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IRAQ'S OIL POLITICS

WHERE AGREEMENT MIGHT BE FOUND

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About the Report

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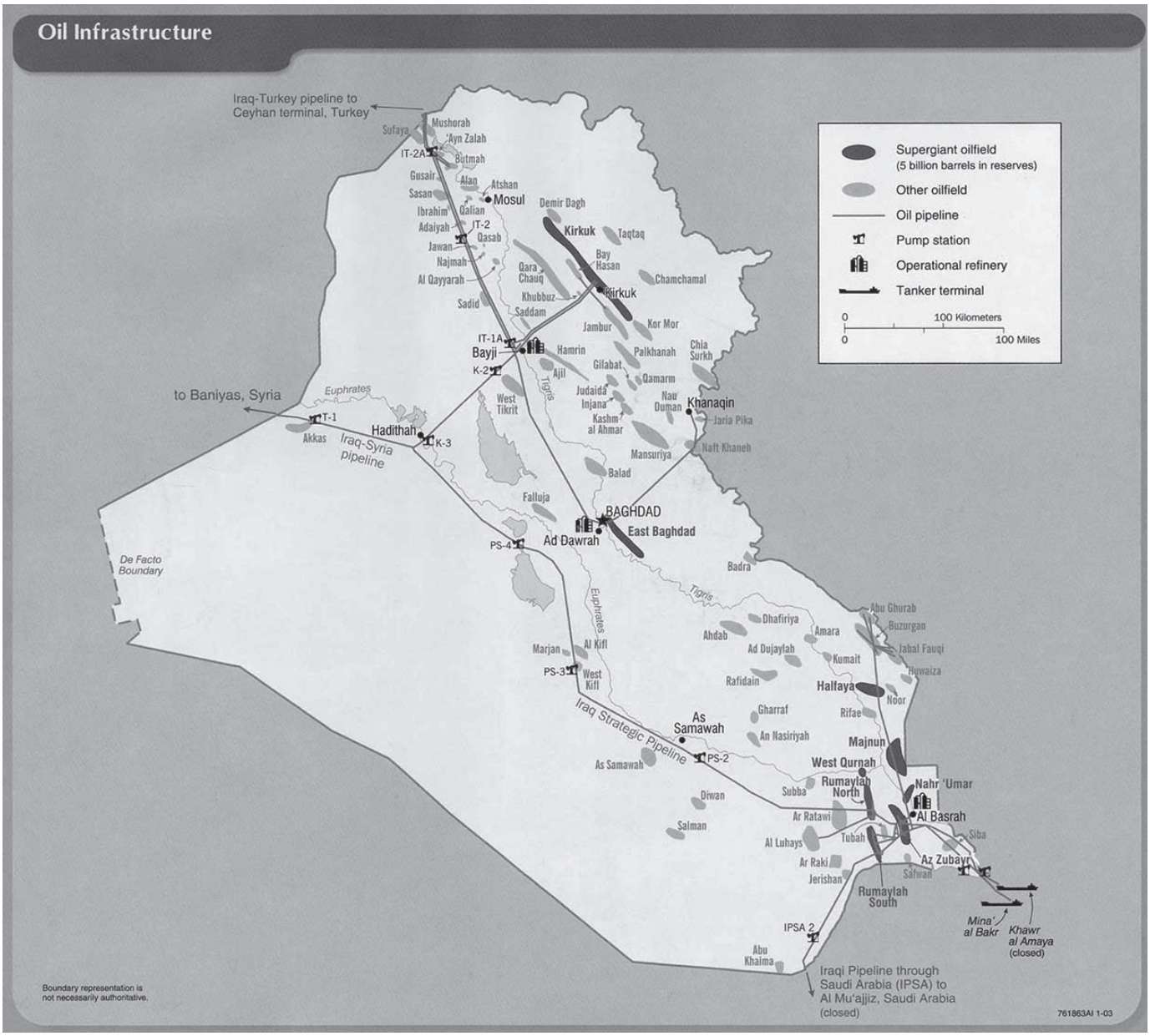
[Revenue sharing may be the only area where the desire among many Arab Iraqis for nationally led governing arrangements and the financial interests of autonomy-minded Iraqi Kurds overlap.]



Source: From "Iraq: Country Profile," Central Intelligence Agency, January 2003. Courtesy of the University of Texas Libraries, University of Texas at Austin.

Summary

- The U.S. policy debate on Iraq is now primarily focused upon defining an appropriate troop withdrawal schedule.
- Iraq is uniquely dependent upon oil to finance its state. Struggles for control over this resource underpin the country's myriad political fault lines. Any political strategy for Iraq therefore must start with the so far intractable question of how Iraq's oil revenues are to be shared.
- The Bush administration clearly recognized the need to address the oil conundrum and specifically identified an oil-revenue-sharing agreement as vital to achieving a political settlement in Iraq. The efficacy of the tactical decisions it made to accomplish such an agreement is substantially open to debate.
- There was a mismatch between the legislation that the United States championed—the hydrocarbon law—and the strategic objective that it had identified, revenue sharing. The hydrocarbon law is principally concerned with oil contracting and investment procedures, an area where Iraqis are particularly far apart, and does not address the task of setting up a national revenue-sharing system.
- The U.S. approach also gave limited consideration to whether complementary constitutional amendments might be required to protect any agreement contained in oil legislation. This is pertinent because Iraq's Constitution appears to grant oil-wealthy regions the ability to override or opt out of national laws on oil matters.
- Such tactical decisions contributed to the deep political impasse on oil legislation, which in turn contributed to Iraq's inability to find compromises on other key political issues, including constitutional reform and disputes over Kirkuk and other disputed internal boundaries.
- U.S. political influence should be reoriented to play a supporting role in helping Iraqis come to a comprehensive agreement on how to share their oil revenues. This could entail both passing a national revenue-sharing law that lays out the details of an automatic revenue-sharing system and adopting specific constitutional amendments to provide guarantees that oil-wealthy regions will participate in such a system.
- An automatic revenue-sharing system would be of great assurance to the Kurdistan Region, which is concerned about both the ultimate acceptance of its autonomy by non-Kurds and, in turn, its dependence upon unpredictable annual budgetary grants from the national government. At the same time, constitutional guarantees would be symbolically and substantively important in addressing the trepidations held by Sunni and many Shia Arabs with regard to federalism, future Kurdish aspirations, and the unity of Iraq.
- Revenue sharing may be the only area where the desire among many Arab Iraqis for nationally led governing arrangements and the financial interests of autonomy-minded Iraqi Kurds overlap. From a broader political standpoint, the conclusion of a revenue-sharing agreement could only help to unlock compromise on other key political disagreements among Iraq's major communities, including disputes over the status of oil-rich Kirkuk province.
- It is vital to Iraq's future stability that progress is made on key political drivers of conflict in advance of a full U.S. troop withdrawal. A comprehensive revenue-sharing agreement is a strategic entry point for pursuing such progress because of its potential for agreement and its broad political significance. Despite three years of failed oil negotiations, revenue sharing is an area of potential agreement that should be further explored.

Introduction

After more than six years of war, a weariness with Iraq has set in among the U.S. public and, one suspects, with U.S. policymakers as well. The drop in violence that "the surge" helped to engineer has contributed to this sentiment, creating a perception that Iraq is on a glide path to some minimally acceptable outcome. Fake news pundit Stephen Colbert satirically captured this sentiment during his visit to Baghdad in June 2009, when he "declared" victory based on his conclusion that the Iraq War must be over because no one was talking about it anymore.[1] This combination of weariness and a sense that things are finally on track is reflected in the policy debate, which since the summer of 2008 has been predominantly concerned with establishing an appropriate withdrawal schedule for U.S. troops. While there is a recognition of the accompanying need to address the political drivers of conflict in Iraq, few concrete ideas on how to facilitate among Iraq's major communities the trade-off of interests essential to achieving lasting stabilization in the country have been put forward.

This is problematic because the core cause of instability in Iraq remains a continuing struggle for control over power and resources. The starting point for a strategy therefore should be for the United States to support Iraqis in finding a way to address competing claims to the revenues produced by the country's vast oil reserves. In and of itself, this is no great insight. Clearly the Bush administration was aware of the importance of oil to a political settlement in Iraq. It devoted substantial capital in trying to forge consensus on a hydrocarbon law, which became the administration's primary political initiative in Iraq from 2006 onward. This effort has not been successful, but this does not diminish the importance of the issue. With the benefit of hindsight, this report reviews the core interests and incentives of Iraq's major communities with respect to oil, seeks to explain why the hydrocarbon negotiations failed in 2007, and attempts to show what the United States could do differently today to support Iraqis in achieving an oil agreement.

From this exercise, the report finds that while the Bush administration correctly identified the strategic importance of an oil-revenue-sharing agreement, the efficacy of the tactical decisions it made to accomplish such an agreement is open to debate. First, there was a mismatch between the legislation the United States prioritized—the hydrocarbon law—and the ultimate objective that it had identified, revenue sharing. The hydrocarbon law is focused on oil contracting and investment and says almost nothing about revenue sharing. This is problematic because Iraqis are significantly further apart over who should have the authority to sign oil contracts than they are on revenue sharing. In addition, U.S. promotion of an oil investment law runs directly into Iraqi suspicions that control of their oil was a chief motivator of the U.S.-led invasion. Second, American lobbying efforts focused solely on oil legislation and gave limited consideration to whether related amendments to the oil-related provisions of Iraq's Constitution might also be required. This decision was defensible given the clear difficulty of achieving constitutional reform in 2007; however, passage of oil legislation when many Arab Iraqis have doubts about the overall constitutional foundation of the Iraqi state has likewise proved difficult. The "legislation-only" approach should have been revisited after oil talks broke down in the fall of 2007 and calls for constitutional reform began to expand significantly within the Shia Arab community. That it was not is unfortunate. Constitutional amendments could enhance the stability and value of any compromises achieved in oil legislation, and they provide additional scope for a possible trade-off of interests in finding such compromises.

Looking forward, the report concludes that the U.S. political strategy for Iraq should be reoriented away from championing the hydrocarbon law to trying to support Iraqis in coming

to a comprehensive agreement on how to share the country's oil revenues. This would entail passing not only legislation to lay out the details of an automatic revenue-sharing system but also specific constitutional provisions that ensure the participation of oil-wealthy regions. This sharp focus on revenue sharing is recommended not only because of the broad political significance that a consensual agreement on oil-revenue sharing would have, but also because of the possible alignment of Iraqi interests on this issue. From a political-importance standpoint, the competition over Iraq's vast oil wealth underlies many of the country's numerous political disputes. An agreement on how to share the monies that fund Iraq's large public sector, its extensive social safety net, and security force salaries enables the possibility of a political resolution to these potential conflicts. From an interests and incentives standpoint, a stable national oil-revenue-sharing system may be the only area where the desire of many Arab Iraqis for nationally led governing arrangements and the financial interests of autonomy-minded Kurds overlap. Despite the record of three years of failed oil negotiations, revenue sharing represents a possibly unique area of potential compromise that should be explored further.

Oil and Identity: Diagnosing Core Interests

Iraq has been described as being founded as an oil company.[2] This characterization refers to how the victorious powers in World War I (and their associated national oil champions) who were involved in drawing the boundaries of the modern Iraqi state did so with a clear eye on oil dispositions.[3] The centrality of oil to the fabric of the modern Iraqi state is critical to understanding the depth of the issues involved in searching for agreement on oil legislation. Oil contracting and revenue sharing are not simply technical or commercial matters but rather serve as proxies for differing conceptions among Iraq's communities of the Iraqi state and their place within it.

Kurdish Coherence and the Iraqi Constitution

The starting point for understanding Iraq's oil debate is with the Kurdistan Region and the Iraqi Constitution, which for the Kurds has obtained the status of an almost sacred text as both the repository and guarantor of their post-2003 strategic gains.

The starting point for understanding Iraq's oil debate is with the Kurdistan Region and the Iraqi Constitution, which for the Kurds has obtained the status of an almost sacred text as both the repository and guarantor of their post-2003 strategic gains. Following the U.S.-led invasion of Iraq, the Kurdish political parties—alone among the representatives of the country's major communities—were able to successfully coalesce around a common vision for the Iraqi state and successfully advocate for it. The Kurds' ability to put aside long-running internal rivalries and focus on a common goal is in large part due to the power of the historical Kurdish narrative. This narrative is animated by the perceived betrayal of the international community in failing to recognize the Kurdish nation with a state and the extensive suffering endured by Kurds under Ba'athist-led Iraqi governments, including most tragically during the genocidal Anfal campaign.[4] The current leadership of the Kurdistan Regional Government (KRG), recognizing the impracticality of Kurdish independence in the current international strategic context, made federalism the sine qua non of its participation in a post-2003 Iraq.

This internal coherence, combined with informed advocacy for a decentralized federal state and a close relationship with the United States, has enabled the Kurds to set the pace of the oil debate. Remarkably, in a country that had always had a highly centralized and state-led oil sector, the Kurds were successful in creating a constitutional framework for Iraq where the main question was not what control regions should have over oil but rather what role was left for the national government.

