Oil and Political Authority: An Analysis of Relations Between the Government of Iraq and the Kurdistan Regional Government

by Amit Paz'11

The transition to a federal, democratic Iraq has not been an easy one. Disempowered populations in Iraq have been positioning themselves politically ever since the American invasion in 2003. Iraqi Kurds are a symbol of this newfound political power in Iraq. The Iraqi Constitution, signed into law in 2005, recognizes the federal nature of the democratic Iraqi republic by legally authorizing the political autonomy of the Kurdistan Region and its government, the Kurdistan Regional Government (KRG). The Constitution represents the first legal arrangement between the Government of Iraq (GOI) and the KRG whereby political, financial and economic authority and most specifically for the purposes of this paper, authority over oil-related matters, is not under the total purview of the GOI. The Constitution is thus the source from which this paper draws its fundamental conclusions on the dispute between the GOI and the KRG over oil and political authority.

The root of this dispute, however, transcends the differing legal interpretations to the Constitution; the differences are deeper than institutional disputes. The quarrel over who controls what part of the oil industry in Iraq represents an echo of a much deeper rivalry between Kurds and Arabs which has revolved around the matter of political sovereignty. An historical analysis is therefore necessary on several accounts. First, a brief recounting of the circumstances under which Iraq came into being while an independent Kurdish entity did not should help outline important themes in the Kurdish narrative. Second, an in-depth account of Iraq's troubled history with international oil companies will frame the recent debates taking place in Iraq's Parliament regarding future oil laws under federal authority. Third, an understanding of the development of Kurdish political autonomy in Iraq especially following the American invasion and the subsequent signing of the Iraqi Constitution will chart the change in the structure of political authority over oil and will clarify how Kurdish regional aspirations cause tension in Iraq's federal structure. Following this historical analysis, which will reveal some of the fundamentally different aspirations of the GOI and the KRG, a detailed, legal analysis of the Constitution will uncover how political differences between the two entities manifest themselves through different legal interpretations.

Oil is by far the largest source of revenue for both the GOI and the KRG.

Understanding and solving the dispute between the two entities may turn out to be a crucial element in ensuring the stability of Iraqi democracy in the future while guaranteeing the economic vitality of the Kurdistan Region.

IRAQ'S MODERN PRE-HISTORY

The borders of the countries in the modern Middle East we know today can largely be attributed to the demarcations made by the British and the French. Once it was obvious that the Ottoman Empire would fall at the end of World War I, the British, the French and the Russians signed the Sykes-Picot Agreement, effectively carving up Ottoman lands and parceling them up as the victors' spoils of war. The Russians eventually withdrew from this agreement after the Bolshevik Revolution in 1917. The seemingly neat practice of map-making, however, ran counter to British promises to the Arab subjects of the Ottoman Empire. The British overture outlined that in exchange for Arab participation in revolting against the Ottomans, the British would grant the Arabs independence after the war. This promise, however, was compromised and transfigured into the Mandate. The Mandate essentially provided Britain and France with temporary legal supervisory roles in the Arab countries while they transitioned to independent governance.

The specific portioning of the former Ottoman lands between Britain and France was formalized in the Treaty of Sevres, signed in 1920. Iraq, which by contentious definition included the former Ottoman provinces of Basra, Baghdad and Mosul, was eventually entrusted to the British. The contention centered on the province of Mosul. At first, the province was supposed to be awarded to France, but Britain effectively muscled its way into the province at the end of the war and stayed there. France came to accept this. Another regional power, on the other hand, did not. Turkey became an independent country after successfully fighting its own formative war of independence following the collapse of the Ottoman Empire. As part of the negotiations at the Lausanne Conference over the final borders between Turkey and Iraq, the Mosul Question was brought up. The Turks claimed that Mosul belonged to them because the British invaded and took control of it after the singing of the Mudros Armistice which ended hostilities between the Ottoman Empire and the British in 1918. The British claimed that since the Ottoman entity had dissolved, it was no longer bound by this obligation. Both sides could not come to an agreement within the confines of the Lausanne Treaty, so they resolved to conclude the issue together in the following months. After the conference, a series of bilateral negotiations began between Turkey and Britain. A League of Nations Enquiry Commission on the issue drew up its conclusion in favor of Mosul's inclusion within the boundary of the British Mandate of Iraq. Thus, the final border was drawn.

The Kurds were directly affected by this final border decision. Most of the Kurdish population in the British Mandate of Iraq lived in the Mosul province. The Kurds did not want to be part of Turkey as it was too reminiscent of the Ottoman Empire to which they had remained partially subservient for the past few centuries. The Turks, moreover, explicitly denied the existence of Kurds as part of their nationalistic attempt to unite the country under a singular Turkish narrative. The Kurds hoped they would enjoy the same fate as the Arabs had—namely, provisional political autonomy and eventually, political independence. They had different reasons to think they would be successful. President Woodrow Wilson's Fourteen Points inspired the notion that national self-determination would constitute a new aspect of international relations. In addition, the Kurds were explicitly recognized during the peace negotiations in Paris and in the Treaty of Sevres, which called for a referendum by Kurds to determine their fate.

At first, British authorities in Mosul imposed no direct control and allowed the Kurds a measure of political autonomy. But geostrategic realities soon intervened and British policy was fundamentally reversed. Despite the Wilsonian ideal of self-determination and the recognition of Kurdish autonomy under the Treaty of Sevres, the Kurds would have to take a backseat to British plans which envisioned a strong Iraqi central state capable of countering any possible thrusts made by Turkey or Russia. Gradually, Kurdish aspirations for an independent Kurdish state were deflected, while the British imposed direct political control and began the process of deconstructing Kurdish authority where it existed. As part of this process, the city of Kirkuk, which belonged to the Kurdish autonomous district of Sulaimaniyah, was taken from Kurdish control and put under the direct supervision of British authorities.[i]

Kurdish ambitions were officially shelved during the Lausanne Conference even though part of the Commission's report recommended that "[regard] must be paid to the desires expressed by the Kurds that officers of Kurdish race should be appointed for the administration of their country, the dispensation of justice and teaching in the school, and that Kurdish should be the official language of all these services." [ii] Taking into consideration the success of Turkey's war of independence, the British reformulated their attitude toward Kurdish independence as previously stipulated under the Treaty of Sevres and decided on the dispersion of Kurdish lands. This move was a concession to Turkey as it rejected the idea of an independent Kurdish state. An independent Kurdish state would threaten Turkey's territorial integrity as many Kurds lived and still live within Turkey's newly defined borders. "The appeasement of Turkey therefore was essential for the preservation of British imperial interests in the Middle East, and the Kurdistan question, which was of great concern for Mustafa Kemal, provided a means to do so." [iii] With the establishment of an independent Iraqi state which included large amounts of Kurdish land, Kurdish political autonomy was put on hold. The Kurds, however, rejected the notion of Arab rule. [iv] They revolted against the British but to no avail. The Kurds had been used by a stronger imperial power on the grand chessboard that is the geopolitical map of the Middle East. The Kurds' fate is neatly summarized:

> "After the First World War, the Kurds, like other nationalities within the Ottoman Empire, were presented with an opportunity to form their own nation-state. The dismemberment of the Ottoman Empire had left chaos and a political vacuum in the Kurdish-inhabited regions of south-eastern Anatolia and northern Iraq. The Kurdish nationalists, like other nationalists within the Empire, tried to take advantage of this situation and establish a Kurdish state. However, British strategy following the First World War was primarily oriented towards containing the Bolshevik threat, and in the Middle East this necessitated enhancing the territorial unity of Iraq, Iran and Turkey. For this reason, the United Kingdom, which had initially encouraged nationalism as a counter to Turkey's pan-Islamism, opposed the establishment of a Kurdish state in an attempt to appease Kemalist Turkey during the Lausanne peace negotiations. The Lausanne Treaty, which was signed on 24 July 1923, formalized the de facto division of Kurdish-inhabited lands among Turkey, Iraq and Syria."[v]

The concept of betrayal, exploitation and victimization, from the beginning of modern Kurdish history, is deeply engrained into the Kurdish narrative. It is against this original, imperial betrayal and the consequences that followed that the Kurds fought for the remainder of the 20th century. It is also because of this original abandonment that the Kurds never enjoyed the bounty of Iraq's rich oil resources, or of Kurdistan's own oil reserves, until a sufficient degree of Kurdish political autonomy was instated in the 21st century.

