

**IRAQ AND THE KURDS:
TROUBLE ALONG THE TRIGGER LINE**

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IRAQ AND THE KURDS: TROUBLE ALONG THE TRIGGER LINE

EXECUTIVE SUMMARY AND RECOMMENDATIONS

As sectarian violence in Iraq has ebbed over the past year, a new and potentially just as destructive political conflict has arisen between the federal government and the Kurdistan regional government in Erbil. This conflict has manifested itself in oratory, backroom negotiations and military manoeuvres in disputed territories, raising tensions and setting off alarm bells in Washington just as the Obama administration is taking its first steps to pull back U.S. forces. A lasting solution can only be political – involving a grand bargain on how to divide or share power, resources and territory – but in the interim both sides should take urgent steps to improve communications and security cooperation, run joint military checkpoints and patrols in disputed territories and refrain from unilateral steps along the new, de facto dividing line, the so-called trigger line.

The conflict is centred on disputed territories, especially Kirkuk, which not only hosts a mix of populations – Arabs, Kurds, Turkomans and smaller minorities (which in some districts are dominant) – but also contains untold reserves of oil and gas. In the security vacuum of post-invasion Iraq, Kurdish forces rushed across the Green Line, the de facto boundary separating the Kurdistan region from the rest of Iraq between 1991 and 2003, to assert their claim to areas they deem part of their historic patrimony. A range of local and national actors challenged this claim, with the government of Prime Minister Maliki starting to push back against Kurdish influence in these areas since August 2008.

The result has been a steady rise in tensions along a new, undemarcated line that in military circles is referred to as the trigger line – a curve stretching from the Syrian to the Iranian border, where at multiple places the Iraqi army and Kurdish fighters known as *peshmergas* are arrayed in opposing formations. The deployment of the army's 12th division in Kirkuk in late 2008, in particular, enraged the Kurds and emboldened their Arab and Turkoman rivals.

Given growing tensions and the proximity of forces, as well as unilateral political moves by both sides in

the form of contracts for oil and gas extraction, alterations have occurred along the trigger line on several occasions. Poor communication could cause such local events to escalate inadvertently into broader conflict that neither party might find easy to contain. The Obama administration responded to the 12th division's arrival by sending an extra brigade into Kirkuk, which may have prevented a very tense situation from turning into open warfare. But U.S. influence inevitably is on the wane.

Given President Obama's repeated and unequivocal pledge to withdraw all U.S. forces by the end of 2011, with combat troops departing as early as August 2010, there is little time left for effective U.S. mediation: both the Kurdistan regional government and the federal government will be averse to compromise on fundamental issues ahead of legislative elections scheduled for January 2010; and some Iraqis, including Kurdish leaders, anticipating Iraq's collapse, could seek outside protection, thus potentially regionalising the conflict.

If the U.S. administration wishes to leave Iraq without being forced either to maintain a significant military presence or, worse, to return after the country disintegrates, it should craft an exit strategy that both encourages and pressures Iraqis to reach a series of political bargains. These deals, as Crisis Group has consistently argued, concern a federal hydrocarbons law, a settlement over Kirkuk and other disputed territories and agreement over the division of powers that jointly would pave the way for consensus on amending the constitution. In the interim, it should take urgent steps to help Baghdad and Erbil improve their mutual communications and security cooperation in disputed territories and persuade them to engage in substantive negotiations on the status of these areas. At the same time, it cannot exclude finding itself, against U.S. military commanders' better judgment, standing between the two sides to prevent armed escalation.

Along with its own efforts, the U.S. should provide full support to the United Nations Assistance Mission in Iraq (UNAMI), whose report on disputed internal

boundaries, issued in April 2009, could offer an important platform for negotiations on disputed territories and, in a grand bargain strategy, on the interlocking issues of power and resources as well. UNAMI is best placed to mediate the complex discussions that will be required but cannot succeed without U.S. muscle, if Iraqi stakeholders are to be pushed to reach a durable settlement.

Whatever the final terms of deals and however difficult it may be to reach them, forgoing them is no option. Without the glue that U.S. troops have provided, Iraq's political actors are otherwise likely to fight all along the trigger line following a withdrawal, emboldened by a sense they can prevail, if necessary with outside help. The Obama administration should make sure that the peace it leaves behind is sustainable, lest Bush's war of choice turn into its own war of necessity. The president's late June decision to appoint Vice President Joseph Biden as his informal special envoy for Iraq, Biden's focus on helping Iraqis reach political deals and support for UNAMI, as well as his subsequent visit to Iraq all point in the right direction. The test is whether there will be sufficient determination, persistence and follow-through.