This is a result of the Kurds having largely obtained in the constitution a legal structure for the Iraqi state where regional law trumps national law on most issues, including most significantly in oil matters. In the Kurdish view, the practical importance of this is that the role of the national government in oil activities within the Kurdistan Region is purely advisory and subject to the explicit permission of the regional authorities and legislature. Likewise, the participation of the Kurdistan Region in national oil contracting and revenue systems is seen as a voluntary choice and dependent upon conditions that national authorities must first meet. This treatment of oil is a microcosm of how Kurds believe Iraq should work.

For the Kurds, it is especially critical that they have the ability to chart their own course in developing oil in the Kurdistan Region, because they believe successive Iraqi governments deliberately neglected the development of the oil sector in their territory so as to marginalize the platform for Kurdish self-determination. In the words of KRG president Massoud Barzani,

> ever since the discovery of oil in Iraq in the 1920s, successive Iraqi governments have sought to keep oil out of Kurdish hands, blocking exploration and development of fields in Kurdistan. Saddam Hussein's government went even further, using Iraqi oil revenues to finance the military campaigns that destroyed more than 4,500 Kurdish villages and to pay for the poison gas used to kill thousands of Kurdish civilians.[5]

Sunni Dislocation

The treatment of oil is also an existential issue for Iraq's Sunni Arabs. Throughout its modern history Iraq has been a highly centralized state. Its golden age of prosperity in the 1970s is fondly recalled by many Sunni Arabs and is perceived by them to have been based on high oil prices and a centralized, state-led oil sector. For Iraq's Sunnis, the idea of a strong central government is linked to a conception of their community as lawgivers and administrators of Iraq and to the historical influence that the Sunni minority has exercised over the modern Iraqi state.[6] The Sunni attachment to a centralized state is also connected to a strong sense of Arab nationalism, in which Sunnis see their community as the natural steward and defender of a united Iraq.[7] Given the relative paucity of proven oil reserves in the Sunni-majority western areas of Iraq, Sunnis' identity-based suspicions toward federalism and decentralization are also buttressed by practical economic concerns.[8]

Among many Arabs, particularly within the Sunni community, oil and natural resource management is perceived as being intimately related to the territorial integrity of Iraq and the key factor in determining whether the country stays together. Kurdish achievement of regional control over oil resources in the constitution is therefore perceived as a threat to Iraq itself. This is not only because Kurdish control over oil reserves could provide the financial basis for future Kurdish independence, but also because it could set a precedent for oil-rich regions in Iraq's south. An Iraqi central government without control over its northern or its southern oil would be no government at all. In this respect, substantial resentment has developed against Iraqi Kurds, who are seen by some Sunni Arabs as having sought to take advantage of the weakness of Baghdad during the post-2003 maelstrom not just to secure their own autonomy but also to undermine the viability of Iraq as a whole.

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However, in contrast to the Kurds, the Sunni community has struggled to unite behind a set of broadly endorsed leaders and to articulate a common vision for the new Iraq. Isolated from the outside world during the sanctions era of the 1990s and instinctively opposed to the concept of federalism—seen as shorthand for partition—the community has struggled to articulate an agenda for the new Iraq beyond a return to past centralization. This fragmentation

and crisis in legitimacy is in part due to Saddam Hussein's elimination of any potential rivals within his own community but is also due to the vast upheaval in the Sunni community's position resulting from the 2003 U.S.-led invasion and its initial boycott of the political process during the January 2005 elections.[9] As Sunni groups have entered the political process, symbolically beginning with their almost unanimous rejection of the constitution in the October 2005 referendum, they have sought to reopen questions regarding Iraq's political configuration and the extent to which power should be decentralized.[10] The handling of oil has been at the forefront of this effort.

While the Kurds and the Sunni Arabs have tended to represent the opposite poles of the Iraqi debate on federalism, the views of the Shia on this topic are the most multifaceted and complex. This diversity has mitigated their ability as Iraq's majority community to impose an outcome on the oil debate.

Shia Heterogeneity

While the Kurds and the Sunni Arabs have tended to represent the opposite poles of the Iraqi debate on federalism, the views of the Shia on this topic are the most multifaceted and complex. This diversity has mitigated their ability as Iraq's majority community to impose an outcome on the oil debate.

As with the Kurds, the history of the Shia in modern Iraq is a troubled one, shaped by a shared sense of collective persecution by successive Iraqi governments that echoes the broader Shia sense of disenfranchisement within the Muslim world.[11] With respect to the constitutional negotiations and the 2005 elections, the Shia representatives strove to maintain the unity of the "Shia House" both to ensure that the community took full advantage of the historic post-2003 opportunity and to give political expression to their demographic majority.[12] This was despite two contradictory impulses with respect to federalism existing within the community. The first impulse was to ensure that enough devolution of power occurred to guarantee that a hegemonic centralized state capable of persecuting the Shia could not reemerge. The second was to maintain an effective and democratically elected central government that the Shia would assumedly lead by virtue of their demographic majority.[13] These differences on questions of federalism were somewhat papered over in the name of unity during the constitutional drafting process, creating a misleading impression that the constitution represented a consensus final view among the Shia on the shape of the new Iraq.

This Shia heterogeneity on federalism was obscured by the horrors of the unfolding sectarian conflict of 2006–07 and the prominent quest by the influential Islamic Supreme Council of Iraq (ISCI) to form a mega nine-province Shia region modeled on the Kurdistan Region. Not coincidentally, such a region would control southern Iraq's vast oil reserves and the oil fields that generate two-thirds of Iraq's current oil production.[14] While the ISCI has likely been Iraq's most influential and powerful Shia Islamicist party for the majority of the post-2003 period, it is important to realize federalism of this type has not been traditionally embraced by the Shia community as its preferred structure for Iraq. The Dawa Party, which has held the prime ministership in the two elected post-2003 Iraqi governments, has increasingly publicly favored greater central control over oil. What is less appreciated is that Dawa left the Iraqi National Congress umbrella opposition group in 1995 due to disputes over federalism.[15] Meanwhile, Shia politicians who did not participate in exile politics during the 1990s, such as Muqtada al-Sadr, have objected to federalism as a concept.[16] Similarly, the influential Shia religious leadership, the *marji'iyya*, are reported to look unfavorably on the idea of federalism in general.[17] In the words of one long-time Iraq observer, the Shia majority have never traditionally been for weakening or disintegrating Iraq but rather for a greater share of power within it.[18]

As the possibility of a minority takeover of the Iraqi government or return of the Ba'ath party has receded, the saliency for the Shia of maintaining a united political house has waned

and competing interests on oil and federalism have progressively come to the fore. With respect to oil negotiations themselves, the complexity of Shia views toward federalism is an overlooked factor that helps to explain the failure of hydrocarbon negotiations in 2007, but it is the subsequent evolution of internal Shia politics that perhaps points to a new approach on oil negotiations today.

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The Hydrocarbon Law Benchmark

In today's 24/7 news cycle, it is easy to forget how much attention and effort was invested by the Bush administration in the passage of a hydrocarbon law as the key to reconciliation among Sunnis, Shia, and Kurds in Iraq in 2007. That January, at the nadir of the sectarian conflict, then-president George W. Bush delivered an address to the nation on U.S. policy in Iraq. This address is best remembered for announcing the troop surge, whose stated objective was to create the political space necessary to enable national reconciliation by stabilizing the security environment.[19] The address also listed a set of political milestones, later codified by the U.S. Congress into benchmarks by which to monitor the political progress generated by the surge.[20] The first political milestone articulated by President Bush in the address read: "To give every Iraqi citizen a stake in the country's economy, Iraq will pass legislation to share oil revenues among all Iraqis."[21]

The efforts to negotiate and draft the hydrocarbon law were to receive extraordinary attention inside and outside of Iraq. This attention was in part due to the vast size of Iraq's untapped oil reserves and the persistent suspicion, also very strongly felt inside Iraq, that access to Iraq's oil was a chief motivator of the U.S.-led invasion. Despite appearing tantalizingly close to agreement at certain points, most notably in February and July 2007, as of late-2009 the hydrocarbon law has not been formally taken up by the Iraqi Parliament. It has now fallen substantially off the radar screen, generically referred to when talking about the need for political progress, but without a clear plan on how to achieve its long-delayed passage.

Unfortunately, there has been little serious analysis of why negotiations on the hydrocarbon law failed. Where this has been carried out, the finger of blame has typically been pointed at political squabbling and irreconcilable differences among Iraqis.[22] There is no doubt that in the final analysis Iraqi politicians must bear primary responsibility for reaching their own social compact on how to share power and resources. Notwithstanding this, a full evaluation of the U.S. role in the negotiations, which represented the Bush administration's primary political initiative in Iraq from 2006 onward, is important to help inform policy choices as the United States seeks to develop a political strategy for what it hopes is the endgame in Iraq.

The Strategic Importance of Revenue Sharing

The U.S. benchmark for the hydrocarbon law was framed around the explicit strategic objective of passing "legislation to share oil revenues among all Iraqis." This formulation was based on an understanding that as a state Iraq is uniquely dependent upon oil revenues to fund its budget. International Monetary Fund (IMF) statistics indicate that more than 90 percent of public expenditures in Iraq are financed by oil monies.[23] Moreover, in the absence of a robust and functioning private sector, a large segment of the population relies on oil-funded government support in some way, shape, or form.[24] From a governance standpoint, the fair sharing of oil monies is critical in ensuring the basis for functional government, service delivery, and a minimum standard of living across provinces. Given that the unequal geographic distribution

of hydrocarbons around the country is overlaid upon Iraq's ethnic and sectarian divisions, this fair sharing is also arguably critical to social peace. A stable oil-revenue-sharing agreement is therefore essential to Iraq's stability and at the heart of determining what type of country it will be.

The strategic importance of revenue sharing from a negotiation standpoint goes beyond its intrinsic political and economic importance and relates to its potential for compromise. This is because oil-revenue sharing, as distinct from oil contracting and management, is a possible exception to the Kurdish conception of how Iraq should work. The reason for this is Kurdish financial self-interest. Like the rest of Iraq, the KRG has limited nonoil revenues and large social-safety-net, civil service, and security-force-wage bills it must pay.[25] At the same time, the KRG is almost entirely funded by annual transfers of $5–6 billion from the national budget,[26] which is itself principally financed by oil production from outside of the Kurdistan Region.[27]

While the Kurds would likely prefer to finance themselves directly through local oil production, a national system where all revenues are pooled and shared based on population ratios results in a major financial windfall to the region—this will likely continue for the foreseeable future. Until recently the Kurds paid nothing into the pot and received an annual multibillion-dollar distribution from it. Even when the KRG was undertaking oil exports from the Kurdish region (from June to October 2009), it was still a net beneficiary from national revenue sharing.[28] Looking forward, by participating in national revenue sharing the KRG stands to substantially benefit from the ten contracts negotiated between the federal government and international oil companies in 2009. These contracts could result in Iraqi oil production increasing several fold over the next eight years, and the KRG would be entitled to billions in additional transfers through its population based share of the resulting revenues.[29] As one senior Kurdish member of parliament (MP) in the Iraq's Council of Representatives confided to the author, the Kurds would be crazy to want to leave Iraq and lose their share of Basra's oil.[30]

Tactical Misalignment

The irony of the Bush administration engagement on the hydrocarbon law is that while it clearly identified the strategic importance of oil-revenue sharing as the keystone of a social compact for Iraq, the efficacy of the tactical decisions it made to attempt to accomplish this objective is open to debate.

The first principal criticism of the Bush administration's approach is that the legislation that the United States prioritized—the hydrocarbon law—and the strategic objective that it had identified—revenue sharing—were mismatched.

Oil contracting and management versus revenue sharing

The first principal criticism of the Bush administration's approach is that the legislation that the United States prioritized—the hydrocarbon law—and the strategic objective that it had identified—revenue sharing—were mismatched. While the hydrocarbon law became shorthand for the overall Bush administration effort to attract much-needed investment into Iraq's oil sector and to ensure a fair sharing of Iraq's oil revenues, both because of the widespread attention it received and the political priority it was given, this particular law was in fact only one component of a four-part legislative package. Whether the hydrocarbon law, as compared to one of its companion pieces of legislation, was the right law to prioritize to accomplish the stated end goal of ensuring that Iraq's oil revenues were shared among all Iraqis is an open question.

The entire oil legislation package included the hydrocarbon law (also called the framework or the investment law), the revenue-sharing law, a law reorganizing Iraq's Ministry of Oil,

and a law reestablishing Iraq's National Oil Company. The hydrocarbon law itself is primarily concerned with attracting investment into Iraq's oil sector by defining responsibilities for the management of petroleum resources, including setting out licensing and contracting procedures. In fact, only one out of the draft hydrocarbon law's 43 articles deals with revenue sharing.[31] In other words, it largely does not address the challenge of setting up a detailed system for oil-revenue sharing, the supposed principal political objective of oil negotiations among Iraq's major communities. Based on this, it would in fact appear that the revenue-sharing law would be the natural point of attention for U.S. lobbying efforts.