IRAQ'S TROUBLED HISTORY WITH OIL

As was the case with Iraq's geographic determination, Iraq's history with regards to oil is dominated by stronger powers with broader objectives. The reasons for foreign interest in the Middle East are inextricably linked to the discovery of oil in the region, in addition to the Middle East's value as a vital trade route. As such, this section will explore the history of Iraq's engagement with the international oil industry in order to understand how this still influences some political standpoints in Iraq today.

Iraq's oil history can be divided into different eras: concessions (1925-1972), nationalization (1972-1991), sanctions regime (1991-2003) and the transition period that Iraq has endured since the war in 2003 (2003-present). The last era will not be discussed in this section.

The International Oil System and Iraq: First Generation Concessions

It is hard to imagine, but the combustive energy in oil that has conquered the world has only existed as a commercial product for approximately 150 years. The early years of the oil industry's booming activities were controlled by the notorious Rockefeller oil trust: Standard Oil Company. Both the American and European markets were almost completely supplied by Standard Oil. Europeans loathed remaining dependent on one source of supply at an easily manipulated price. Soon separate, private oil ventures sprung up and eventually challenged Standard's supremacy. Leading the field were Dutch and British interests in the form of the Royal Dutch Company and the Anglo-Persian Oil Company (APOC) respectively. Other independent interests formed Shell. As will be shown, these companies would play a formative role in Iraq's early history and in the history of the wider Middle East as well.

The dominance of these interests in the European market prevented other would-be great powers from securing enough resources at affordable prices to build a strong military force. Germany was such an example. It had been dependent on oil from the Russian market, but this proved unsustainable, and Germany, whose great ambitions started to startle other European powers, attempted to place its foothold in the Middle East. Germany managed to secure a contract with the Ottoman Empire for the construction of a railway from Berlin to Baghdad. As part of the contract, the construction company was allowed to explore for minerals within 20 km of either side of the railway. Construction began but was never finished due to the Young Turk revolution in 1908 which deposed the Ottoman sultan and changed the fortunes of Germany's plans.[vi] Meanwhile, in the same year, the forerunner of APOC struck oil in what is today Iran. This was the first discovery of oil in the Middle East.

Before World War I, the German contract was renewed through the formation of the Turkish Petroleum Company (TPC) but under terms which allowed for British and Dutch participation as well. The resultant contract represented a 25 percent share for German banks, a 25 percent for Royal Dutch and a 50 percent share for APOC, half of whose shares had been bought by the British government. By agreement amongst the shareholders, a five percent share was given to an Armenian businessman named Calouste Gulbenkian who helped form the TPC. The British were careful not to allow further European penetration to the Middle East without their supervision.

The outbreak of World War I prevented any action relating to the contract from taking place. More importantly, however, the war made it very clear that oil was a vital resource for war-making. The British Navy had already made claims regarding oil as the backbone of its continued supremacy of the seas. After the discovery of very productive oil fields in Iran, the Middle East teemed with potential as the new zone of prospective supply to the European victors of WWI. American companies had monopolized the oil trade and Britain needed to secure its own source since it controlled only about 4.5 percent of the trade. Sir Harry Brittain outlined the British strategy in regard to oil quite frankly:

> "Whether you like it or not we have arrived at the age of oil. We live in a country in which there is plenty of coal and no oil. We have to get oil with which to run our ships where ship-owners insist on burning oil…if oil can be obtained from Iraq, then Iraq will gain just as much as any commercial company will gain." [vii]

At the time the British Mandate of Iraq had been established, oil had yet to be discovered in commercial quantities in Iraq. But it was not hard to know that the bowels of the Iraqi desert were full of oil. In some places, such as Kirkuk, the oil was visible as it seeped through the sands and bubbled to the surface. In fact, it was reported by *Time Magazine* that "[i]t was 1900 when a Briton discovered oil in Mosul, not far from the legendary site of the Garden of Eden, in the shadow of Mesopotamia's Kurdish Hills." [viii] These observations, combined with the relative ease of discovering and extracting oil in Iran, bolstered Iraq's importance to British objectives. Before Iraq's final border was agreed upon, the British managed to secure an oil concession from the Iraqi government: "Despite the constant denial of British concern for Mosul oil, the Turkish Petroleum Company signed a concession agreement with the Iraqi government on 14 March 1925 giving the company a 75-year concession on oil, before the fate of the Mosul Vilayet was determined." [ix] Turkey had recently won its war of independence, and it was the first such country to negotiate with the British on an equal level. But Turkey did not belong to the League of Nations, and it was not surprising that the League decided in Britain's favor. "Turkey reluctantly had to accept the League of Nations' resolution and give up its territorial claims on the Vilayet of Mosul, but insisted that it should have a share in the Turkish Petroleum Company. This was rejected by London on the grounds that Turkey would receive a ten percent share from the royalties of the Iraqi government."[x]

The resultant concession agreement between the Iraqi government and the TPC changed the shareholders involved. The new company was now called the Iraq Petroleum Company (IPC).

"France had taken Germany's place. The U. S. had cut itself in on the pure-hearted principle of the "open door." Perhaps the Turkish concession was good but the companies wanted a new one from Irak's King Feisal. At last Irak Petroleum Co. was formed and the shares were equally divided, 23 percent each, among the winners: The Netherlands' Royal Dutch-Shell; Anglo-Persian, in which the British Government has a 50 percent interest; France's Compagnie Française des Pétroles, in which the French Government has big holdings; and the U.S.'s Near East Development Corp., owned by New York's and New Jersey's Standard Companies and Gulf Refining Co. A final non-voting 5 percent went to a mysterious Armenian named C. S. Gulbenkian who was active in securing the Irak concession."[xi]

The major provisions of the agreement were as follows:

1. Exclusive oil rights to what amounted to the Baghdad Province (excluding Basra and "transferred territories").

2. The allocation of 24 rectangular plots the size of eight square miles each, by the government to the Company for the purpose of exploration and drilling.

3. The annual allocation, after four years, of an equal amount of land mentioned in the previous provision for public auction relating to oil exploration and production, open to all.

4. Royalty payments to the Iraqi government based on four shillings in gold per metric ton of net oil production for the duration of 20 years after the completion of an oil pipeline after which the payments will be deduced according to the market value of oil.

5. The Company must remain British and its chairman a British subject at all time.[xii]

The American entry into the Consortium was resisted by the British, but the Americans were not going to let the British monopolize the spoils of war; they were especially careful not to let their grip on the oil trade slip away, realizing how powerful a resource it was in the new oil age. The principle wielded by the Americans was the concept of the "open door," a free market principle conducive to economic competition and penetration. But the concept of free-market competitiveness soon gave way to monopoly control. The members of the IPC decided that the exploration and production of oil in the entirety of the former Ottoman Empire should remain in their exclusive domain. Furthermore, these companies did not have to compete with each other in the Middle Eastern market which belonged to the former Ottoman Empire. They pledged that any activity in the area would be done through the IPC as a whole or not at all. Known as the Red Line Agreement, this arrangement called for the companies to act in concert in a confined space.