RECOMMENDATIONS

To the Government of Iraq and the Kurdistan Regional Government:

1. Restart negotiations over issues of key concern, including:
 - a) unfreeze the five leadership committees in Baghdad and resume discussions on the questions under their remit concerning disputed territories, power sharing and constitutional reform, security and *peshmergas*, foreign policy and economics and oil/gas;
 - b) hold discussions on disputed territories as part of the task force established under UN auspices and institute confidence-building steps in individual districts, as per UNAMI's recommendations in its April 2009 report on disputed internal boundaries; and
 - c) support political actors in Kirkuk in negotiations, mediated by UNAMI, in furtherance of the objectives of Article 23 of the September 2008 provincial elections law concerning power sharing, voter rolls and property issues in Kirkuk, with a view to holding elections in Kirkuk governorate at the earliest opportunity.
2. Agree to take no further unilateral steps in disputed territories, such as issuing new oil and gas contracts,

and give clear instructions to military forces on the ground to remain in designated separate areas, except in those cases when both sides agree to joint operations against violent groups outside the political process.

3. Refrain from inflammatory rhetoric concerning mutual relations, the status of disputed territories and the issuance of oil and gas contracts in these areas, especially in the run-up to elections in the Kurdistan region on 25 July 2009 and in all of Iraq on 30 January 2010.
4. Agree to open channels of communication and coordinated action, including:
 - a) a channel for frequent communication between Iraqi Prime Minister Nouri al-Maliki and Kurdistan region President Masoud Barzani or their designated senior representatives;
 - b) the appointment of a non-voting official from each side to, respectively, the Iraqi cabinet and the KRG's council of ministers to promote early flagging of disputes.
 - c) a joint military coordination centre for non-urban areas in Kirkuk governorate for early warning and fact-based communications along the trigger line (to work in co-operation with the already existing joint police coordination centre in Kirkuk city); and
 - d) joint army-peshmerga checkpoints and patrols in all disputed territories, based on the Diyala experiment, guided by a joint security committee in each governorate and coordinated by a joint committee that includes political representatives of the KRG and federal government.

To the United Nations Assistance Mission in Iraq:

5. Support negotiations between Iraqi stakeholders on disputed internal boundaries by providing technical expertise and political advice at all levels where such negotiations are taking place (see above).
6. Move Iraqi stakeholders through these negotiations, and especially should they threaten to reach a dead end on their individual tracks, toward a grand bargain combining the issues of power, resources and territories, as proposed in the UN's report on disputed internal boundaries.

To the U.S. Government:

7. Exercise strong pressure on Iraqi parties and deploy political, diplomatic, military and financial resources to ensure a responsible troop withdrawal from Iraq

- that leaves behind a sustainable state, including through a peaceful and durable accommodation of its Arab and Kurdish populations.
8. Provide, in particular, full backing to UNAMI in mediating between Iraqi stakeholders on these key issues.
 9. Continue to apply pressure on Iraqi army and *pesh-merga* units not to take unilateral steps in disputed territories, and strengthen mechanisms aimed at improving communications and security cooperation to reduce chances of violent conflict.

Baghdad/Erbil/Brussels, 8 July 2009

IRAQ AND THE KURDS: TROUBLE ALONG THE TRIGGER LINE

I. INTRODUCTION

As sectarian fighting has receded since late 2007, a series of events has brought another conflict to the fore – between the Baghdad national government and the Kurdistan regional government in Erbil. It started with difficult (but ultimately successful) negotiations over a controversial clause on Kirkuk in the provincial elections law in July 2008¹ and was followed the next month by military manoeuvres in Khanaqin,² a poisonous Prime Minister Maliki-Kurdistan President Barzani dialogue of the deaf over federal powers that began in September, the deployment of the army's 12th division in Kirkuk at the end of the year, an Arab nationalist list victory in Ninewa governorate in January 2009 and a troubling pattern of altercations in disputed territories throughout, including at oil and gas field facilities.

The mix of military moves and anti-Kurdish rhetoric allowed Maliki to project himself as a leader defending Iraq's Arab identity and territorial integrity. As the provincial election results showed, this resonated well with the public outside Kurdistan. It is likely, therefore, that Maliki will employ the formula in his campaign to carry the parliamentary elections as well. This report analyses the further tensions between Baghdad and Erbil that can be anticipated during the coming year.