This is not to say that a modern oil contracting and investment regime for Iraq is not badly needed. After decades of sanctions and neglect, Iraq's oil infrastructure is clearly in need of a substantial injection of investment and expertise just to maintain current oil production levels, to say nothing of the need for capital to conduct exploration of Iraq's vast untapped reserves. A modern hydrocarbon investment regime is therefore undoubtedly important to the future development of Iraq. However, in addition to the mismatch identified above, oil contracting is a very challenging area for the United States to play a facilitating role in. By virtue of the interest of American and other international oil companies in access to Iraq's oil reserves, U.S. input on contracting and the opening of the Iraqi oil sector to international investment runs directly into Iraqis' resource nationalism and suspicions on the motivations for the U.S.-led invasion.[32] For this reason alone, it probably should not have been an area where the United States was front and center in negotiations and media coverage.

Legislation only versus accompanying constitutional reform

The second principal criticism of the Bush administration's approach relates to the sole focus of American lobbying efforts on oil legislation and the limited consideration as to whether amendments to the oil-related provisions of the Iraqi Constitution might also be required to achieve the objective of a fair sharing of oil revenues. Constitutional amendments would undoubtedly have been more difficult to achieve, and the choice to focus solely on legislation was a defensible one for this reason. Notwithstanding this, with the failure of the hydrocarbon law talks apparent by September 2007, a policy review was warranted. If achieved, constitutional amendments would enhance the reconciliation value and stability of any compromises achieved in oil legislation, and they would provide additional scope for a trade-off of interests in finding such compromises.

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Here it should be recalled that the principal reconciliation aim of the hydrocarbon law was to dampen the then virulent Sunni-led insurgency by reassuring Iraq's largely oil-poor Sunni community of its place in the new Iraq. The hydrocarbon law was seen as necessary to achieve this given the lead role over oil that the constitution gave to existing (Kurdistan) and future (assumedly largely Shia) regions. In particular, the constitution gave the federal government a role in managing and distributing revenues from Iraq's currently producing oil fields while saying nothing on so-called future fields.[33] With Iraq estimated to have in excess of 100 billion barrels of undiscovered oil reserves, and with up to two-thirds of its discovered fields not currently producing,[34] the constitution's silence on this matter is highly significant. It was also not a simple drafting oversight. KRG officials have consistently maintained that the silence of the constitution on this matter is intentional and signifies that future oil is under the absolute authority of the regions.[35] This is of course precisely the fear of those Iraqis who favor a stronger national government.

The Bush administration hoped that agreement on a hydrocarbon law could help to

allay these fears by filling in the details in areas not fully addressed by the constitution. In one important sense the February 2007 draft hydrocarbon law succeeded in this task by developing uniform arrangements for both current and future oil fields in terms of contracting. This appeared to address a major uncertainty and source of concern on the viability of the federal government for the non-Kurdish parties. However, while a hydrocarbon law might be able to clarify the current versus future oil fields issue, as ordinary legislation it is unable to address the hierarchy that the constitution establishes between national and regional laws.

This seemingly technical issue goes straight to the heart of political debates over what the new Iraq will look like and is important to understand. Here the critical point is that, with the exception of a set of exclusive powers explicitly given to the federal government, the Iraqi Constitution gives regional law "priority" over national law (in article 115) and regional legislatures the ability to amend the application of national law within their region (article 121.2) on most matters.[36] Critically, since oil and gas arrangements are not among the exclusive powers given the federal government, regional laws would theoretically supersede the national hydrocarbon law.[37] For Sunni Arabs especially, this calls into question the value of anything negotiated in the hydrocarbon law. They worry that no matter what is ultimately agreed to in the hydrocarbon law talks, the Kurdistan Region or a possible future region in the oil-rich south could *legally* choose to override the law or even opt out of national oil arrangements altogether.

A mechanism to address the hierarchy of national and regional law does exist. The early review of the Iraqi Constitution was agreed to through the insertion of article 142 at the end of the 2005 constitutional drafting process. The constitutional review was created as a means to try to avoid a Sunni boycott or even defeat of the constitution during the October 2005 referendum. Moreover, the constitutional review was also one of the Bush administration's political benchmarks. However, the constitutional review did not receive substantial U.S. support, principally because of administration officials' worries that it would complicate hydrocarbon talks and the belief that the Shia and Kurdish communities would not entertain substantive changes to the constitution.[38] This position had merit, as it is indeed the case that constitutional amendments are extremely difficult to achieve, especially because the Kurdistan Region holds a veto over constitutional reform.[39] In 2007 especially it was probably not possible to amend the constitution to address Sunni concerns about regions overriding national law, and the Iraqi Parliament body assigned this task was unable to achieve a package of reforms acceptable to Kurdish leaders in particular.[40]

Passing oil legislation when many Arab Iraqis have doubts about the overall constitutional foundation of Iraq has proved very difficult.

However, while the understandable U.S. worry was that constitutional reform efforts might derail hydrocarbon law talks, it has also turned out that the reverse might be true—namely, passing oil legislation when many Arab Iraqis have doubts about the overall constitutional foundation of Iraq has likewise proved very difficult. To date, the United States has not developed a response to address this conundrum. As will be seen in the next section, since 2007, calls for constitutional reform have expanded beyond the Sunni community. It is eminently preferable that a way to address these calls is found through political and constitutional means. In this sense, the explicit statement of support for article 142 by the White House in a December 2009 press release is a positive development and the first high-level U.S. reference to the process of constitutional amendments since 2007.[41] The obvious question that now arises is whether a "legislation-alone" approach still makes sense and whether there is anything that the KRG can be offered in order for it to accept carefully constructed constitutional amendments on oil matters.

The Evolution Of Iraqi Politics: Oil, Federalism, And The Hydrocarbon Law

The combination of these two tactical choices by the United States, the focus on the oil contracting over revenue sharing and a "legislation-only" approach, and how these choices intersected with evolving Iraqi politics on oil and federalism have not been well understood. From 2006 to 2008 actors in the national government and the KRG had little immediate political or financial imperative to make the compromises necessary to pass a hydrocarbon law, and even had some reasons not to do so. The heavy U.S. lifting on the hydrocarbon law was not able to counterbalance these considerations and was also to arouse serious protest on grounds of resource nationalism from Iraqis.

Iraqi Ambivalence Toward the Hydrocarbon Law

A little-commented-upon aspect of the hydrocarbon law benchmark was its general lack of resonance among Iraqis. For a piece of legislation that was supposed to be the key to reconciliation in Iraq, the hydrocarbon law was rarely put at the top of the agenda in meetings by Iraqi politicians and leaders (as opposed to Iraqis being continuously quizzed about it by Western officials). This relative indifference should have been seen as an indicator of larger problems with the overall diagnosis and approach being pursued by the Bush administration on oil legislation.

For a piece of legislation that was supposed to be the key to reconciliation in Iraq, the hydrocarbon law was rarely put at the top of the agenda in meetings by Iraqi politicians and leaders (as opposed to Iraqis being continuously quizzed about it by Western officials).

On the Kurdish side, the KRG was aware of the domestic political importance of the passage of a national hydrocarbon law to its key strategic ally, the United States. The Kurds therefore actively participated in the hydrocarbon negotiations, but did not push for its passage with anything like the tenacity it demonstrated, for example, in demanding the implementation of article 140 of the constitution on the disputed territory of Kirkuk. As one senior Kurdish official bluntly said to the author in July 2007, the draft law was of poor technical quality and not very good, but the KRG supported it because it was important to the United States.[42] The Kurds, as will be seen shortly, were much more interested in passage the revenue-sharing law and insisted that the hydrocarbon law could only be passed as part of a package that includes revenue sharing.[43]

The lack of resonance of the hydrocarbon law is however probably best observed by looking at the group among which it was supposed to have its principal appeal—specifically, Sunni Arabs living in oil-poor areas. In fact, some Sunnis even privately opposed the hydrocarbon law, fearing it would further entrench a decentralized structure for the Iraqi state. U.S. officials did not appear to fully understand the reasons for Sunni ambivalence, sometimes displaying open frustration that Sunnis did not understand that the draft hydrocarbon law was going to benefit their community by dropping the distinction between present and future oil fields.[44] However, as described, many Sunnis questioned the value of a national hydrocarbon law, however positive its contents, if it could be later overridden by the Kurdistan Region. This was spelled out in an April 2007 press release by the main Sunni bloc in the Iraqi Parliament, Tawafuq, which stated the draft hydrocarbon law contained positive elements on oil management issues, but also stated that the draft law "is fragile, non-obliging and incompatible with the Constitution." As a consequence, "regions can neglect this law . . . without being subject to . . . incompliance with the Constitution." The press release called for amendments to the constitution in order to "find the correct foundation on which the Hydrocarbon Law can depend" and suggested that the Law should prohibit oil contracts that do not involve full state ownership.[45]

Importantly, from 2008 onward, this position was increasingly voiced outside of the Sunni community. In early 2008, a senior MP in Prime Minister Nouri al-Maliki's Dawa Party and deputy chair of the Iraqi Parliament's Oil and Gas Committee, said that it was the settlement of political disputes on the constitution that would pave the way for the passage of the hydrocarbon law.[46] During UN-organized roundtables on oil and federalism in Baghdad and Erbil in 2008 and 2009, other Shia MPs and government officials consistently expressed concern about the negative implications for Iraq implied by the priority of regional oil legislation over national law. These opinions were voiced across the Shia political spectrum, including among Sadrists, a member of the independent Solidarity Front bloc, and federal Ministry of Oil officials. In the words of one MP,

> The priority of regional law over national law under Article 115 of the Constitution is making problems for the hydrocarbon law today and will create more problems in the future. The KRG can take whatever power it wishes and we have no power to object. It would be "very useful" to review Article 115 because while the Kurdistan Region might be the issue today, a Basra Region could create a big problem tomorrow for all of us, including the Kurds. [47]

Maliki's Dilemma

Iraqi prime minister Nouri al-Maliki was in a particularly difficult position when it came to the hydrocarbon law. On the one hand the Bush administration had effectively set the passage of the hydrocarbon law as a litmus test for the efficacy of the Maliki government and, to a certain extent, for its continued political support for Maliki as prime minister. In the summer of 2007, ahead of the much anticipated Iraq benchmark presentation by Ambassador Ryan Crocker and Commanding General David Petraeus to the U.S. Congress, Baghdad was abuzz with speculation about the status of negotiations on the hydrocarbon law and U.S. dissatisfaction with Maliki.[48] On the other hand, as is suggested by subsequent events, Maliki must have been significantly concerned with how internal political rivalries within the Shia community would be impacted by the passage of a hydrocarbon law.

From a political standpoint, in order to pass the investment- and contracting-focused hydrocarbon law, Maliki would have to go some way toward meeting Kurdish demands on the decentralization of oil-contracting authority. A hydrocarbon law acceptable to the Kurds would therefore not only strengthen Erbil vis-à-vis Baghdad but also create incentives for provinces in Iraq's oil-rich south to seek to form new regions so that they too could negotiate their own oil contracts.[49] While the southern provinces are predominantly Shia, from 2004 to 2009 the ISCI largely controlled their provincial governments. The ISCI is a political rival to Dawa and was of course the principal advocate for the creation of a mega Shia region that would control the south's vast oil reserves. Given that Dawa has headed both of Iraq's elected post-2003 national governments, the passage of such a law would appear to be politically self-defeating for Maliki. Further credence is given to this line of thought by the January 2009 provincial elections, where Maliki ran separately from the ISCI and successfully campaigned on a centralizing agenda, which included vocal advocacy for constitutional amendments to strengthen the role of the national government on oil management and revenue sharing.[50]

A hydrocarbon law acceptable to the Kurds would therefore not only strengthen Erbil vis-à-vis Baghdad but also create incentives for provinces in Iraq's oil-rich south to seek to form new regions so that they too could negotiate their own oil contracts.

The main factor that could have counterbalanced these political calculations for Prime Minister Maliki was financial. Oil revenues are the principal source of financing for public-sector salaries, pensions, service delivery, badly needed reconstruction, and Iraq's large defense and security budgets—all of which are important to any Iraqi government's stability and political

standing. The passage of a hydrocarbon law was widely seen as necessary to attract the investment to the sector necessary to increase production and therefore public revenues. However, despite this, the federal government was under little immediate financial pressure to increase oil production in 2007. From 2006 to 2008, Iraq was consistently able to raise crude oil export *revenues* by about 30 percent per year[51] and deliver record budgets despite average daily oil *production* only growing modestly.[52] This was made possible by the ever-climbing price of oil, which rose from around $60 per barrel at the beginning of 2006 to $147 per barrel in July 2008. There was no immediate financial imperative for the Iraqi government to pass an investment- and contracting-focused hydrocarbon law in order to increase oil production, especially when the Iraqi government's low budget execution rates in 2007 suggested that it could not even fully spend all the oil money coming in at existing production levels. This meant from an internal standpoint, as opposed to outside U.S. pressure, there was little reason for Maliki to compromise on major issues of principle with the Kurdistan Region, especially when this might have disadvantaged him vis-à-vis other Shia political actors.