But as for Iraq, the original 1925 concession was still limited to the Baghdad Province in the form of parcel plots to be jointly explored by the IPC. The new concession, renegotiated in 1931, extended the IPC's exclusive right to all lands east of the Tigris River.[xiii] Basra was still open to exploration, and the lands west of the Tigris which belonged to the Mosul Province were also free. But these conditions also changed quickly. In April 1932, the British Oil Development Company negotiated a 75-year concession for the free lands in the Mosul Province, but the company failed to find oil, and "ten years later this concession was transferred to the Mosul

Petroleum Company, a subsidiary of the Iraq Petroleum Company."[xiv] Similarly, in Basra, the Basra Petroleum Company, also a subsidiary of the IPC, signed a 75-year concession with the Iraqi government.

The 1931 concession essentially eliminated both the competitive bidders from the Iraqi oil space and the parcel system which mandated the annual exploration of a certain amount of lands per year. Now the companies were free to retain exclusive rights to all of Iraq without exploration and production expectations. A State Department oil expert, speaking in the 1950s, said the following about the 1931 revision:

"Nuri-es Said…was the Prime Minister then, and he put his initials on what I certainly consider one of the worst oil deals that has ever been signed, and one that in my opinion has damaged the interests not only of Iraq but of the whole world…he needed cash and in exchange he gave up the parcel system and he gave up a refinery which had to be built in Iraq before any oil could be exported. He also gave up the drilling obligation which would have forced the company to really operate in Iraq, not drill one or two wells and forget the rest of the area. He gave up a pipeline convention which stated that pipelines had to be built within a certain time limit. He gave up a provision which indicated Iraq would get oil at the lowest cost sold to others. All these provisions he gave up or modified in the 1931 agreement."[xv]

The Red Line Agreement, along with the eventual total control by the IPC companies, left Iraq at the mercy of these companies' terms. In fact, the companies involved agreed to make the IPC a non-profit organization. Whereas the earliest arrangements between the TPC and Iraq included a ten percent equity share for the Iraqi government in any oil consortium, the IPC's non-profit nature excluded this possibility.

"Why would the members want to be associated with a company that was nonprofit? The answer is that, although IPC was nominally nonprofit, this did not mean that there were not profits to be made, albeit in a roundabout manner. All of the major participants in the IPC were integrated companies, which meant that they did not sell crude oil on the open market. They used it themselves, passing it through their own refineries and selling it through their marketing setups in Europe, the Far East, or wherever. By taking profits downstream, on product (not crude), the companies could enhance their tax picture…"[xvi]

Iraq officially joined the host of independent countries in 1932, though this arrangement held firm through the 1950s. But before continuing, it is necessary to elaborate on the nature of concessions in order to understand why they have been, and remain, so controversial.

In the Middle East, oil belongs to the state, as opposed to its being the property of the landowner, like it is in the United States. A concession, therefore, describes the terms under which any actor makes a deal with the sovereign government of the country where the oil is found. The companies involved were all foreign companies. These concessions were henceforth looked down upon because the "concession often creates a monopoly in favor of the foreign enterprise; it may raise questions as to the extent to which the government is thereby discriminating against its own nationals; it tends to put a part of the economy of the country under the influence of economic elements outside the government's control."[xvii]

The question that remains is whether or not the conditions by which foreign companies operated their concessions inherently exploitative. A concession with a foreign company does not have to be inherently incompatible with a national government. It must also be noted that

> "the concession system can be defended as a reasonable basis for the development of petroleum in a backward area. The countries, for technical and commercial reasons, would have difficulty exploiting their own oil and marketing it for their own account. Often, before a concession is granted, they do not even know whether oil exists…Furthermore, business necessity dictates that the companies must be allowed to operate with a reasonably free hand."[xviii]

Hence, it is easy to see how business practices clash with nationalistic passions. All concessions shared some basic elements: a provision for the nature of the work involved, the area of operation, the royalty or other form of payment to be made to the government, a reference as to the duration of the concession and an arbitration clause outlining the procedure for addressing disputes between the two actors.[xix] Furthermore, the company acquired the title to the petroleum and was usually allowed to use the extracted resource as it saw fit without any restrictions, and finally, the company bore the commercial and financial risks associated with exploration and production operations.[xx]

The most important part of the concession, however, was the payment clause, whether it was in the form of royalties, taxes or signature bonuses. The relative proportion of company profit and government revenue could determine whether or not the relationship was deemed exploitative. This relationship, of course, had to take into consideration both the business concerns of the operating companies and the legitimate rights of the government to earn a substantial amount of money from its country's natural resources. But no Iraqi representatives were allowed to review the internal operations of the companies to ensure that honest numbers were reported and that taxation and government revenue were indeed representative numbers of the companies' actual production and sale value. The concession terms allotted for a "dead rent" royalty fee to be paid before the companies began production and for a production tax to be levied based on metric tonnage produced according to prices set by the oil companies.

The exploitative element seems to center around the decision-making process which was not transparent and not necessarily legal. "The companies operated as a cartel. Cartels were illegal organizations. Perhaps not in Britain or France, but this certainly was the case in the United States."[xxi] In this sense, the companies asymmetrically controlled the most obviously mutually-beneficial part of the contract, and they manipulated those terms to their benefit, to the detriment of the producing countries. The oil trade was an oligopolistic market because there were few producers and even fewer sellers. The biggest companies, which were integrated companies in control of both upstream and downstream operations, coordinated on price setting and production rates. When there are few sellers and demand is high, that power can go on uncontested.

Second Generation Concessions

The second generation of oil concessions in the Middle East followed the wave of nationalizations in the region during the 1950s and 1960s. These concessions represented a "reasonable compromise between the emphasis on national sovereignty and the efficiency of the oil operations [which revised] existing concession agreements in favor of the producing country."[xxii] The new provisions modified those already enumerated above to include a well-defined, limited area of operation for a shorter amount of time, rules regarding the amount of time allowed for extracted oil supply to remain idle, a 50 percent income tax, higher, explicitly agreed upon royalties, other defined fees, rules for additional investments and detailed rules for solving disputes.[xxiii] This second generation of concessions, which began with a substantial increase in the national countries' "participation," slowly gave way to outright nationalization and the emergence of national oil companies.

It is in the context of increasing Iraqi oil production and rising Arab nationalism that the asymmetrical relationship between the international oil companies and the Iraqi government began to change. Following in the footsteps of Venezuela and Saudi Arabia, which signed 50-50 profit sharing agreements with the oil companies, the government of Iraq managed to negotiate a 50-50 profit sharing deal in 1952. Also included in the new contract were modified standards for royalty payments and new requirements for Iraqi executive participation in the IPC subsidiary companies and the training of Iraqi nationals in petroleum related fields. This new contract, combined with the fact that Iran nationalized its oil industry in 1953, a fact which significantly decreased Iranian oil production, led to a boom in Iraqi oil production and government revenue. Oil production jumped to 29,550,000 metric tons by 1954 and correspondingly, whereas profits in 1951 stood at 13,700,000 Shillings, by 1954 the figure was 68,390,000 Shillings.[xxiv] The increased production was fairly well distributed across Iraq's three largest operational fields: Kirkuk, Zubair and Rumaila. In the meantime, the government of Iraq managed to purchase the few refineries in Iraq while commissioning an

American company to build a larger capacity refinery near Baghdad in order to satisfy Iraq's domestic consumption of refined oil.

A discernable amount of progress could be pointed to by the mid-1950s, but given the vast amount of revenue allotted to the government of Iraq, it is safe to conclude that the Iraqi leadership's execution of policies did not live up to its rhetoric of modernizing the country due to high oil revenues. It would seem then that the "basic obstacles to the rapid social and economic development of the country could apparently not be overcome by the mere availability of oil, some technical knowledge and royalties from the oil industry."[xxv] The potential for sweeping transformation, however, was implanted in the general consciousness of the Iraqi nation. This sense of potential actualization was one of the factors which led to the 1958 Revolution that ushered in both a radical change in Iraqi politics and in the Iraqi governments' relationship with the international oil companies.

