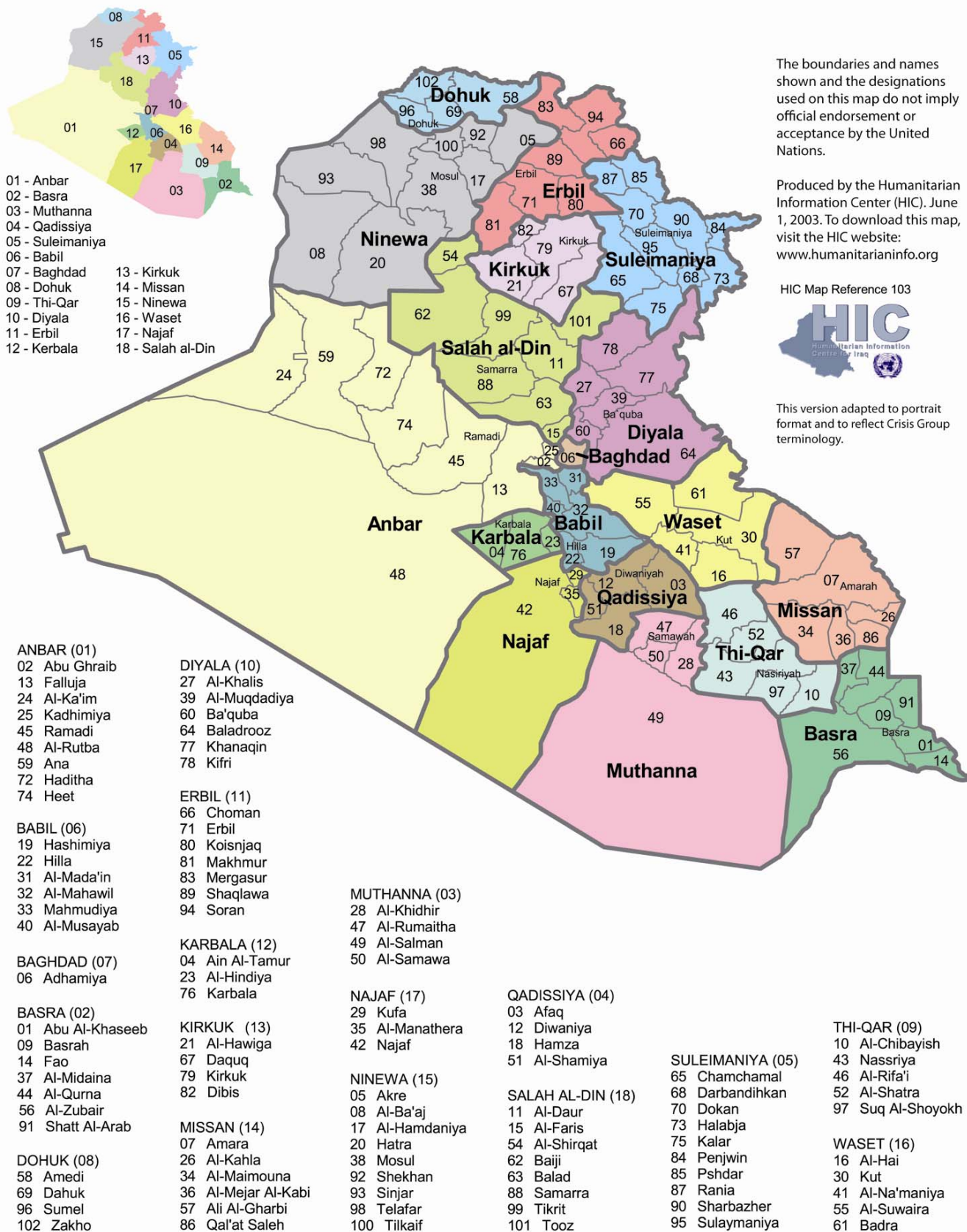
OIL AND GAS RESOURCES IN THE KURDISTAN REGION AND DISPUTED TERRITORIES



This map has been adapted by the International Crisis Group from a map made available by the U.S. Government. The Kurdish Green Line has been added, and the border of the "Disputed areas" adjusted to add more detail.

APPENDIX E

GOVERNORATES AND DISTRICTS



APPENDIX F

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