The Kurdistan Region Moves Ahead

The KRG, perceiving the development of the Kurdish oil sector as fundamental to consolidating the long-term future of the Kurdistan Region, had a compelling strategic interest to take steps to attract international investment to develop oil production in the region. However, the Kurds did not want to do this at the cost of sacrificing in the hydrocarbon law what they saw as constitutional victories on the principles of regional autonomy over oil contracting. Perhaps most revealing is that KRG negotiators sought a side political agreement specifying that if the hydrocarbon law was not passed by the Iraqi Parliament as of May 2007, each side could proceed with its own separate contracting arrangements.[53]

The oil and gas law for the Kurdistan Region

With no national hydrocarbon law in sight—and relying on the Kurdish interpretation of the constitution—the Kurdistan Regional Parliament passed in August 2007 an oil and gas law for the Kurdistan Region. This regional law gave the KRG the authority to directly sign oil contracts, and states that no federal oil legislation shall have application in the Kurdistan Region without the express agreement of regional authorities. It also set a number of conditions for the participation of the Kurdistan Region in any national oil framework.[54] On the basis of this law, the KRG signed twenty-five oil exploration and production-sharing contracts with international companies in late 2007 and early 2008. Needless to say, both the regional oil law and the KRG oil contracts were controversial in Baghdad and made concrete non-Kurdish fears regarding the limited value of a national hydrocarbon law that was not accompanied by constitutional amendments.

In hindsight, it appears that the Kurds also had little interest to compromise for the early passage of a hydrocarbon law. The KRG has demonstrated that it does not require a national hydrocarbon law to sign oil contracts and initiate oil exploration and production in its territory. While the KRG will likely ultimately require some sort of agreement with Baghdad to undertake large-scale oil export from the region, the Kurdish contracts were expected to take two to three years to generate production. This meant that there was no compelling reason to compromise on a hydrocarbon law in 2007. Instead, the Kurds have been able to shift the terms of the oil-contracting debate by taking action. When oil negotiations resume with Baghdad, the

The KRG has demonstrated that it does not require a national hydrocarbon law to sign oil contracts and initiate oil exploration and production in its territory.

discussion will now more likely center around what will be an undoubtedly contentious—but tangible and technical—review of existing Kurdish contracts (as opposed to a more existential debate about the Kurdistan Region's ability to sign contracts in the first place).

The Kurdish desire for automatic revenue sharing

In contrast to their strong stance on oil contracting, the Kurds have showed consistent flexibility on oil-revenue sharing. In October 2006, one of the first drafts of the Kurdistan Region's oil and gas law, which could have been expected to set out a maximalist position, indicated that while the KRG believed it had the constitutional right to directly collect oil revenues from production in the region, these revenues could be collected by the federal government if a "fair and equitable" revenue-sharing regime was negotiated.[55]

The financial reasons for this flexibility on revenue sharing have been described. The KRG obtains almost the entirety of its funding through the annual federal budgetary process.[56] As long as this works smoothly, which it largely did when the Kurdish parties were the political kingmakers for any national government coalition from 2003 to 2007, the Kurds were under little immediate pressure to compromise on oil-contracting or constitutional issues. However, in the long run, the stability of revenue sharing by budget for the Kurds is less clear. Even at the height of their political influence, the Kurds complained about delays and interference with the delivery of their share of the budget.[57] As Kurdish-Arab tensions in Iraq increased from 2008 onward, the KRG became increasingly uncomfortable with the prospect of annual political negotiations on the Kurdish region's share of the budget in an Iraqi Parliament where Kurds are a minority.[58]

The fragility of the current situation for the Kurds was underscored during Iraq's 2008 budget negotiations, when there was a coordinated push by Sunni and Shia Arab MPs to cut the figure used to calculate the KRG's transfer from 17 percent to 13 percent (which would have represented an annual loss in funds of more than $1 billion for the KRG). The Kurds were able to protect their 17 percent share through the threat of a veto of the 2008 budget law by Iraqi president Jalal Talabani, who is also the leader of one of the two main Kurdish political parties. However, the veto power given to Iraq's three-member Presidency Council is a transitional mechanism limited to one term by the constitution. Even if the next president is a Kurd, which is not guaranteed, he may not be able to wield a veto threat to protect Kurdish interests in revenue sharing against an Iraqi Parliament that could operate in a more purely majoritarian manner.[59] Indeed, the issue has resurfaced in the preparation of Iraq's 2010 budget, with the Ministry of Finance reportedly proposing to use a 12 percent share to calculate the KRG transfer in the draft budget.[60]

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In contrast, from the Kurdish perspective, a revenue-sharing law would ideally provide the KRG with a transparent and automatic mechanism to transfer its share of oil revenues and a set of stable principles by which its allocation is calculated. In other words, the KRG is not just concerned with how the Kurds' budget share is calculated (17 percent versus 13 percent) but equally importantly with how this share reaches them (on time and in full). According to former KRG prime minister Nechirvan Barzani,

> We still depend on a system of budget allocation, rather than a constitutionally required revenue sharing mechanism. In the past few years, the people of Kurdistan have suffered considerably from repeated delays in budget distribution. We have no doubt that these delays are caused by political calculations rather than technical or administrative problems. With a Revenue Sharing Law in place, our regional government would have

> received its fair share on time. We would now have been in a better position to deliver much needed services to our citizens in the Kurdistan Region.[61]

Unsurprisingly, the Kurds have become the strongest proponents of the revenue-sharing law, and it is this strong Kurdish interest in its passage that may create the basis for a political agreement with Arab Iraqis on initial constitutional reform.

A Comprehensive Oil-Revenue-Sharing Agreement

The combination of enormous pressure by the Bush administration to pass the hydrocarbon law and the focus of the draft law upon an area—investment and contracting—in which the parties had wide differences and little incentive to compromise, led to what one U.S. adviser described as an elaborate form of Kabuki theater.[62] A U.S. embassy staffer commented to the author that Iraqis simply told visiting U.S. dignitaries what they wanted to hear, and related the anecdote of having to calm an excited visiting U.S. senator (later to become a presidential candidate) after receiving a "commitment" from a senior Iraqi government official that the hydrocarbon law would be passed within the month. In retrospect it appears unlikely that the hydrocarbon law was ever close to adoption. The Council of Ministers did approve of a draft of the law in February 2007, but this appears to have been largely a symbolic gesture aimed at alleviating U.S. pressure because the political agreement necessary to submit it to Parliament for a vote was clearly lacking.[63] Bush administration officials appeared to either not fully understand the depth of issues at play,[64] or were satisfied with being able to spin progress on the law at a time of enormous domestic skepticism of the war effort.[65] The heavy involvement of U.S. officials in managing the text of the draft law, and subsequent announcement of agreement on the February 2007 draft law in a press conference at the U.S. embassy, aroused the ire of Iraqi nationalists and tainted the law among Iraqis as appearing to be part of a U.S. effort to control "their" oil.[66] Iraqis deeply resented being rushed to quickly approve a piece of legislation so consequential to their future in order to meet external timelines related to the domestic political considerations of the Bush administration.

Despite a highly troubled drafting history, which has probably contributed more to creating mistrust than fostering reconciliation, a detailed, stable, and comprehensive agreement on oil-revenue sharing remains critical to reaching a social compact in Iraq. The question now is what, if anything, can be done by a new U.S. administration to help this process along. This question arises in an evolving set of circumstances, where Kurdish-Arab differences on federalism, oil, and the future of oil-rich disputed areas are described by Defense Secretary Robert Gates, Commanding General Raymond Odierno, and Ambassador Christopher Hill as representing the greatest danger to Iraq's stability.[67]

The urgent challenge is to create a framework for the political resolution of this incipient Arab-Kurdish conflict (as well as disputes along Iraq's sectarian fault line that threaten to reemerge as the U.S. withdraws from Iraq's towns and cities). The logical place to start is revenue sharing, which is perhaps the only area of overlap between many Arab Iraqis' desire for stronger national-governing arrangements and Kurdish financial interests. The KRG has stated that oil-revenue sharing is the key to ensuring the unity of Iraq,[68] the exact thing which many Arab Iraqis believe that Kurdish oil contracting and territorial claims are directed against. For his part, Prime Minister Maliki has said that there will be no return to the iron centralism of the past and that the constitution has "approved" federalism, but that constitutional reform is necessary to ensure national unity.[69] While he has added that this reform and other political disputes should be resolved by constitutional mechanisms,[70] many Kurds feel that Arab Iraqis

do want to return to centralism and are trying to get there by ignoring constitutional provisions that they disagree with. The United States and its international partners should try to present the parties with options and formulas on revenue sharing that align with their respective interests and challenge them to live up to their own words on these matters.

Supporting a Mutually Beneficial Trade

The United States should use its remaining political influence to explore with Iraqis the possibility of a comprehensive agreement on the passage of detailed revenue-sharing legislation and a specific set of constitutional amendments to help assure the participation of oil-wealthy regions in national revenue-sharing. Detail and certainty on the former would be of great assurance to the KRG, while the latter would be both substantively and symbolically important to most Arab Iraqis. There is no guarantee that this can be achieved, but the basic interest that the parties share in a stable and transparent national system, which neither side can unilaterally subvert, gives it a chance of success.

This comprehensive approach to revenue sharing would be both wider than that pursued by the United States since 2006 but also narrower than the grand bargain type deals on oil, federalism, and territory more recently proposed.[71] The possible trade-offs proposed in this section go beyond the U.S. "legislation-only" approach to consider the constitutional dimensions of the revenue-sharing issue. At the same time, they only explore a comprehensive legislative and constitutional deal on revenue sharing, and do not seek to directly link multiple issues such as oil and territory together in a grand bargain. While it is believed that the successful conclusion of a comprehensive oil-revenue-sharing agreement would positively impact upon a number of other political disputes in Iraq, the structure of possible deals on revenue sharing contemplated below is not dependent upon the simultaneous resolution of several different issues at once.

A Facilitating Approach

The days when the United States could micromanage Iraqi political structures and craft legislation have clearly passed. Furthermore, the ambivalence with which the hydrocarbon law was greeted by many Iraqi political actors points to the difficulties that the United States faces in trying to promote political deals that are not aligned with Iraqi interests and incentives. Now more than ever, the ability of the United States to contribute to a political settlement in Iraq rests upon its ability to accurately diagnose Iraqi interests and to develop discrete value-added contributions to Iraqi-led processes. This report has therefore spent substantial effort in trying to diagnose Iraqi interests on oil matters in order to show why U.S. support for a comprehensive Iraqi revenue-sharing agreement is more likely to result in political progress than continued U.S. prioritization of the investment- and contract-focused hydrocarbon law.

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The ability of the United States to make a contribution to the realization of a revenue-sharing agreement will also require a change in approach, from actively championing legislation to facilitating and supporting Iraqi-led processes. Indeed, while publicly bristling at U.S. interference in Iraqi politics, Iraqi leaders also complain about the perceived lack of attention being paid to the country, indicating that the space for this discreet outside support is there.[72] It is the author's experience from multiple negotiation settings in Iraq that, if given with proper respect and upon request, Iraqis will welcome the presentation of concrete options on contentious issues by impartial outsiders. It is rarely the case that these options will be taken up in the form presented, but they can serve as a basis to initiate discussions without any party having to

look weak by being the first to move from its opening position.

Finally, it is worth noting that the United States does not necessarily have to take the lead on or undertake this facilitating role on its own. On the similarly sensitive issue of competing Arab and Kurdish claims to Kirkuk, the United States and the United Nations have already successfully demonstrated their ability to work together, and in a configuration where the United States actively supports UN-led efforts. The ultimate resolution of the sensitive and highly complex issue of Kirkuk and Iraq's other disputed internal boundaries is a long-term challenge, yet the work of the United Nations Assistance Mission for Iraq (UNAMI) is an example of the type of outside support to sovereign Iraqi processes described earlier. UNAMI's in-depth research into disputed areas aimed to provide Iraqis with a substantial body of knowledge to help them find possible solutions to territorial disputes (rather than seeking itself to resolve the disputes), and its accompanying process of public consultation has provided an important pressure release valve.[73] UNAMI has also succeeded in launching a High Level Task Force for Dialogue with senior representatives of the KRG and the Iraqi government, in which it plays an active but supporting and facilitating role.[74]

With respect to oil-related issues, UNAMI has recently signaled its intention to try to help facilitate progress on revenue-sharing matters.[75] U.S. and UN coordination on oil matters is potentially attractive for a number of reasons. First, the UN possesses comparative experience in natural resource negotiations in a number of country settings; second, it has established relationships with a wide spectrum of Iraqi political leaders and groups that are potential stakeholders in a revenue-sharing agreement (some of which may be reluctant to formally meet with the United States); and finally, Iraqis could be more willing to accept support from UNAMI on this issue, because unlike major national actors, it does not have an affiliated oil company. However, while UN involvement should be actively explored and supported, even at this stage there is still no substitute for the United States to judiciously signal its backing for political initiatives, especially with its Kurdish allies.[76] In this respect, a public shift in U.S. focus from the hydrocarbon law to revenue-sharing legislation and related constitutional reform would send an important signal.