Brigadier General Abdul Karim Qasim led a revolution in 1958 in which the Iraqi monarchy was overthrown. Qasim's hungry appetite for reform obliged him to confront the oil companies within a year of his taking power. Among Qasim's initial demands were an increase in Iraqi production, which had stalled in comparison with figures from Saudi Arabia and Kuwait, and a 20 percent Iraqi share in IPC holdings. These demands were rebuffed and by 1961, Qasim resorted to passing Public Law 80, a move which brought the Iraqis to the verge of nationalizing the oil industry. Public Law 80 reinstated the 1925 limit for IPC operations in terms of the area allotted to their exclusive control. This meant that Iraq was taking back 99.5 percent of the land to which the IPC was granted exclusive exploration rights under the revised 1931 concession. [xxvi] "The principal provision of Law 80… was that the government should be able to reassert its rights to the unexploited concession area, thus, at first in theory but eventually in practice, enabling it to carry out its own development and exploration."[xxvii] Furthermore, "Law No. 80, of 1961, constituted the first step towards the strategic objective of the oil policy, namely, freeing oil from foreign domination and exploitation, bringing it back under national control and placing it in the service of the people's welfare."[xxviii]

Qasim was overthrown in 1963, and even though his Ba'athist successors sought better relations with the oil companies, popular pressure prevented the relationship from backtracking to the previous terms already superseded by Qasim's policies. Furthermore, in 1964, Iraqi legislation officially created the Iraq National Oil Company (INOC). It would take another eight years until INOC was fully operational, but Iraq's road to nationalization was set in motion. Iraq slowly began to loosen the IPC stranglehold on Iraqi oil. Another blow to the relationship between the government of Iraq and the international oil companies came in the form of Western support for Israel during the 1967 Arab-Israeli war. Iraq severed diplomatic relations with America and Britain, who held most of the shares in the IPC, and proceeded to court other independent foreign oil companies, including Soviet ones, for the first time. "In 1969, a number of agreements with the Soviet Union, East Germany and Hungary were concluded that provided for loans, technical assistance, training, and equipment to help INOC build a national oil industry."[xxix] The IPC responded by halving production. The Iraqi government, having gone through the second Ba'athist coup that brought Saddam Hussein the vice-presidency, finally nationalized the oil industry in 1972. In tandem, the government also signed an agreement with the Soviet Union by which the Soviets agreed to buy all Iraqi oil, guaranteeing an outlet for Iraqi production but also placing Iraq in the middle of the Cold War.

Nationalization

"In 1972, INOC was successful in producing and marketing oil from fields covered by Law No. 80. In addition to producing oil, Iraq succeeded also in developing other facets of a well-developed oil industry, including the training of specialized labor force; building of pipelines, refineries, export facilities, and loading terminals; acquisition of oil tankers; and creation of marketing networks at home and abroad. The decision to develop a national oil sector was intended to use the country's oil wealth as the mainstay of the economy: Iraq National Oil Company became responsible for the execution of that part of the national oil policy that aimed at creating and developing a large, solid and integrated oil industry that would become the mainstay of accelerated economic development."

For obvious technological reasons, the INOC was not as productive as the IPC members were. But fortunately for Iraq, the nationalization of oil came one year before the OPEC revolution. The Organization of Petroleum Exporting Countries (OPEC) was created in 1960 but it did not flex its muscles until the 1970s. The creation of OPEC fundamentally changed the international oil industry. The major international oil companies, most of which had a share in IPC, controlled the vast amount of both upstream and downstream operations, which allowed them to control the price. The nationalization of the producing countries' oil industries took control away from the major international oil companies. Prices rose sharply, especially during the 1973 Arab-Israeli war. This crisis, described as the first "oil shock" in the West, tested OPEC's resolve and immense power to cripple Western economies by cutting the flow of oil. The majors surely did not protest the income which higher prices provided, but they had lost their control over the industry and were now more vulnerable than before to competition from independent and national oil companies who could thrive in an environment of high profits and increasing market destinations. The effectiveness of OPEC, it should be noted, has been exaggerated. Its coordinated effort has only produced significant results on very few occasions. Most of the time member countries cheated on their quotas, leaving the production and price of oil to a variety of fluctuating factors whereas in the past, production and price were more tightly controlled by the major oil companies that worked together as a cartel. Aside from undisciplined behavior on the part of OPEC members, however, it is also important to note that many new sources of oil gained access to the international market, making control of the trade a logistical impossibility.

Nationalization was a politically popular move, but Iraqi control over its own oil industry did not give the government free reign in either production or pricing.

> "It is true that by taking power over the operations of the oil sector Iraq was able to free itself from the uncertainty associated with decisions made by multinational firms over which it had no control. Yet the mere transfer of ownership to a national authority did not by itself free Iraq from the uncertainty of the constantly changing forces of supply and demand of the wider world economy. To put it differently, while Iraq succeeded in increasing its oil income per unit of output and in mapping the size and direction of its oil sector, its dependency on the world economy remained nevertheless unchanged." [xxx]

Nevertheless, as mentioned above, Iraqi nationalization did coincide with a spike in oil prices and hence a tremendous increase in revenue. The 1970s were the most prosperous in Iraq's history considering the massive influx of oil revenue. Saddam Hussein officially assumed power in 1979, and he oversaw Iraq's most profitable year. "This huge increase in income brought considerable prosperity to Iraq, and there were major expansions in education, health, housing and infrastructure. Per capita income increased more than sevenfold in the decade 1972-82, and GDP increased more than fourfold over the same period." [xxxi]

The 1980s saw this surplus squandered on the Iran-Iraq War. Not only was the surplus not spent on the Iraqi people, but the ability to produce and export large quantities of oil was hampered by Iran's military offensives. One of Iran's first actions against Iraq was the bombing of oil exporting facilities in southern Iraq along with some production sites. These factors, along with decreasing oil prices, led to a drop in Iraqi oil production and government revenue.

> "When Iraq nationalized IPC in 1972, its oil output was 1.5 million barrels per day (MBD). By 1976, it rose to 2.4 MBD, and by 1979 it was 3.5 MBD…the outbreak of the Iran-Iraq war, which resulted in the destruction of Iraq's exporting facilities in the southern part of the country and the closure of its pipelines across Syria, reduced Iraq's oil output to 1 MBD in 1982, a level of output that had been reached in 1960. As a result of this decline in output and exports and the decline of in oil prices after 1981, Iraq's oil revenue plummeted from ID 8.9 billion in 1980 to ID 2.2 billion in 1986." [xxxii]

The war with Iran also pointed out some obvious flaws in Iraq's ability to export oil. Its only access to the sea was through the Shatt al-Arab which then opened up to the Indian Ocean. Iraq's main pipeline through Syria ceased operations due to a political dispute with Syria. Hence, Iraq commissioned the construction of a pipeline from Kirkuk to the Turkish port of Ceyhan, making the export of Iraqi oil to Europe a much cheaper and easier endeavor. This export pipeline proved to be Iraq's lifeline as Iran destroyed Iraq's oil-exporting facilities in the south. Oil export dropped by 72 percent, from "3.281 MBD on the eve of the war to a mere .926 MBD." xxxiii This precipitous drop in oil export and prices, combined with the gross expenditures of the war finally materialized in the form of astounding mountains of debt. Estimates suggest that "the Iran-Iraq War cost Iraq $452.6 billion…To give some idea of the magnitude of these losses, the total value of Iraq's petroleum exports between 1981 and 1990 amounted to $102 billion." [xxxiv]