II. THE MALIKI-BARZANI SPAT OVER FEDERALISM

Emboldened by military successes against the Sadrists in Basra and Sadr City and against the Kurds in Khanaqin, Maliki's opening volley on the rhetorical court came on 17 September 2008, when he publicly touted the virtues of a strong central state, while simultaneously defending the principle of federalism:³

This does not mean a renunciation of federalism. Yes, we will establish federalism. However, we must say that the central government is stronger than the federal entities and that the federal entities are not stronger than the central government, as some think, with the central government only collecting and generating revenue and distributing it. This is how some see the central government – that it should be at this level of weakness. This contradicts the basic goal of building a strong state capable of defending itself.⁴

A few weeks later, Maliki went further, criticising the constitution for having been drafted "in haste", when Iraq was in transition, and declaring it now needed to be changed to clarify the division of powers between

³ This dual (one could say twisted) approach has a long history, reflecting profound political differences. When still in exile in the early 1990s, Iraqi opposition parties embraced federalism but, disagreeing on what it should mean, refrained from giving it content. The Kurds preferred an ethnic federalism that would support the emergence of an autonomous Kurdistan; other exile parties may not have backed federalism at all or, divided as they were, accepted it only as long as it remained undefined. Maliki is at the far edge of this spectrum, paying mere lip service to federalism, which was enshrined in the constitution before he came to power.

⁴ Maliki speaking to satellite television executives, quoted on the Abu Muqawama blog, www.blogged.com/blogs/abumuqawama.html, 23 September 2008. A month earlier, he first mentioned the need for a central government "more powerful than the federated regions". Quoted in *The Washington Post*, 2 August 2008. Terms used in the debate matter: Maliki and his political allies routinely refer to the "central" government, whereas the KRG uses the term "federal" government, which also appears in the constitution.

¹ Crisis Group Middle East Report N°80, *Oil for Soil: Toward a Grand Bargain on Iraq and the Kurds*, 28 October 2008, pp. 3-4.

² *Ibid.*, pp. 4-5.

the central government and the governorates, lest federalism handicap governance.⁵

In his September speech, Maliki also attacked *muhhasasa*, the unwritten post-2003 rule that positions should be allotted according to the presumed size of one's ethnic or religious group rather than merit.⁶ By this rule, the Shiites occupy the prime minister position (with one Kurdish and one Sunni Arab deputy), the Kurds take the presidency (with Shiite and Sunni Arab vice presidents), and the Sunni Arabs receive the consolation prize of speaker of parliament (again, with one deputy each from the other two groups). *Muhhasasa's* inexorable logic has gone much further, however, sometimes determining positions at very junior levels.

Kurdish leaders, who invested major capital in the new order's creation to prevent the return of a repressive state,⁷ have responded with outrage to Maliki's declarations. Masoud Barzani decried his November remarks, stating that the majority of Iraqis had voted for the constitution and that "any amendment that will diminish the powers of the Kurdistan Region will be unacceptable".⁸ The Kurdistan regional government (KRG)

weighed in by accusing Maliki of wanting not to amend but to suspend the constitution and declaring that the text "clearly specifies the distribution of powers" and thus required no amendment.⁹ Close examination of the debate shows, however, that every element of the constitution's provisions on power, territory and resources is contested between the two sides and that this debate, short of adjudication by the constitutional court, will contribute to further legislative gridlock.

Acknowledging the long odds against revising the constitution,¹⁰ Maliki toned down his rhetoric but extended his criticism of *muhhasasa* rule by also denouncing over-reliance on *tawafuq*, the effort to reach cross-ethnic and cross-sectarian consensus in decision making. In May 2009, he declared in a television interview that if consensus rule continued to be a problem in governance, the alternative would be majority rule:

In the beginning, consensus was necessary for us. In this last period, we all embraced consensus and everyone took part together. We needed calm between all sides and political actors. But if this continues, it will become a problem, a flaw, a catastrophe. The alternative is democracy, and that means majority rule. ... From now on I call for an end to that degree of consensus.¹¹

Over time, as provincial elections approached, the Barzani-Maliki "debate" across the airwaves degenerated into mudslinging, with Maliki accusing the KRG of separatist tendencies and Barzani suggesting that the Maliki government wished to restore dictatorship.¹² Their fight is unlikely to be resolved before the

⁵ Associated Press, 8 November 2008. Two months later, he likewise stated: "Iraq needs to change its laws and constitution to be able to defend its unity". Quoted by Agence France-Presse, 21 January 2009.