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Reorienting to revenue sharing

The first and most clear conceptual step of a new approach to oil matters would be to shift focus to the piece of legislation that is directly concerned with the objective at hand—namely, oil-revenue sharing. In contrast with the ambivalence generally displayed toward the hydrocarbon law, the KRG in particular has urged and continues to urge the adoption of a national revenue-sharing law as an absolute necessity and constitutional requirement. In unusually frank language about U.S. policy, the KRG minister of natural resources and chief oil negotiator, Ashti Hawrami, recently criticized the "unhelpful and misunderstood" Bush administration benchmark, which shifted focus to the hydrocarbon law and thereby put "the cart before the horse" by pushing an oil investment law without prior agreement on revenue sharing. According to Dr. Hawrami, this made negotiations on the hydrocarbon law itself "unnecessarily contentious."[77]

As the hydrocarbon law negotiations were disintegrating, the KRG and national government did attempt to negotiate a revenue-sharing law in May and June 2007. As could be expected, the KRG eagerly pursued revenue-sharing talks and announced on its Web site in June 2007 that agreement on a draft revenue-sharing law had been reached.[78] Importantly, the draft law established a fund for total financial resources, "including amounts received and obtained

from the sales of oil and gas all over the country"—in other words, a national system. It also set out a sequence of automatic transfers whereby the KRG receives 17 percent of "remaining revenues" after deducting certain national expenditures and strategic infrastructure investments by the federal government and gives the KRG a direct role in auditing the handling of Iraq's revenues.[79] For their part, senior Iraqi government negotiators have indicated that there is general agreement on the principles of revenue sharing and that this issue was essentially resolved.[80] However, the enabling revenue-sharing legislation has yet to come before the Council of Ministers, much less be brought forward to Parliament.

This seeming contradiction might be explained and addressed by the second element of the proposed new approach—namely, the consideration of specific constitutional amendments that would protect the revenue-sharing system established in a revenue-sharing law from being opted out of by oil-wealthy regions.

In this regard, federal government negotiators may agree with their Kurdish counterparts on the general principles of revenue sharing, which are in effect how the federal budget is already being calculated. However, requiring the KRG to have almost its entire funding approved by the Iraqi Parliament each year through the federal budget is a major source of leverage. Many Iraqi Arabs believe that the KRG is happy to rely on financing from oil revenues coming from the rest of the country for the present, preserving Kurdish oil reserves for some future date. At this point they worry that, after having been the beneficiary of a national revenue-sharing system, the KRG will employ its constitutional prerogatives to opt out of national revenue sharing. In order to pass a revenue-sharing law that provides for the automatic annual distribution of funds to the KRG, Iraqi nationalists may therefore ultimately require assurances that the Kurdistan Region or possible future regions will not have the legal authority to unilaterally withhold sharing revenues from their local oil production at a later date. Specific constitutional amendments on oil-revenue sharing might be able to provide this assurance.

A continuum of possible trade-offs

There is already basic agreement among Iraqis that the revenue-sharing law would establish a single national account into which oil revenues from all over the country would be collected and automatically distributed based on population ratios.

There is a continuum that can be used to illustrate the trade-offs between passing revenue-sharing legislation and a defined set of constitutional amendments under article 142 of the constitution. Under any scenario there is already basic agreement among Iraqis that the revenue-sharing law would establish a single national account into which oil revenues from all over the country would be collected and automatically distributed based on population ratios. The trade-offs would be made over the level of guarantees that the KRG would receive on the transparency and automaticity of this distribution against the extent of constitutional amendments restricting the ability of regions to opt out of the system. These illustrations are based on the previous observations that the KRG is as concerned with how the transfer of its share of the budget is carried out as it is with the size of its share. For example, in November 2009, President Massoud Barzani stated that "the current 17 percent of national proceeds from the sale of Iraqi oil should go directly to the Iraqi Kurdistan Region and not be paid via the federal authorities."[81]

At one end of this continuum, the KRG could receive near certainty on automatic revenue sharing and would be asked in return to accept constitutional amendments that include recognizing the primacy of national revenue-sharing legislation over its own laws. The KRG has indicated that while it supports the June 2007 draft revenue-sharing law, it much prefers its own May 2007 draft, which among other features had oil revenues being held and automatically distributed from an international bank rather than the Central Bank of Iraq.[82] The national

government objected to holding national revenues in an off-shore account as an abrogation of its sovereignty, but if this type of an arrangement is of such value to the KRG, it may be worth the while for Baghdad to explore what Erbil is willing to concede in terms of constitutional amendments in order to obtain it.

At the other end of the continuum, more modest constitutional amendments that make explicit the obligation of regions to share oil revenues but that do not touch the Kurdish redline of the priority of regional law could be contemplated. In this case, the level of guarantees received by the KRG in revenue-sharing legislation would be correspondingly lessened to those contained in the draft June 2007 revenue-sharing law. Similarly, a more limited set of amendments would mean that regional oil legislation remains superior to national law, but would create a basic constitutional requirement to share local oil revenues that the laws of the Kurdistan Region or any future region would have to respect. More limited constitutional amendments of this type would still be an achievement for the federal government because at present the constitution does not require regions to share local oil revenues with the rest of the country or even contain a principle that the national government needs a basic level of finance to fulfill its duties.[83]

Alternatively, a specific arrangement for revenue sharing with the Kurdistan Region, based on the Kurds' particular history and the KRG's high levels of capacity, and which would not apply to possible future regions in Iraq's south, could be attempted. Such an arrangement would satisfy the KRG's financial-based concerns and would potentially be seen as less threatening to the future stability of Iraq by Sunni Arabs and nationalist Shia Arabs. In return, the Kurds would have to agree not to use their veto against constitutional amendments that strengthen the powers of the national government in Iraq south of the Kurdistan Region, the type of centralization of power in Baghdad that the Kurdish political parties have traditionally been wary of but that they now state they are open to.[84] Something like this has been proposed by independent Shia MP Jabir Habib Jabir, who writes that a way needs to be found to deal "distinctively" with the Kurdistan Region so that the Kurds will have their "national peculiarities acknowledged" and "fears allayed" without Iraqis having to replicate the Kurdish model in the rest of Iraq, "in which case there would be no Iraq left any more."[85] Jabir, a Baghdad University political science professor is also an adviser to Grand Ayatollah Ali al-Sistani, which indicates that this concept may have some traction within the Shia community.

The efforts of the United States and its partners on oil matters should now be directed toward supporting Iraqis in exploring trade-off along this continuum.

Challenges to reaching agreement

Achieving this type of deal will not be easy. For the majority of the post-2003 period, the KRG, traumatized by its past and perceiving the constitution as guaranteeing its future, has been resolutely opposed to constitutional amendments. Further complicating matters, relations between the KRG and the national government have been strained since the summer of 2008. There has been an increase in recriminatory rhetoric and, most worryingly, multiple instances in which a confrontation has almost occurred between Iraqi Army units and the *peshmerga* (Kurdish regional guard; literally translated as "those who face death" in Kurdish).[86] The Pentagon now publicly worries about a possible future "lethal force engagement between Kurds and Arabs."[87]

The increase in Kurdish-Arab tensions has also played out in terms of oil-related facts on the ground. The existence of twenty-five oil contracts signed by the Kurdistan Region that

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have not been sanctioned by the federal government has not only contributed to the overall deterioration of Arab-Kurdish relations but also complicated the revenue-sharing issue. Now it is no longer just about sharing revenues among the parties but also about how international oil companies working in the Kurdistan Region are to be paid.[88] A revenue-sharing agreement may provide the scope and goodwill to resolve this issue. Even if it does not, simply waiting for the contracting issue to be resolved is not an option. As more of the Kurdish contracts come online without such a deal in place, the alignment of Kurdish financial interests with a national revenue-sharing system could start to wane. The possibility of the eroding of the possibly unique area of overlap between Arabs and Kurds on a national system (revenue sharing) should be a matter of serious concern. Fortunately, at this point the KRG continues to reiterate the need for a revenue-sharing law and to state that its passage should take priority as it would make it easier to resolve contracting disputes.[89] This opportunity should be seized while it still exists.

There are also some strategic-level developments that may enable progress on oil issues. The most unambiguous of these is the change in Iraq's financial outlook since 2007–08. In July 2008, oil stood at $147 per barrel, while by December of that year its price had fallen to $32 per barrel. This change is devastating for a country as reliant as Iraq on oil revenues to fund its budget. While oil prices have since recovered, they are still only about half of their July 2008 peak, and Iraq has been forced to raise money through loans and bonds to finance its 2010 budget deficit.[90] Thus, unlike in 2007, the federal government had a definite financial need to increase oil production in 2009.[91] With its own contracting efforts not gaining traction until late in the year, the revenue decline was likely the major reason why the federal government agreed to allow the KRG to start limited oil exports from the Tawke and Taq-Taq fields in June 2009. What even this tentative, limited, unstable, and now discontinued agreement[92] shows is that if it is in their mutual interest to do so, Iraqis will explore political deals even in the face of heightened Arab-Kurdish antipathy. Looking forward, if oil prices remain low, the federal government may feel compelled to explore a broader agreement with the KRG on oil matters. The contracts signed by the Iraqi government in December 2009 will need years to reach fruition and will require parallel transport and storage infrastructure investments to translate into revenue-producing exports. KRG oil contracts, signed in 2007 and closer to being production ready, could represent a source of extra revenues to help bridge Iraq through its current period of financial difficulty. The KRG shares the need to explore such an agreement, not only because its financial health directly depends on the federal budget[93] but also because its oil investors will be increasingly eager to start earning a return on their investments.

The KRG may now be psychologically prepared to consider specific constitutional amendments that would enable it to objectively improve its overall position by consolidating post-2003 gains.

The rapidly changing strategic context in Iraq may also enable the reconsideration of long-held views. On the Kurdish side, with a U.S. troop pullout and the uncertainties of a post-U.S. Iraq looming, the KRG may now be psychologically prepared to consider specific constitutional amendments that would enable it to objectively improve its overall position by consolidating post-2003 gains. Securing guarantees on stable, automatic, and transparent financing for the Kurdistan Region is a big part of this, as is addressing the potentially explosive dispute over Kirkuk. A credible oil-revenue-sharing arrangement that called for the oil revenues of Kirkuk to be shared among all Iraqis regardless of the ultimate administrative status of the province could only help to resolve this most important of issues to the Kurds. Such an agreement would add credibility to the KRG's stated position that Kirkuk is not an oil grab but rather an attempt to right a historical injustice, and perhaps start to address Arab fears about what the issue of the disputed territories signifies for the territorial integrity of Iraq.

On the political front among the Shia, it appears that the stance of Prime Minister Maliki and more nationalist Shia appears to have come to the fore. In anticipation of the January 2010 national elections, at least three "second-generation" mixed Sunni-Shia electoral alliances have formed that would appear to have centralist tendencies as relates to the shape of the Iraqi state.[94] The prime minister heads the most prominent of these lists and will appear to campaign at least in part on the need for constitutional amendments. Most recently, he has said that the constitution played a role during a difficult period of Iraq's history but "absolutely" needs to be changed to build a modern state.[95] Maliki's success in the provincial elections, due in part to this same centralizing stance, even led the ISCI to indicate that it has abandoned the idea of a southern region.[96]

With a higher level of Shia consensus on the need to enhance the role of the national government joining the preexisting Sunni view on this score, Maliki and other Iraqi nationalist leaders may be in a position to make a deal on revenue sharing. By doing so, they could obtain a revenue-sharing law where all oil revenues are collected into a single national account, and constitutional amendments to protect this arrangement against a regional override. Moreover, a prime minister able to secure such a deal would have achieved a political victory by becoming the first figure to achieve a major piece of constitutional reform. With the continued fragmentation of the Sunni political class, and the recent trend toward cross-sectarian political alliances, such a deal could help any Shia political leaders involved in striking it to expand their political appeal beyond their own community. This would certainly appear to have appeal to Prime Minister Maliki given his decision thus far not to participate in the reconstituted unified "Shia House" slate for the 2010 elections but rather to run at the head of his own "national alliance" electoral list.[97] The precedent of a comprehensive revenue-sharing agreement could also be important in enabling additional political deals on the wider constitutional reform that Maliki and other Iraqi nationalists seek, something which is currently difficult to contemplate given the Kurdish perception of the constitutional text as sacrosanct.