Iraq's crippling debt obligations were part of Saddam Hussein's strategic rationale for going to war with Kuwait in 1990. In effect, Hussein charged Kuwait with waging an economic war on Iraq. Kuwait refused Hussein's plea to forgive its war loans. When Iraq was in dire need of more oil revenue, Kuwait also refused to comply with its OPEC quota which would have limited production and presumably raised the price of oil. Lastly, Hussein accused Kuwait of siphoning off oil from the Rumaila field which crossed the border between Iraq and Kuwait. A week before the invasion, however, at an OPEC meeting in Geneva, the member countries agreed to stringent production quotas and a tentative agreement on a price hike to $21 per barrel from the $15 per barrel figure for May.[xxxv] The agreement, however, did not change Hussein's determination to attack Kuwait and take control of its oil resources. He was encouraged by his perception that the United States would not go to war in order to protect this small, oil-rich country. And so, on 2 August, 1990, Hussein launched his invasion and in "a lighting strike, Iraq had seized control of over 94 billion barrels of proved oil reserves—about ten percent of the world's total—and was within a stone's throw of the major Saudi oilfields with over one-quarter of the world's reserves."[xxxvi]

Hussein grossly miscalculated. Just as the British government had fought to maintain its oil supplies from the Middle East, the United States government mounted a coalition in order to prevent such a significant share of the world's oil supplies from falling into Saddam Hussein's hands. It did not take long for the American-led coalition to defeat Iraq's forces. A decision, however, was made to leave Saddam Hussein in power in order to maintain a politically unified Iraq as a counterweight to a menacing Iran.

The Sanctions Regime

"In 1960, Iraq's real GDP measured in 1980 prices was $8.7 billion. In 1979 GDP peaked at $54 billion. And by 1993 Iraq's GDP [had] declined to $10 billion."[xxxvii] Iraq's oil industry was a hairbreadth away from collapse as many of its facilities were damaged during the war. But even exporting the oil they could produce was restricted by the implementation of the sanctions regime. The sanctions regime was meant to ensure the weakness of the Iraqi regime by restricting oil production and ensuring the incremental repayment of Iraqi debt obligations. This strategy was made official in 1995 with the passing of UN Security Council Resolution 986, also known as the Oil-for-Food Program whereby Iraq was allowed to exchange a limited amount of oil for food and medical supplies. The strategic purpose of limiting Iraq's economic growth potential was to put an end to Hussein's militaristic aggression. Perhaps, it was argued, the people might be able to rebel against a weaker regime. But the regime was not harmed; government revenue still took care of the Ba'ath Party and its members. By the end of the 1990s, however, the proclaimed reasons for the program no longer seemed to make sense as Iraq rejoined the oil exporting community.

> "Under the gradually expanded terms of the 'oil for food' resolutions Iraq had once again become a major oil exporter. By 2001-2 it was producing an estimated 2.8 million barrels of oil per day, exporting 1.7 million barrels of oil per day under the UN's 'oil for food' arrangement. This earned Iraq roughly $12 billion in 2001-2. After the removal of a fixed percentage to pay for compensation claims, meet UN expenses and provide the Kurdish Regional Government with 13 percent of the proceeds, the Iraqi government retained some 50 per cent to spend on imports."[xxxviii]

As Iraqi oil production approached pre-war levels, it was obvious that the sanctions regime would not bring down Saddam Hussein. It is at this point in time that a group of neo-conservative American politicians and policy-makers began arguing for a new policy towards Iraq. They wanted Hussein out. The oil companies wanted back in. Their vision brought them closer to Iraq's main opposition groups, including the Kurds in the north.

THE EVOLUTION OF KURDISH POLITICAL AUTONOMY

Considering that this essay is concerned with the development of a bilateral policy regarding oil operations within Iraq, one belonging to the KRG the other to the GOI, it is important to recognize the historical weight of the Kurdish struggle for political sovereignty. Nevertheless, this particular issue will not be explored in as much detail as Iraq's history pertaining to oil has been so far. The particulars of the Kurdish struggle are interesting, but for the purposes of this discussion, it is satisfying to begin the historical recount at the end of Iraq's war with Kuwait.

As mentioned above, the UN passed a resolution condemning Saddam for his repression of the Shi'a and Kurdish uprisings. The British and Americans, both for strategic and humanitarian reasons, decided to strengthen their commitment to the safety of Iraq's unprotected populations by declaring a no-fly zone in both the south and north of the country. Routine aerial patrols deterred Saddam from pursuing any further military action against either the Kurds or the Shiites in the south. The northern no-fly zone was delineated at the 36th parallel—assuring the Kurds a safe haven in the territory roughly aligned with the last autonomy agreement signed between the Kurds and the Iraqi government in 1970. The Kurds had never enjoyed such unprecedented protection. In fact, the favorable conditions they enjoyed in light of Saddam's weakened position allowed them to declare de facto political autonomy, an opportunity they bolstered by holding elections and forming the first Kurdish government in northern Iraq in 1992.

The government consisted of the Kurds' two main political parties, the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK), both of which had been instrumental in the Kurdish struggle for self-determination. This political unification came on the heels of decades of squabbles between the two parties and shifting alliances with whoever seemed to offer a helping hand. Inevitably, however, tensions erupted between the two sides, and a civil war ensued over several issues. "These issues revolved around questions of territory; but also around questions of the distribution of international economic aid and the revenues derived from lucrative oil and commodity smuggling across the Iranian and particularly the Turkish borders."[xxxix]

The revenue from smuggled oil and from international economic aid was a consequence of the sanctions regime imposed on Iraq in the wake of the Gulf War in 1991. The "Oil-for-Food" Program assured Iraq a minimal revenue stream from its oil export. Thirteen percent of the revenue that was transferred to the Iraqi government from a controlled UN account was guaranteed for the Kurdistan Regional Government (KRG). In addition, in order to augment government revenue, Iraqi oil was smuggled through the Turkish and Iranian borders where the Kurds were able to collect handsome border fees. Control over these resources, as mentioned above, was part of the reason for the breakdown between the PUK and KDP.

The civil war was interrupted be a series of unfulfilled ceasefires but hostilities finally came to an official end with the signing of the Washington Agreement in 1998 between the leaders of the two parties, Masoud Barzani of the KDP and Jalal Talabani of the PUK. The Agreement did not necessarily resolve any particular points of conflict as these were deeply ingrained, but it did provide for the reunification of the Kurdish region, a much sought-after strategic benefit from the American perspective. A divided Iraqi Kurdistan could potentially open up another opportunity for Saddam Hussein to intrude upon the Kurds' hard-fought autonomy. Moreover, the Agreement spelled out what would become of the Kurdistan Region after the 2003 invasion as "it pledges the commitment of all parties to the territorial integrity and unity of Iraq but on the basis of pluralistic, democratic and federal political structure."[xl]

Post-War Restructuring

The Kurds were intimately involved with the American decision to invade Iraq in March 2003. Providing a base of support for American operations, including allowing Iraq's political opposition to gather in anticipation of Saddam Hussein's ouster, the Kurds established a working relationship the American administration. This relationship would prove to be a very fruitful one when the time came to restructure Iraq's political system.

The dynamics of Iraqi political authority over oil began to change with the ratification of the Iraqi Constitution in 2005. While the sovereign decision-making process in Baghdad was still compromised by the sway of American influence, the Constitution solidified Iraq's federal nature and gave sweeping powers to Iraq's regions and governorates. As the Kurds were one of the more, if not the most, organized and cohesive political unit in post-war Iraq, they were able to help craft the Constitution well enough to guarantee sweeping assurances for the political autonomy of the Kurdistan Region.

The dispute between the KRG and Baghdad which has existed since the passing of the Constitution in 2005 contains several different elements. Legally speaking, the GOI in Baghdad claims that the KRG has overreached in its interpretation of regional rights over oil-related matters. The KRG strictly maintains that its actions have been in complete accordance with the Constitution. The inability to solve the dispute has been overtly political, and this has been the case for both pronounced and disavowed reasons. The GOI has accused the KRG of breaching its sovereignty and advancing on the path of complete separation from the Iraqi state. The Kurds, weary of many years' worth of brutal Iraqi central government control and suppression, are suspicious of any kind of initiative to restrict Kurdish political autonomy. The balance has been hard to strike.

The Constitution

The Kurds use the Iraqi Constitution as the platform upon which they have built their rationale for an independent Kurdish oil industry. There is an imbalance, however, when it comes to the legal argument between the KRG and the GOI. The KRG is prepared to discuss the legal details until the differences are settled and they have the legal rationale to back their argument. The GOI believes that it benefits from delaying because it knows that it would most likely lose in a sober analysis of the legal rights legislated to the Kurdistan Region by the Constitution.

But Baghdad's interpretation should be considered nonetheless. The foundation for Baghdad's interpretation of the Constitution has been keenly analyzed by University of Tulsa Law Professor Rex J. Zedalis and they are briefly introduced below.

Article 110 of the Iraqi Constitution delegates exclusive powers to the federal government, powers which cannot be exercised by the federally recognized regions or governorates. The powers most pertinent to the discussion on oil are "economic and trade policy" and "regulating commercial policy." Oil policies or general strategy is not mentioned, but seeing as oil production and export are the most vital commercial practices in Iraq, it is reasonable to assume that authority over oil is expected to fall under the general yet vague category of "economic and trade policy" or "regulating commercial policy." Article 114 describes the powers that the federal government must share with the regions. As for language which can relate to oil matters, the shared power to formulate "development and general planning policies" might play a role. Article 115 effectively assigns all residual powers not mentioned in Articles 110 or 114 to the regions and governorates. "In light of the fact neither Article 110 nor 114 explicitly speaks to power over matters involving oil and gas, it would make sense to think of Article 115's reservation as doing so indirectly. However, account must still be taken of Article 112."[xli] Article 112, First, explicitly provides for the federal government's cooperation with the regions and governorates over the "management of oil and gas extracted from present fields."[xlii] Article 112, confers upon the federal government the shared responsibility and authority to formulate "strategic policies" for developing oil and gas resources generally. The KRG has taken the stance that any federal involvement is restricted to oil fields which were already producing or in the process of developing the capacity to produce oil at the time the Constitution was signed. All subsequent fields, not considered "present fields," are therefore to be left under the purview of the regions. Finally, Article 111 states that Iraq's oil and gas resources are owned by all the people of Iraq.[xliii] This article has created a conflict related to revenue sharing. The KRG, using Article 115, claims that it has the right to directly profit from its oil production and export while the GOI claims that all profits must be centrally controlled and appropriately distributed according to a national budget.

It should be noted that from a strict legal interpretation of the Constitution as it stands today, the Kurds have buttressed their legal argument with validations from numerous outside sources that support the Kurdish legal rationale for their share of political authority over the oil in the Kurdish regions. The political levers of power have been slow to adjust to the validity of the law.

POLITICAL AUTHORITY OVER IRAQI OIL

In a report to Congress in 2007, the Iraq Study Group Report stated:

"The politics of oil has the potential to further damage the country's already fragile efforts to create a unified central government. The Iraqi Constitution leaves the door open for regions to take the lead in developing new oil resources. Article 108 (changed to 111) states that 'oil and gas are the ownership of all the peoples of Iraq in all the regions and governorates', while Article 109 (changed to 112) tasks the federal government with 'the management of oil and gas extracted from current fields.' This language has led to contention over what constitutes a 'new' or an 'existing' resource, a question that has profound ramifications for the ultimate control of future oil revenue."[xliv]

The lack of a clear policy on oil was to be resolved by a federal hydrocarbons law negotiated in the Iraqi Parliament. The parliamentary committee in charge of formulating the law released two drafts in 2007, one in January and the other in March. The federal government claimed that despite making concessions in favor of wider regional authority over oil, the Kurds still refused to support the final draft. The Kurds, who were in favor of the second draft of the bill, withdrew their support after realizing Baghdad had added four attachments that were not reviewed by the Kurdish delegation. The heart of the dispute is lodged in the different interpretation of the Constitution and the amount of political authority over oil that each government is allotted.

Tariq Shafiq, a petroleum engineer who was Vice President and Executive Director of the INOC, provided an analysis of the draft hydrocarbon law in which he sided against what he perceived as an overreaching regional power over oil, saying that an "amendment of the constitution is, therefore, needed in such a way as to modify article 112 to include the management of the exploration and development of new reserves, in the same way, under the umbrella of the Federal Government."[xlv]

Shafiq's criticism reflects what many veteran Iraqi oil experts have said regarding the priorities evident under the structural authority proposed under the draft hydrocarbon laws. The first draft, according to Shafiq, "prioritized the rehabilitation of the infrastructure and building production capacity to monetize the reserves and make the most of the country's bulk of idle proven reserves of 115 B[illion] bbls (barrels)."[xlvi] The second draft, reflecting the leverage the Kurdish delegation imposed on the parliamentary committee, was further criticized by Shafiq:

"The latest draft calls for the immediate grant of rights to IOCs (international oil companies) for exploration and development of 65 blocks with billions of potential oil reserves. The discovered reserves shall be developed and produced to unrestricted capacity without delay or a cap to earn investment capital and provide a healthy return. They will, therefore compete with the INOC's large oil production capacity over a limited share of markets open to Iraq, cause oversupply, destabilize the crude oil price structure and contravene Iraq's obligation towards OPEC, among other undesirable consequences." [xlvii]

Citing Baghdad's failure to approve the hydrocarbons law, the Kurds decided to move ahead with their own regional oil and gas law under the KRG Constitution in August 2007. Though the Kurds had signed their first oil contract with a foreign company in 2004, the new regional oil law provided for unlimited foreign access to Kurdistan's unexplored reserves. Despite the misgivings of many foreign oil companies to invest in a politically unstable and geographically untested Kurdistan, the KRG was able to build a foundation for its oil sector at a pace which outdid any progress that Baghdad could claim for itself given the horrendous security conditions at the time.

Besides the legal dispute over the specifics of political authority, the management of oil resources was also a matter of dispute between the KRG and Baghdad. The transition government in Iraq, under the guidance of U.S. officials, had begun to adopt many of the recommendations made by pre- and post-war planners. For example, one of the areas of interest under the Future of Iraq Project, the official pre-war planning project, was oil. This was left up to the Oil and Energy Working Group. A brief recount of Iraq's potential oil supplies provides the background for later recommendations:

> "For historical and political reasons, exploration in Iraq is immature with less than 200 exploration wells drilled to date. This compares with one million wells in Texas. Yet-to-find reserves have been estimated to range from around 50 billion barrels to as much as 200 billion barrels. This magnitude of yet-to-find is unmatched anywhere in the world. Gas reserves, mainly associated with the oil reserves, total some 100 trillion cubic feet (TCF), comparable in size to those of the entire European Union. Seventy-three fields have been discovered in Iraq, but only about 15 have been put into production. Ninety percent of Iraq's historical production has come from just two super-giant fields (>10 billion bbls): Kirkuk in the North and Rumaila in the South. These fields still dominate today, making up over 80 percent of the production capacity. According to Iraqi Ministry of Oil officials quoted during the March 1995 Oil and Gas Markets Seminar in Baghdad, 33 fields have a potential of more than 4.5 mbd, giving ample new production capability."[xlviii]

Among the recommendations made in the report was advice concerning the restructuring of the INOC and its eventual de-monopolization and privatization. Recommendations were also made concerning the re-introduction of private oil companies, (more specifically, British and American companies which had been blacklisted by Saddam Hussein) along with private equity in any state-owned oil companies.