Conclusion: The Big Picture

In and of itself, a U.S. withdrawal from Iraq is unlikely to cause Iraqis to reach compromise on core political issues; instead, it is unfortunately more likely to cause the parties to position themselves to fill the ensuing vacuum. In this scenario, outstanding political issues could ultimately be settled by force, resulting in continuing instability and a level of U.S. engagement in Iraq that the United States, the region, and Iraqis want to avoid. In the short term, the lack of resolution of oil-related issues will contribute to Arab-Kurdish tensions in north-central Iraq and could complicate or delay a U.S. troop drawdown.[98] The longer-term currents of such a scenario are more difficult to predict, but the history over the past thirty years of tragic internal conflict within Iraq,[99] the destructive regional and international wars of which it was part in this period, and the heavy costs of the more or less continuous U.S. military engagement related to Iraq over the past two decades[100] suggest that they could be substantial for all concerned. It is very much in the moral and strategic interest of the United States to do everything that it can in advance of a troop withdrawal to foster political compromise among Iraqis on key issues relating to the sharing of power and resources.

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This can only be accomplished by the U.S. supporting Iraqis in constructing political deals that serve Iraqi interests. In order to make such a contribution, the United States will need to undertake a change in both process and substance from the approach pursued by the Bush administration on oil matters. On the substance side, while the overall objective of achieving an

agreement for the fair sharing of Iraq's oil revenues remains unchanged, there should be a decisive shift from the Bush administration's prioritization of the passage of an investment- and contracting-focused hydrocarbon law to U.S. backing for a comprehensive oil-revenue-sharing agreement. On the process side, rather than seeking to manage the oil legislative drafting process as the Bush administration did in 2006 and 2007, U.S. officials should play a supporting and facilitating role while judiciously deploying remaining U.S. leverage to buttress Iraqi incentives for agreement and exploring opportunities for working with international partners such as the United Nations.

A new approach is required because of understandable Iraqi sensitivities with regard to sovereignty on oil matters and because of the greater alignment of Iraqi stakeholders' interests on revenue sharing as compared to who should have the authority to sign oil contracts. The current system of revenue sharing via the annual budgetary process is unstable, with the Kurds having to worry about an unfriendly Iraqi Parliament cutting their budget allocation and many Arab Iraqis fearing that the Kurdistan Region or a future oil-wealthy region will use their constitutional prerogatives to opt out of national revenue-sharing altogether. A possible way forward may therefore be to pass the automatic revenue-sharing legislation that the KRG seeks, accompanied by constitutional amendments to provide assurances to Iraqi nationalists on the continuing participation of oil-wealthy regions in national revenue sharing.

While important in and of itself, a comprehensive agreement on oil-revenue sharing has broader significance beyond the oil sector or financial considerations. As this report has sought to demonstrate, revenue sharing is possibly the only area where many Arab Iraqis' desire for nationally led governing arrangements and the financial interests of autonomy-minded Kurds overlap. Given the importance of oil to Iraq, revenue sharing is also the overarching principle for organizing the state, but it has yet to be resolved, leaving the final consolidation of a unified, federal, and democratic Iraq in doubt.[101] One prominent Iraqi MP has stated that "in the people's mind federalism is equated to taking possession of oil resources" and that Iraqis need to find a way to break this connection in order to move forward.[102] It is this connection that underpins Iraq's myriad fault lines, including competing claims to Kirkuk and its supergiant oil field, intra-Shia political competition in oil-rich southern Iraq, and the Sunnis' suspicions about what federalism will mean for their future. In addition, disputes over who has the authority to sign oil contracts (the main point of contention in the hydrocarbon law) would be easier to resolve if legislation on how to share the resulting revenues was in place. An agreement on oil-revenue sharing is by no means sufficient to resolve these issues, but it is part of laying the foundation to enable the possibility of resolving these disputes by political and constitutional means, rather than through a Hobbesian "might-makes-right" outcome.

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A comprehensive oil-revenue-sharing agreement has the potential to bind Iraq together by establishing the principle that all of Iraq's oil will be fairly and transparently shared among all Iraqis regardless of where it is located. Such an agreement appears to be conceptually possible if it incorporates Kurdish desires for automatic revenue sharing and contains a first step toward the constitutional reform increasingly sought by both Sunni and Shia Arabs. The United States should therefore reorient its political strategy to help Iraqis explore possible trade-offs on a package consisting of revenue-sharing legislation and related constitutional amendments. In a critical contrast to the absence of a clear Iraqi advocate for passage of the hydrocarbon law, there are Iraqi backers for each component of this type of a comprehensive revenue-sharing deal. Political agreement on an issue of this magnitude that is achieved through an Iraqi-led process and by making use of existing constitutional mechanisms would send a powerful signal

regarding the positive evolution of Iraq's polity. On the eve of a U.S. troop withdrawal, this could help provide the foundation for greater confidence among Iraq's major communities for negotiated solutions to other political disputes and increase the prospects for stability in the post-U.S. Iraq.

Notes

1. Colbert may be on to something. According to the Pew Research Center's Project for Excellence in Journalism, there has been a 92 pecent drop in the U.S. media's coverage of the Iraq war from January 2007 to July 2009. See Tricia Sartor and Dana Page, "Iraq—The Incredible Shrinking Story," July 9, 2009, www.journalism.org/numbers_report/iraq_incredible_shrinking_story.
2. See Mary Kaldor, Terry Karl, and Yahia Said, *Oil Wars* (London: Pluto Press, April 2007).
3. Perhaps most consequential was the decision to include the Ottoman *vilayet* (province) of Mosul, with its promising hydrocarbons geology and obvious large oil prospect near the small town of Kirkuk, in the new Iraqi state despite Turkish objections and Kurdish lobbying for a Kurdish state.
4. The most notorious of Iraqi government actions against the Kurds was the Anfal campaign, which occurred in the context of the Iran-Iraq War from 1987 to 1989. Anfal was not merely about the final phase of this war but also an attempt by the Ba'athist regime to end the Kurdish quest for meaningful autonomy or independence. According to Human Rights Watch investigations, the campaign entailed the mass summary executions and disappearances of many tens of thousands of Kurdish civilians, the widespread use of chemical weapons against civilian populations, the destruction and widespread looting of some two thousand Kurdish villages, the arbitrary detention of tens of thousands of Kurds, and the forced displacement of hundreds of thousands more. Human Rights Watch labeled the Anfal campaign as genocide. See "Genocide in Iraq: The Anfal Campaign against the Kurds," Human Rights Watch, July 1993, http://www.hrw.org/legacy/reports/1993/iraqanfal/.
5. Massoud Barzani, "Kurdistan Is a Model for Iraq," *Wall Street Journal*, November 12, 2008.
6. For a discussion of how, since the formation of modern Iraq, the Sunni Arab population has enjoyed disproportionate advantage in terms of well-paying and prestigious government employment, see Amatzia Baram, *Who Are the Insurgents?* Special Report 134 (Washington, DC: United States Institute of Peace Press, August 2005).
7. See Ali Allawi, *The Occupation of Iraq: Winning the War, Losing the Peace* (New Haven and London: Yale University Press, 2007), 409.
8. See, for example, Kamil al-Mehaidi, "Geographical Distribution of Iraqi Oil Fields and Its Relation with the New Constitution," *Revenue Watch Institute* (2006), in particular table no. 3.
9. Sunni Arabs effectively boycotted the vote for the Transitional National Assembly, which was charged with drafting the constitution, ending up with only 6 percent (17 out of 275) of the seats in the Transitional National Assembly, well below their approximate 20 percent share of the total population. This made it more difficult for them to place a brake on decentralizing arrangements incorporated into the constitution.
10. The constitution was almost unanimously rejected by Iraq's Sunni population, with the Sunni dominated Anbar governorate voting 98 percent against the constitution, the largely Sunni province of Salah ad Din voting 82 percent against, and the Sunni-majority province of Ninewa voting 55 percent against (see Independent Electoral Commission of Iraq, "Certification of Constitutional Referendum Final Results," October 25, 2005).
11. See, for example, the July 2002 "Declaration of the Shia of Iraq" (www.al-bab.com/arab/docs/iraq/shia02a.htm), which refers to the "sectarian bases of political power in Iraq" and the historically "anti-Shia bias" of these bases, and which calls for the full "confirmation of the Shia's civil and political rights in line with other groups in society." Relations between the Ba'athist regime and Iraq's Shia reached their denouement during the regime's brutal suppression of the Sha'aban intifada in mainly Shia southern Iraq following the 1991 Gulf War. Estimates of the number of Iraqis killed during the 1991 uprising vary from thirty thousand to sixty thousand, although some counts are much higher.
12. The Shia wanted to avoid a repeat of their boycott of the British-led constitutional and electoral process of the early 1920s, which is still perceived by some within the community as having resulted in a state that was dominated by the country's Sunni Arab minority. For the strategizing of the "Shia House" (the informal name given to the unified Shia electoral alliance that was the leading vote getter in Iraq's 2005 elections), see Allawi, *The Occupation of Iraq*, 205.
13. See the 2002 "Declaration of the Shia of Iraq," which argues for "grant[ing] considerable powers to the regions, including legislative, fiscal, judicial and executive powers, thereby removing the possibility of the centre falling under the control of a dominant group which would extend its hegemony over the entire country" but at the same time maintaining a central authority with "effective" powers. Signers of the declaration included individuals who would later hold the positions of minister of finance, minister of defense, minister of oil, national security adviser, deputy speaker of parliament, and vice president in post-2003 Iraqi governments.
14. Iraq's south currently accounts for about 1.7 million of Iraq's 2.4 million barrels per day (bpd) of oil production. It is also estimated to contain about two-thirds of Iraq's proven oil reserves.
15. See Noah Feldman and Roman Martinez, "Constitutional Politics and Text in the New Iraq: An Experiment in Islamic Democracy," Fordham Law Review 75, no. 883 (November 2006): 3.

16. See Edward Wong, "Top Shia Politician Joins Call for Autonomous Region in South Iraq," *New York Times*, August 11, 2005. Sadrist objections to the formation of new regions are likely based on a combination of ideology (Arab nationalism) and political calculation (the formation of a new region would geographically divide the Sadrist movement's two main bases of support in Baghdad's Sadr City and the extreme south of Iraq).
17. See Allawi, *The Occupation of Iraq*, 345–46.
18. See Patrick Cockburn, *Muqtada al-Sadr and the Fall of Iraq* (London: Faber and Faber, 2008).
19. See U.S. Government, "Initial Benchmark Assessment Report," July 12, 2007. The report states that during the surge, Coalition forces would play a temporarily greater role "in securing the Iraqi population," because "the levels of violence seen in 2006 undermined efforts to achieve political reconciliation by fueling sectarian tensions, emboldening extremists, and discrediting the Coalition and Iraqi Government. Amid such violence, it became significantly harder for Iraqi leaders to make the difficult compromises necessary to foster reconciliation."
20. See section 1314 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110-28).
21. Transcript of President George W. Bush's address to the nation on U.S. policy in Iraq, January 11, 2007. In the U.S. Troop Readiness Act and future White House reports on the benchmarks, the oil law milestone was formulated as "enacting and implementing legislation to ensure the equitable distribution of hydrocarbon resources to the people of Iraq without regard to the sect or ethnicity of recipients, and enacting and implementing legislation to ensure that the energy resources of Iraq benefit Sunni Arabs, Shia Arabs, Kurds, and other Iraqi citizens in an equitable manner."
22. See Paul Richter, "Iraqi Leadership's Failures Raise Pressure on the U.S.," *Los Angeles Times*, May 21, 2007.
23. According to International Monetary Fund (IMF) figures, crude oil exports and revenues of oil-related public enterprises accounted for 88 percent of government revenues in the 2008 budget. If one-off gains from mobile license auctions are excluded, oil-related revenues accounted for 94 percent of revenues. See IMF, "Iraq: First Review under the Stand-by Arrangement and Financing Assurances Review," Country Report no. 08/303 (Washington, DC: IMF, August 2008).
24. The IMF estimates that Iraq will spend a total of $21.2 billion on public sector pensions and salaries in 2009 and a further $13.4 billion on transfers to its population (including food rations and fuel and electricity subsidies). See IMF, "Iraq: Second Review Under the Stand-By Arrangement and Financing Assurances Review," Country Report no. 08/383 (Washington, DC: IMF, December 2008). COSIT (the Iraqi Statistics agency) estimates that the public sector in Iraq employs close to 3 million Iraqis (or 35 percent of the economically active population). See COSIT figures in United Nations Assistance Mission for Iraq (UNAMI) Inter-Agency Information and Analysis Unit, "Iraq Labour Force Analysis 2003–2008," January 2009, www.iauiraq.org.
25. An unpublished 2006 World Bank study estimated that two-thirds of KRG budget expenditures were on salary and pensions for public sector employees and *peshmerga* (Kurdish regional guard forces). World Bank, "Public Financial Management in the KRG" (draft, November 8, 2006).
26. The KRG's major alternative source of finance was locally collected customs revenues that amounted to US$60–70 million in 2006. See ibid.
27. As mentioned previously, two-thirds of Iraq's current oil production comes from southern Iraq. The majority of the remaining production comes from Kirkuk governorate, currently outside the administrative boundaries of the Kurdistan Region.
28. The KRG targeted 100,000 bpd of oil production in its Taq-Taq and Tawke fields following approval from the federal government to begin limited exports (Grant Smith and Caroline Alexander, "Kurdistan to Start Tawke, Taq-Taq Exports in June," Bloomberg.com, May 8, 2009). Given that total national exports were about 1.75 million bpd without Kurdish exports, the KRG was still financially better off pooling its 100,000 bpd with national production and receiving a share of total revenues based on its population size as opposed to going alone. This is for the foreseeable future only a hypothetical choice as the KRG requires federal approval to export oil, its exports travel through federal pipeline infrastructure, and are marketed by the national State Oil Marketing Organization.
29. Current Iraqi oil production is around 2.4 million bpd, but Iraqi Oil Minister Hussein al-Shahristani says that three of Iraq's southern oil fields will together pump more than 6 million bpd within eighty months after foreign companies complete development work that they were awarded in 2009 (Rachel Graham, "Iraq Minister Says Three Oilfields to Pump 6 Million Barrels," Bloomberg.com, November 9, 2009). Following the subsequent award of seven additional service contracts in December 2009, Iraq ultimately seeks to boost its oil production capacity to between 10 million and 12 million bpd although it is not clear how realistic these projections are. (Ben Lando, "Iraq to Rival Saudi output, if … ," Iraq Oil Report, December 14, 2009).
30. In personal communication with the author, Baghdad, June 2008. Basra is by far Iraq's most oil-rich province, estimated to have about 60 percent of the country's proven oil reserves.