Privatization was a top priority for the Bush administration. It was decided that the most enticing contracts should be offered in order to lure international oil companies back to Iraq. Production sharing agreements (PSAs) were broadly recognized by oil industry operatives and advisors as the best kind of contract for new exploration and production projects. PSAs are used in about 12 percent of all oil contracts worldwide and they are generally used in places where oil extraction is especially risky. This is not the case in Iraq. Iraqi oil is the cheapest to produce in the world. But considering the vast unexplored area in Iraq, it is not unreasonable to assume that many exploration attempts will not yield results. And yet, PSA's have been compared to politically-correct versions of the old concessionary systems.

> "As industry consultant Daniel Johnston writes in a standard textbook on petroleum fiscal systems: 'At first [PSAs] and concessionary systems appear to be quite different. They have major symbolic and philosophical differences, but these serve more of a political function than anything else. The terminology is certainly distinct, but these systems are really not that different from a financial point of view.' Similarly, Professor Thomas Wälde, an expert in oil law and policy at the University of Dundee, describes 'a convenient marriage between the politically useful symbolism' of the PSA and 'the material equivalence' of this contract model with concession regimes. 'The government can be seen to be running the show and the company can run it behind the camouflage of legal title symbolizing the assertion of national sovereignty.'"[xlix]

Therefore, any large-scale privatization of Iraqi oil has yet to be approved by the Iraqi Parliament. So far, Baghdad has only signed contracts with foreign oil companies under strictly technical service contracts which exact a fee for services rendered from the oil companies. Such contracts do not extend to developmental and exploration operations. The KRG, on the other hand, built its oil sector on attractive investment conditions and the PSA model contract. Shafiq, once again assuming the comprehensive voice of the Iraqi mainstream oil consensus, said that privatization of the oil industry "runs against the grain of the great majority of the oil technocrats and the Iraqi nation. A strong state-owned national oil industry and unified central plan, policy and resource management, with a liberal attitude towards cooperation with the regions and governorates, have become the unchallenged principles of the overwhelming majority of Iraqi oil technocrats."[l]

The rationale behind the KRG's oil sector was concocted by Kurdistan's Minister of Natural Resources, Ashti Hawrami. As a veteran in the oil business, Hawrami is acutely aware of the details involved and Baghdad's objections to the KRG's policies. He recognized that that the percentage of post-"cost recovery" profits allocated to contractors is at the heart of the debate between the contractual model offered by the KRG as opposed to the one currently favored by Baghdad. The proposed KRG contracts offer profits covering exploration and production costs plus a 12 percent interest on profits henceforth. The technical service contracts offered by Baghdad only provide fees for services rendered. In addition, service contracts do not give out new exploration rights to contracted companies. PSA's do not grant the INOC the right to explore for new oil reserves, essentially renting out all future reserves to foreign oil companies. This was a conscious decision. By looking at the carved up map of Kurdistan's oil exploration future, comprised of over 40 separate blocks, one might notice the kind of foreign investor the Kurds are trying to invite. The major oil companies are drawn to very large fields where they can extract large quantities of oil. They are not as likely to take the risk of exploring small plots with no recognized value. This risk is taken by smaller oil companies, which are precisely the ones who will take the terms of the PSA's and the risk involved in order to reap the reward of discovery and initial production under the terms of the contract. The KRG wants to move quickly and get the oil pumping. Inviting major oil companies means moving slowly in terms of exploration and rates of production. The faster and more productively the KRG operates, the greater leverage it has to compare its successful results to Baghdad's lethargic recovery of its oil industry.

Baghdad has not only argued that the KRG's contract models are financially inferior to the terms offered by Baghdad, but also that they are illegal according to the Iraqi Constitution.

> "By arguing that the KRG's oil contracts are illegal, Iraq's central government is asserting that only it has the authority to sign and validate contracts with foreign oil companies. Ultimately, this issue comes down to control. Iraq's central government believes that Kurdish oil policies should come under the authority of the federal government. This view appears to be prevalent in Baghdad and it is not unique to the current Iraqi government. There are deep suspicions of foreign oil companies and their motives throughout Iraq, which is likely a legacy of the colonial period."[li]

Revenue-Sharing

> "The central role of the oil sector in Iraq's economy, the uneven geographic distribution of Iraq's oil resources and the legacy of communal favoritism practiced under Saddam Hussein have created lasting concerns among Iraqis about the future equitable distribution of oil revenues." [lii]

Under the negotiated revenue-sharing agreement between Baghdad and the KRG, the KRG deserves to receive 17 percent of the national budget after sovereign expenses are paid. Following this consideration, the KRG is allowed 17 percent of the total profits made off the oil produced and sold from the Kurdistan Region. If political authority over oil is the first step to gain control of the resources themselves, then financial control is where the real power to ensure Kurdistan's autonomy resides. Currently, Baghdad is responsible for wiring the KRG its annual budget, though it has consistently failed to provide the entire sum, has not made the transfers in a timely fashion and has attached conditions for receiving the funds. The KRG argues that it should be able to control the revenue from its oil directly, meaning it should not be transfered to the central government and then dispersed but rather should go to a KRG account and then be split, with 83 percent sent to Baghdad. "It is a question of control. Baghdad wants to control all revenue from oil sales. These are new oil fields. We keep 17 percent and give you 83 percent instead of vice versa. The money used from oil was used against Kurds in the past. Independent control of oil can help prevent atrocities."[liii]

After oil companies operating in Kurdistan had already started producing and exporting oil via the Baghdad-controlled Kirkuk-Ceyhan pipeline in 2009, the Iraqi government refused to allow further exports due to Kurdish demands that the Iraqi government pay the oil companies for their services. Baghdad insisted the Kurds pay the companies using the revenue they received from the federal government. The matter had no agreed upon method of being resolved. The drafted hydrocarbons laws proposed the creation of the Federal Oil and Gas Commission in order to review contracts and decisions made regarding the oil and gas industries, but since the law was not approved, the matter was sidelined to political discourse. The KRG accused Baghdad of stalling Kurdish progress in lieu of Baghdad's reverse course in oil production. Even though the KRG was adding to Baghdad's total production and even helping it meet OPEC's quota, Baghdad could not tolerate the KRG's advances. The matter was finally resolved in February 2011, when Baghdad agreed to pay the companies involved as long as the Kurdistan Region supplied a set amount of oil. Attached to the resolution of this matter was also an agreement regarding revenue sharing. According to Qubad Talabani, the KRG Representative to the United States, in lieu of a national hydrocarbons and revenue-sharing law, the two governments have resolved to direct the revenue to a shared account at the Central Bank of Iraq where sovereign expenses are paid from a joint account and then split according to the 17 percent-83 percent agreement.

PROSPECTS FOR FUTURE RELATIONS

"The stable security situation and positive economic outlook in the Kurdish region has enabled the Kurds to strengthen their clout as a regional force within the Iraqi state, despite also remaining dependent on the central government. By developing its oil and gas sector, the Kurdistan Region hopes to increase its political and economic leverage vis-à-vis the central government."liv Baghdad, however, is no longer so far behind. After signing 11 contracts with foreign oil companies in 2009, the GOI is projecting that it will be producing millions of barrels of oil annually in the next decade, a projection that will increasingly make Kurdistan's contribution a smaller one. If that is the case, the Kurds are even more justified in their current action to outpace Iraqi advances.

"If the Kurds hope to further develop their oil sector, they have few options for getting the oil that they produce to world markets. At the moment, a 600-mile pipeline transports Iraqi crude oil, including any Kurdish exports, from Kirkuk to the Turkish port of Yumurtalik, near Ceyhan on the Mediterranean, where it is then exported to world markets. The KRG is unable to use the northern pipeline for

exports without permission from Baghdad. Additionally, a new pipeline through Turkey is unlikely in the near-term, despite Kurdish desires to build one. While relations have improved considerably between Turkey and the KRG over the past few years, Ankara does not want to anger Iraq's central government, nor does it want to provide Iraqi Kurds with a self-sufficient economic base with which the KRG can effectively use to move toward establishing an independent state." [lv]

Indeed, as the Kurds venture out beyond their borders, they leave the realm of domestic politics and enter the more dangerous arena of international relations. Other actors will not have the same political hurdles that Baghdad faces, and if need be, they will not have as hard a time to bypass the Kurds' demands. The Kurdistan Region will have to be careful not to upset both the internal balance of power with Baghdad and external relations with neighboring countries, especially with Turkey. To do so, the KRG must cooperate with Baghdad to the extent that they preserve several Kurdish goals, which are to "(1) strengthen and enhance Kurdish regional autonomy; (2) extend the separation between the Kurds and the rest of Iraq; (3) prevent a strong Iraqi central government from using its military against the Kurdish population; and (4) maximize the chances for an independent Kurdistan in the future."[lvi]

Undoubtedly, the GOI is interested in keeping Kurdistan within its official sphere. But seeing as there does not seem to be a clear-cut solution looming in the distance, the course must be a pragmatic one, for each side is dependent on the other for stability and prosperity. For the Kurds, the economic and political rationale for their separate existence from Baghdad still exists, but the reality behind the federal structure they have willingly adopted prevents total independence. Within this scope of political authority, and taking into consideration the struggle over oil, the Kurds will next be tested as to their commitment to a stable Iraq when they enter negotiations to build a pipeline for oil and gas exports. If the KRG attempts to do so without Baghdad's approval, a constitutional crisis might very well develop. Likewise, if Baghdad begins to feel more confident as to its relative political and economic position vis-à-vis the Kurds, the central government might begin to restrict Kurdish autonomy once again, inviting a conflagration in the Kurdish Region. Undoubtedly, a cooperative, respectful relationship on the matter of political authority over oil will play a crucial role in preserving Iraqi stability and Kurdish autonomy.

---

[i] Saad Eskander. "Britain's Policy in Southern Kurdistan: The Formation and the Termination of the First Kurdish Government, 1918-1919." *British Journal of Middle Eastern Studies*, Vol. 27, No. 2 (Nov., 2000), pp. 139-163. Found online through JSTOR at http://www.jstor.org/stable/826089

[ii] League of Nations, Question of the Frontier between Turkey and Iraq. Report to the Council by the Commission Instituted by the Council Resolution of September 30th, 1924 (Geneva, 1925), C. 400. M. 147. 1925. VII, 88-89.

[iii] Othman Ali. “The Kurds and the Lausanne Peace negotiations, 1922-23.” *Middle Eastern Studies* 33.3 (1997): 521+. Academic OneFile. Web. 14 Dec. 2010.
[iv] Eskander, Saad. “Southern Kurdistan under Britain’s Mesopotamian Mandate: From Separation to Incorporation, 1920-23.” *Middle Eastern Studies*, Vol. 37, No. 2 (Apr., 2001), p. 160. Found online through JSTOR at http://www.jstor.org/stable/4284159
[v] Ali.
[vi] Stephen Pelletiere. *Iraq and the International Oil System: Why America Went to War in the Gulf.* (Westport, CT: Praeger Publishers, 2001), pp. 25, 26.
[vii] Benjamin Shwadran. *The Middle East, Oil, and the Great Powers*. Frederick A. Praeger, (New York), 1955. p. 241.
[viii] “IRAK: Oil from Mosul.” *Time Magazine*. Monday, Jan. 28, 1935.
[ix] Nevin Çosar and Sevtap Demirci. “The Mosul Question and the Turkish Republic: Before and After the Frontier Treaty, 1926.” *The Turkish Yearbook of International Relations*. Vol. XXXV, (2004), pp. 49, 50.
[x] Çosar and Demirci, p. 51.
[xi] “IRAK: Oil from Mosul.” Time Magazine. Monday, Jan. 28, 1935.
[xii] Shwadran, p. 237.
[xiii] *Ibid*, pp. 247, 248.
[xiv] *Ibid*, p. 249.
[xv] Francisco Parra. *Oil Politics: A Modern History of Petroleum*. I.B. Tauris, (New York), 2010, p. 13.
[xvi] Pelletiere, p. 66.
[xvii] David Finnie. *Desert Enterprise: The Middle East Oil Industry in its Local Environment*. Harvard University Press, (Cambridge), 1958, p. 21.
[xviii] *Ibid*, pp. 21-22.
[xix] *Ibid*, pp. 22-23.
[xx] Parra, p. 9.
[xxi] Pelletiere, p. 68.
[xxii] P.L. Eckbo. *The Future of World Oil*. Ballinger Publishing Company (Cambridge, MA), 1977. pp. 11-12.
[xxiii] P.L. Eckbo. p. 12.
[xxiv] Shwadran, p. 262.
[xxv] *Ibid*, p. 265.
[xxvi] Pelletiere, p. 127.
[xxvii] Kate Gillespie and Clement Henry. *Oil in the New World Order*. Florida University Press (Gainesville, Florida), 1995, p. 233.
[xxviii] Iraq National Oil Company, Iraq National Oil Company and Direct Exploitation of Oil in Iraq (Baghdad, 1973), p. 5.
[xxix] Abbas Alnasrawi. The Economy of Iraq: Oil, Wars, Destruction of Development and Prospects, 1950-2010. Greenwood Press (Westport, CT), 1994, p. 68.
[xxx] Alnasrawi, pp. 12-13.
[xxxi] *Ibid*, p. 236
[xxxii] *Ibid*, p. 13.
[xxxiii] *Ibid*, p. 11.
[xxxiv] Gillespie, p. 229.
[xxxv] *Ibid*, p. 243.
[xxxvi] Parra, p. 298.
[xxxvii] Alnasrawi, p. xv.
[xxxviii] Charles Tripp. *A History of Iraq*. Cambridge University Press (New York, New York), 2002, p. 278.
[xxxix] *Ibid*, p. 272.
[xl] *Ibid*, p. 274.
[xli] Rex Zedalis. “Foundations of Baghdad’s Argument that Regions Lack Constitutional Authority Over Oil and Gas Development Agreements.” *Journal of Energy & Natural Resource Law*, Vol. 26, No. 2. May 2008, p. 307.
[xlii] Iraqi Constitution, Article 112.
[xliii] Iraqi Constitution, Article 111.
[xliv] Iraq Study Group Report. Found online at <http://bakerinstitute.org/publications/iraqstudygroup_findings.pdf.>, p. 22

[xlv] Tariq Shafiq. "Iraq Petroleum Law Re-Visited." A Paper Presented at the Centre for Strategic & International Studies. June 12, 2007, p. 7.

[xlvi] Shafiq, p. 1.

[xlvii] *Ibid*, p.1.

[xlviii] Future of Iraq Project: Oil and Energy Working Group. Commissioned State Department Consultation Report. Washington D.C., (October, 2001), p. 3

[xlix] Antonia Juhasz. *The Tyranny of Oil. The World's Most Powerful Industry and What We Must Do to Stop It*. Harper Collins (New York, New York), 2008, p. 348.

[l] Shafiq, p. 4.

[li] Strouse, Thomas. "Dependent Aspirations: The Oil Policies of the Kurdistan Regional Government." The Institute for Middle East Studies at the Elliott School of International Relations, George Washington University. May 2010. Found online at http://www.gwu.edu/~imes/research/Strouse.pdf. p. 14

[lii] Blanchard, Christopher. CRS Report for Congress "Iraq: Oil and Gas Legislation, Revenue Sharing and US Policy." June 26, 2007. Found online at <http://fpc.state.gov/documents/organization/88057.pdf>, p 12.

[liii] Masroor Barzani. In discussion with the author. 10 January 2011.

[liv] Strouse, p. 10.

[lv] *Ibid*, p. 10.

[lvi] *Ibid*, p. 17.