31. This article generally refers to a principle on the national collection of oil monies and their distribution according to the constitution, and it tasks the Iraqi government to "submit a draft federal revenue law" to the Iraqi Parliament. See article 11 of the draft hydrocarbon law prepared by the Council of Ministers on February 15, 2007.
32. The draft hydrocarbon law inspired a group of 419 Iraqi academics, engineers, and oil industry experts to sign an open letter to the Iraqi Parliament stating that the draft law "lays the foundation for a fresh plundering of Iraq's strategic wealth and its squandering by foreigners, backed by those coveting power in the regions, and by gangs of thieves and pillagers." See Joshua Partlow, "Missteps and Mistrust Mark the Push for Legislation," *Washington Post*, September 5, 2007. Indeed, the expulsion of foreign oil companies from Iraq in 1972 remains one of the Ba'athist regime's, few popular acts.
33. See article 112.1 of the Iraqi Constitution.
34. Depending on how the term "current fields" is interpreted, Iraq is estimated to have about 115 billion barrels of proven reserves and prospects for a further 100 billion in new finds. See al-Mehaidi, "Geographical Distribution of Iraqi Oil."
35. Ashti Hawrami, "Oil and Gas Rights of Regions and Governorates," KRG.org, June 12, 2006, http://www.krg.org/articles/detail.asp?rnr=95&lngnr=12&anr=11678&smap=.
36. The Iraqi Constitution contains three basic articles relating to the distribution of powers between the federal government and the regions. Article 110 sets out a limited list of exclusive authorities of the federal government. Article 114 sets out a list of competencies that are to be shared between the federal government and regional authorities. Article 115 states that "all powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions," and that "priority" shall be given to regional law in the case of dispute in the shared powers listed in article 114. Significantly, oil- and revenue-sharing authorities are not listed in the exclusive powers of the federal government in article 110.
37. In fact, the oil and gas law of the Kurdistan Region, adopted by the Kurdistan Region's Parliament in August 2007, makes this claim and states that no federal legislation on oil matters will have application in the region without the express consent of regional authorities (see article 2.2). Given the absence of a federal hydrocarbon law, this claim has not been directly tested.
38. The author witnessed this both through the disparate level of media coverage given to the two benchmarks and in his interaction with U.S. embassy officials and frustrated Sunni politicians during 2007. Other observers encountered similar views: "Some officials of the United States government . . . have disavowed Article 142 and dismiss the amendment process as a political impossibility, given the dim prospects of persuading the powerful Kurdish and Shia drafters to make permanent concessions to Sunni Arab positions." See Jonathan Morrow, *Weak Viability: The Iraqi Federal State and the Constitutional Amendment Process*, Special Report no. 168 (Washington, DC: United States Institute of Peace Press, July 2006).
39. Article 142 of the constitution requires amendments agreed upon through the constitutional review to be put to a national referendum, where they must achieve both a majority "yes" vote countrywide and not have any three governorates (provinces) return a two-thirds "no" vote in order to be adopted. Since the Kurdistan Region consists of three provinces, it can by itself block the passage of any constitutional amendment.
40. On May 23, 2007, the Iraqi Parliament's Constitutional Review Committee produced a consensus draft report that in part proposed to make national law supreme on both oil and revenue sharing. In response, on June 13 the Kurdistan Region's Parliament, following a special session attended by then-prime minister Nechirvan Barzani, issued a report rejecting any proposed constitutional amendments that would increase the power of the federal government or decrease the powers of the Kurdistan Region. The Constitutional Review Committee failed to progress over the next two years and in July 2009 produced a final report containing, from the Kurdish perspective, an even more provocative set of amendments. See Jason Gluck, "Iraq's Constitutional Review Committee Declares Victory and Goes Home—Leaving a List of Proposed Amendments Sure to Inflame Arab/Kurdish Tensions," posted on the Comparative Constitutions blog, www.comparativeconstitutions.org/2009_08_01_archive.html.
41. See "Statement by the Press Secretary on the Passage of Iraq's Revised Election Law," The White House, December 7, 2009. http://www.whitehouse.gov/the-press-office/statement-press-secretary-passage-iraqs-revised-election-law.
42. In conversation with the author, Erbil, July 2007.
43. See KRG, "KRG Publishes Draft Federal Oil and Gas Law of Iraq in English and Arabic," press release, March 9, 2007, www.krg.org/articles/detail.asp?smap=02010100&lngnr=12&asnr=&anr=16644&rnr=223. The press release states that the KRG will support the draft hydrocarbon law provided that the annexes and other documents are concluded to the KRG's satisfaction and "if it is accompanied by an agreed revenue-sharing law for submission as a package to the Council of Representatives."
44. U.S. embassy and administration officials, in meetings with the author, Baghdad, June–August 2007.
45. See Iraqi Tawafuq, press statement, April 24, 2007.
46. See Ben Lando, "Top Iraq MP: Constitution Fix Then Oil Law," United Press International, February 11, 2008.

47. United Nations Assistance Mission for Iraq Roundtables on Oil and Federalism, held under the Chatham House Rule in Baghdad on November 25–26, 2008, and in Erbil on April 7–8, 2009.
48. See, for example, Richter, "Iraqi Leadership's Failures Raise Pressure on the U.S.," where an unnamed U.S. official is quoted as saying that intervention "is the eternal temptation for the Americans. As we get closer and closer to the fall, and the benchmarks are not met . . . there will be a growing appeal to the idea that if we can replace the top guy, we can get back on track." See also James Weisman, "Senator Calls for Maliki's Ouster," *Washington Post*, August 21, 2007; Sheryl Gay Stolbert and Jim Rutenburg, "Bush Takes a Step away from Maliki," *New York Times*, August 22 2007; and "U.S. Ambassador Criticizes Iraqi Leadership," *Miami Herald*, August 22, 2007.
49. Article 10.A of the February 15, 2007, draft hydrocarbon law gives the Oil Ministry, the Iraqi National Oil Company, and regional authorities the right to initiate oil exploration and production contracts. Ordinary governorates (provinces) are not provided with contracting authority by the draft law.
50. See, for example, Saif Nasrawi, "A New Divide," *Al-Ahram Weekly*, September 25–October 5, 2008. The article cites a September 2008 speech by Maliki where he called for constitutional amendments to strengthen the federal government. This presaged several months of similar statements in the run-up to the January 2009 provincial elections.
51. U.S. Government Accountability Office, "Stabilizing and Rebuilding: Iraqi Revenues, Expenditures, and Surplus," September 16, 2008.
52. For example, the 2007 budget was $41 billion, the 2008 budget and budget supplement totaled $55 billion, and the 2009 budget was originally forecast at $79 billion prior to the oil price slump (after which this forecast was cut several times). In the same time period, Iraqi crude oil production fluctuated between 2.0 and 2.4 million barrels per day.
53. See KRG president Massoud Barzani, "The Kurdistan Region and the Future of Iraq" (remarks made at the Center for Strategic and International Studies, Washington, DC, October 31, 2008), http://csis.org/event/kurdistan-region-and-future-iraq.
54. The oil and gas law of the Kurdistan Region states that the KRG will only cooperate with the federal government on oil matters subject to a number of conditions, including certain arrangements on revenue sharing, the restructuring of Iraq's oil industry, joint management of current oil fields, a role for the KRG in the management of the Iraqi National Oil Company, and a prohibition on federal government oil contracting activity in the disputed areas until the implementation of article 140 of the constitution (see articles 18–20).
55. See annex A of the Petroleum Act of the Kurdistan Region of Iraq for Submission to the Parliament of the Kurdistan Region, Council of Ministers, draft dated October 22, 2006.
56. The annual transfer to the KRG is calculated on the basis that the region is estimated to represent 17 percent of the national population and should receive 17 percent of expenditures. This figure of 17 percent is applied to total budgeted expenditures after the deduction of certain "sovereign" and "national" expenditures.
57. For example, on December 4, 2006, the Suleymaniya-based *Kurdistan Nwe* newspaper carried an article covering the visit of a KRG delegation headed by then-prime minister Nechirvan Barzani to Baghdad to address $485 million which the KRG believed to be outstanding from its share of the 2006 budget.
58. Former prime minister Nechirvan Barzani recently told the International Crisis Group (ICG), "The only thing that matters is a guaranteed revenue stream. We don't want any more threats [from Baghdad] of 'we will cut your budget.'" See ICG, *Iraq and the Kurds: Trouble along the Trigger Line*, Middle East Report no. 88 (Baghdad/Erbil/Brussels: ICG, July 8, 2009), 18.
59. During the 2008 budgetary negotiations, Arab Iraqi parliamentarians argued that 13 percent more accurately represented the KRG's share of the population. The KRG reportedly beat this challenge back in part by having President Talabani threaten to veto any reduction to the KRG's 17 percent share of the budget (see *Hawler* newspaper, February 13, 2008). At the time, Iraqi interlocutors told the author that Talabani's presidential veto threat extended to the passage of pieces of legislation that were important to other communities.
60. See Mustafa al-Hashemi, "Row over Kurds' share of Iraq's oil revenues," Azzaman newspaper, December 16, 2009.
61. See former KRG prime minister Nechirvan Barzani's speech marking the start of oil exports from the Kurdistan Region, June 1, 2009, www.krg.org/articles/detail.asp?lngnr=12&smap=02040100&rnr=268&anr=29800.
62. In personal communication with the author, Baghdad, March 2007.
63. Speaking about the draft hydrocarbon law, one Western energy expert noted that "quite a lot of it is not good. . . . A lot of the difficult questions were fudged, like revenue sharing and who controls the oil fields. These obviously are vitally important, but they [the U.S. administration] wanted a benchmark passed, so it was pushed." See Tina Susman, "Iraqis Resist U.S. pressure to Enact Oil Law," *Los Angeles Times*, May 12, 2007.

64. In August 2008, outgoing U.S. ambassador for economic affairs Charlie Ries said, "I was quite optimistic when I got here [in July 2007]" . . . that it would only be "a month or two" before the bill passed. "The more I understood what the real issues were," he continued, the more "it was clear this was going to be a major political challenge." See "Iraq: Oil Bill on Ice," in the "Babylon and Beyond" blog, *Los Angeles Times* (online), August 22, 2008, http://latimesblogs.latimes.com/babylonbeyond/2008/08/iraq-oil-bill-o.html.
65. In May 2007, a U.S. official in Baghdad reportedly "shocked" diplomats at the State Department's headquarters in Washington with a gloomy status report on the hydrocarbon law. A Washington diplomat responded, "What do you mean? We've been claiming it as a success. The president's been lauding it." See Richter, "Iraqi Leadership's Failures Raise Pressure on U.S."
66. See, for example, Joshua Partlow, "Missteps and Mistrust Mark the Push for Legislation," *Washington Post*, September 5, 2007. It describes how former U.S. ambassador Zalmay Khalilzad's "hands-on" efforts with regard to the law were seen by many Iraqis as inspiring a groundswell of Arab nationalist opposition to the law and stoking fears among their fellow countrymen that the United States was bringing in "its Exxons and Chevrons" to control their oil again.
67. See Anne Gearan, "Gates: Kurd-Arab Friction Top Problem in Iraq," Associated Press, July 29, 2009; and testimony of Ambassador Christopher Hill to the House Foreign Affairs Committee, "Outlook for Iraq and U.S. Policy," September 10, 2009, webcast at http://foreignaffairs.house.gov/hearing_notice.asp?id=1110.
68. See KRG, "Natural Resources Minister Urges Lawmakers to Pass Fair Transparent Revenue Sharing Law at UNAMI Conference," press release, April 25, 2009. Dr. Hawrami said, "It is my personal belief and real concern that if a fair, transparent and an unambiguous revenue sharing law is not enacted soon . . . then the unity and the future of the country would be at risk. . . . Real revenue sharing will bind us all together," www.krg.org/services/pda_detail.asp?lngnr=12&smap=02010100&rnr=223&anr=29077.
69. In a campaign speech in Karbala in December 2008, Maliki stated his support for forming a strong unified federal government while distinguishing this from previous centralism, saying that "the iron centralism of Iraq has left and will not be back." See *al-Sabah al-Jadeed* newspaper, "Al-Maliki: Iron Centralism in Iraq Went off and Will Not Be Back," December 28, 2008.
70. In resolving disputes with the Kurdistan Region, Maliki says he can only offer what is in the constitution. See "Al Maliki: Talks between KRG and Baghdad Resumes, Constitution Is the Base," PUKmedia.com, May 15, 2009.
71. See ICG, *Oil for Soil: Toward a Grand Bargain on Iraq and the Kurds*, Middle East Report no. 80 (Baghdad/Erbil/Brussels: ICG, October 28, 2008).
72. See "Biden Says His Trip Proves Iraq Remains a Priority," in "The Caucus" blog, *New York Times* (online), July 5, 2009, http://thecaucus.blogs.nytimes.com/2009/07/05/biden-says-his-trip-proves-iraq-remains-priority/?hp. Vice President Joe Biden quoted a senior Iraqi leader as stating that Iraqis were concerned that Iraq had moved to the bottom shelf of U.S. foreign policy concerns.
73. For fuller description of UNAMI's research, activities, and report to the national government and KRG, see the section titled "UNAMI's Report on Disputed Internal Boundaries" in ICG, *Iraq and the Kurds*. The section contains an overview of UNAMI's extensive investigation into the disputed territories' administrative, demographic, and military history, as well as the four possible scenarios its report produces for Kirkuk. The ICG report finds that the UNAMI report could offer an important platform for Iraqi negotiations on the disputed territories. It recommends full U.S. support for UNAMI efforts, because UNAMI is the best placed actor to mediate complex Arab-Kurdish territorial discussions, stating that such efforts cannot succeed without U.S. muscle.
74. The ultimate success of the Task Force is uncertain at this stage, but its establishment in the current strained Arab-Kurdish environment is an accomplishment. This is because it reflects a possible evolution in Iraqi views, which UNAMI has helped engender, on disputed territories—namely a Kurdish transition away from calls for an immediate referendum on Kirkuk's status and toward recognizing the need for some form of a preparatory dialogue, and an Arab Iraqi move toward accepting disputed internal boundaries as a legitimate issue that merits a political process.
75. See "Iraq: UN-Supported Forum Pledges to Work Out Sharing of Natural Resources," UN News Centre, June 17, 2009.
76. See, for example, Anthony Shadid, "Maliki Keeps Foes, Friends Guessing," *Washington Post*, August 1, 2009, which reports that "no one questions that Americans still carry tremendous influence here. Through a phone call . . . Vice President Biden was able to help delay a vote on a Kurdish constitution that some Arab officials saw as provocative." U.S. officials were also reportedly instrumental in arranging the first face-to-face meeting in more than a year between Prime Minister Maliki and KRG president Massoud Barzani during August 2009.
77. See Ashti Hawrami, "Opening Remarks" (remarks, UNAMI Conference on Hydrocarbon Resource Management in the Context of a Federal System, Erbil, April 7–8, 2009), www.krg.org/uploads/documents/Ashti_Hawrami_Opening_Remarks_English_April09__2009_04_25_h16m21s40.pdf.
78. See KRG, "KRG Publishes Draft Iraq Revenue Sharing Law," press release, June 21, 2007, www.krg.org/articles/detail.asp?smap=02010100&lngnr=12&asnr=&anr=18548&rnr=223.

79. See articles 2, 4, and 6 of the June 20, 2007, draft of the revenue-sharing law.
80. Officials from the federal Ministry of Oil and prime minister's Council of Advisers, in meetings with the author, January–June 2008. The major remaining point of disagreement is the size and definition of the so-called strategic investments that the federal government can deduct from the pool of national revenues prior to calculating the KRG's 17 percent share.
81. "President Barzani Meets Solana, Briefs EU Parliament's Foreign Affairs Committee," PUKmedia.com, November 14, 2009.
82. Ashti Hawrami describes the May 2007 draft as "good" and the agreed-upon June 2007 draft as "acceptable" but lacking a number of "clarities, transparencies and inter-governmental checks" that were in the earlier draft. See Hawrami, "Opening Remarks," April 7, 2009.
83. There are two articles on revenue sharing in the constitution. The first, article 112.1, appears to set out a population-based criterion for the sharing of oil revenues from "present" oil fields and the second, article 121.3, states that regions and governorates (provinces) are to be allocated an equitable share of those "revenues collected by the federal government" sufficient to discharge their duties and responsibilities. These articles are silent on what happens to revenues from future oil fields or those revenues that are not collected by the federal government (i.e., those collected by regions). In addition, the constitution does not contain a statement of principle that the federal government should receive the resources that it requires to carry out its duties and responsibilities under the constitution.
84. The June 13, 2007, report of the Kurdistan Region's Parliament on the Iraqi Parliament's proposed constitutional amendments states that "we do not oppose such amendments [which increase the power of the federal government] to the new regions, which will be established in future if the concerned parties considered public interest in that. Differences between federal regions is the case in many federal systems, considering the special status enjoyed by some regions."
85. See Jabir Habeeb Jabir, *Asharq al-Awsat*, November 16, 2008. Jabir writes, "The only solution [to the question of federalism in Iraq] seems to lie in dealing distinctively with Kurdistan Region. If the Kurdish leaders insist, as they have always done, on refusing to concede any of the powers that the Constitution has granted them, then the solution will be to expand rather than curtail these powers—i.e., to change the status of the Kurdistan Region from that of a federation into that of a confederation, which would amount to an acknowledgment of the current status quo. . . . This way, the Kurds will have their national peculiarities acknowledged, their historical and geographical grievances squarely addressed and their fears allayed, without other Iraqis having to replicate the Kurdish experiment in the rest of Iraq, in which case there would be no Iraq left any more."
86. Most notably in the disputed district of Khanaqin (Diyala province) during Operation Omens of Prosperity in August 2008, in Kirkuk during early 2009 following the deployment of the Twelfth Iraqi Army Division to the disputed province, and on May 8, 2009 in Bashiqa town (Ninewa province) during a visit to the disputed town by Ninewa governor Atheel Najaefi. See ICG, *Iraq and the Kurds*, 12–14.
87. See "Pentagon 'Very Nervous' about Arab-Kurdish Feud," Reuters, August 12, 2009.
88. See Samuel Ciszuk, "KRG-Baghdad at Odds over IOC Pay," IHS Global Insight, March 25, 2009, which is posted on Iraq Oil Report, www.iraqoilreport.com/oil/krg-baghdad-still-at-odds-over-ioc-pay-1232/.
89. See Ashti Hawrami, "Hydrocarbon Resources and Revenue" (presentation, UNAMI Conference on Hydrocarbon Resource Management in the Context of a Federal System, Erbil, April 7–8, 2009), www.krg.org/uploads/documents/Ashti_Hawrami_Presentation_English_April09__2009_04_25_h16m24s43.pdf.
90. Iraq's 2009 budget was cut by billions of dollars on three occasions following the collapse in oil prices. Iraq's 2010 budget of $67.3 billion has a projected deficit of $15.3 billion, which will be funded through issuing new treasury bonds and loans from international financial institutions. See Dow Jones Newswires (Hassan Hafidh), "Iraq Cabinet OKs $67.29B 2010 Budget, To Issue Bonds," *Wall Street Journal*, October 13, 2009.
91. One important area where the impact of falling oil prices has already been felt is the security sector. According to an article in the *Washington Post*, Iraq's security plans have been derailed because of the drop in oil prices, hampering efforts to buy ships, planes, and weapons and slowing down the construction of the necessary national supply chain. The article quotes a top U.S. commander as stating that "Iraq's budget shortfall due to low oil prices presents a challenge to building up the country's army and raises questions about whether it will be able to protect itself when U.S. troops leave." See Associated Press (Chelsea Carter), "US: Iraq Budget Shortfall Poses Security Challenge," *Washington Post*, September 30, 2009.
92. See Timothy Williams, "Defying Baghdad, Kurdistan Halts Oil Exports," *New York Times*, October 13, 2009.
93. The Kurdish language newspaper *AK News* reported on October 12, 2009, that the KRG's 2010 budget of $8.1 billion faces a "critical deficit" as a result of the strain on the overall federal budget due to reduced oil prices.
94. See Reidar Visser, "The Unity of Iraq Alliance: Another Second-Generation Coalition," Historiae.org, October 21, 2009. These coalitions include Maliki's State of Law coalition, the Unity of Iraq Alliance

between Interior Minister Jawad Bolani and Anbar tribe leader Abu Risha, and the alliance between former prime minister Iyad Allawi and Saleh al-Mutlaq's National Dialogue Front.

95. See "Iraq PM wants stronger central government powers," Agence France-Presse, July 11, 2009.

96. Ammar al-Hakim, political heir of late ISCI leader Abdul Aziz al-Hakim, said the following after elections: "We [ISCI] are stepping back to review (a) how we communicate to the people, (b) our program, and (c) our party organization. We will select a new way in the future. We believe in strong government in Baghdad, and we froze the discussion about federalism a long time ago." See Ammar al-Hakim, in an interview in *Al-Arabiya*, February 20, 2009.

97. Notwithstanding recent political developments, the elemental appeal of religious unity continues to exert pull on Shia political parties and leaders. According to the *Washington Post*, Prime Minister Maliki has come under "tremendous pressure" from the country's Shia establishment and religious leadership to run as part of the reconstituted Shia coalition, now called the Iraqi National Accord (INA), in the 2010 national elections (see Anthony Shadid and Nada Bakri, "In Sign of Times, Alliances Shift Ahead of Iraqi Elections," *Washington Post*, September 30, 2009). ISCI leader Ammar al-Hakim has also appealed to Maliki to join the INA: "Uniting our position is the most urgent need, and we will still work to accomplish this unity. It is the right of our people to expect that" (see "Iraqi Shiite Leader Appeals for Unity before Vote," *Asharq al-Awsat* (English edition), September 21, 2009). Press speculation continues that Prime Minister Maliki will join the INA; although denying that he will do so, he has stated his openness to exploring various coalitions after the elections (see Abdul-Zahra, "Iraqi PM: No Election Alliance with Shi'ite Rivals," Associated Press, November 10, 2009).

98. At a time when the United States was drawing down its overall number of troops in Iraq, Commanding General Raymond Odierno was developing plans to deploy more troops along "the Arab-Kurdish fault line," as described by Adam Ashton in his article titled "U.S. General Wants to Move Troops to Northern Iraq," McClatchy Newspapers, August 17, 2009.

99. Since the 1970s, internal conflicts in Iraq such as the Anfal campaign, the suppression of the uprisings that followed the first Gulf War, and the post-2003 sectarian conflict have been nothing short of catastrophic for Iraqis, resulting in at the very least five hundred thousand civilian deaths (and possibly closer to a million) as well as the displacement of a further six million Iraqis.

100. It is almost difficult to conceive, but beginning in 1990, the United States has had almost twenty years of essentially continuous military engagement related to Iraq, resulting in 4,500 U.S. lives lost, 31,000 U.S. injured, and direct nominal costs to the United States in excess of $700 billion.

101. This is the aspiration expressed in article 1 of the Iraqi Constitution.

102. UNAMI Roundtables on Oil and Federalism.

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The United States Institute of Peace is an independent, nonpartisan institution established and funded by Congress. Its goals are to help prevent and resolve violent conflicts, promote post-conflict peacebuilding, and increase conflict management tools, capacity, and intellectual capital worldwide. The Institute does this by empowering others with knowledge, skills, and resources, as well as by its direct involvement in conflict zones around the globe.

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This report analyzes the interplay of oil politics among Iraq's major communities and the intersection of this interplay with the efforts of the Bush administration to achieve passage of a hydrocarbon law. The report finds that while the Bush administration understood that an oil-revenue-sharing agreement is vital to achieving a political settlement in Iraq, there was a mismatch between the legislation that the United States championed—the investment and contracting focused on hydrocarbon law—and the strategic objective that it had identified, setting up a national oil-revenue-sharing system. The report finds that revenue sharing may be the only area where the desire of many Arab Iraqis for nationally led governing arrangements and the financial interests of autonomy-minded Iraqi Kurds overlap. It then recommends that U.S. political influence should be reoriented to play a supporting role in helping Iraqis come to a comprehensive legislative and constitutional agreement on how to share their oil revenues.

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