⁶ Maliki said that the members of the team negotiating the strategic framework agreement with the U.S. had been chosen "on the basis of professionalism, not on a quota basis [*muhhasasa*]" . Quoted on the Abu Muqawama blog, www.blogged.com/blogs/abu-muqawama.html, 23 September 2008.

⁷ The KRG has argued: "The Prime Minister believes that centralisation is the key to the problems of Iraq. Iraq's history, however, has proven that centralisation is dangerous. It has resulted in the country being controlled by a select group, and eventually by a single party and single individual. ... It is thus unfortunate and deeply regrettable that the press conference of Iraq's Prime Minister illustrates efforts being made to take the people of Iraq back to a period we are desperately trying to get beyond. It was a period where the excessive concentration, or centralisation, of economic and political power condemned all Iraqi peoples to unimaginable suffering". "Full text of the KRG response to Iraqi prime minister's accusations", Kurdistan Regional Government, 20 November 2008, at www.krg.org.

⁸ Press conference, 12 November 2008, at www.krp.org. Barzani also alluded to the Kurds' right to secede from Iraq should the constitution be violated: "Everyone must know that the preamble of the constitution states that commitment to the constitution guarantees the integrity of Iraq". Later he amplified: "In the preamble of the constitution, it says very clearly adherence to this constitution is a precondition to preserving the unity of Iraq. For sure, we will not accept an Iraq ruled by dictatorship. ... So long as Iraq is in possession of such a constitution and adheres to such a constitution,

Kurdistan will be part of Iraq". Quoted in *The Los Angeles Times*, 11 January 2009.

⁹ "Full text of the KRG response", op. cit. The KRG stated: "Despite his talk about the need to make amendments to the Constitution, what [Maliki] really wants is to suspend the Constitution, [which] he participated in drafting and for which he has expressed admiration [in the past]. The idea of suspending the Constitution is a very dangerous action indeed".

¹⁰ The Kurds could veto any constitutional amendments by their ability to mobilise a two-thirds majority in at least three governorates in a popular referendum. For a discussion, see Crisis Group Middle East Report N°75, *Iraq After the Surge II: The Need for a New Political Strategy*, 30 April 2008, pp. 26-28.

¹¹ Quoted by Reuters, 15 May 2009.

¹² In January 2009, Barzani stated: "We know there is someone who wants to restore dictatorship in Iraq through the control of army and the police". Maliki said, "I want to tell those who have ambitions to create a micro-state that our attachment to the constitution has allowed us to unify Iraq". Both quoted by Agence France-Presse, 25 January 2009. Kamal Kirkuki, deputy chairman of the Kurdistan National

2010 parliamentary elections. While there has been talk of removing Maliki through a no-confidence vote in the council of representatives, the political reality is that while the council could probably muster such a vote, it could not get majority support for a successor;¹³ a parliamentary coup would in effect entail the suspension of government. No party would like to be blamed for political gridlock in an election year. The better strategy – and the apparent chosen approach – for Maliki’s adversaries would be to keep him in power but as a weak leader unable to govern.¹⁴

Meanwhile, talks on resolving difficult political issues – disputed territories, power sharing and constitutional reform, security and *peshmergas*, foreign policy, and economics and oil/gas – remain frozen. In November 2008, the five main governing parties established five leadership committees to address these issues;¹⁵ they were supposed to report back within two weeks, but only one did.¹⁶ Negotiations over the strategic framework agreement and the provincial elections compli-

Assembly, went further, saying about Maliki: “I think he is a dangerous man. He is dangerous for Iraq. He is dangerous for democracy. He is a second Saddam in Iraq”. Quoted by the Associated Press, 14 February 2009.

¹³ Leaders of the Islamic Supreme Council of Iraq (ISCI) and the Kurdish parties held a meeting in Kurdistan in December 2008 to strategise about a no-confidence vote against Maliki. *The Los Angeles Times*, 11 January 2009.

¹⁴ The most the parties opposing Maliki could muster was the removal of the mercurial speaker of parliament, Mahmoud Mashhadani, a member of Tawafuq (a Sunni Arab Islamist parliamentary bloc) who was closer politically to Maliki than many in his coalition. He was replaced in April 2009 by Iyad al-Samarraie, the deputy secretary-general of the Iraqi Islamic Party (which was a member of the Tawafuq list in the December 2005 elections), after much bargaining. Samarraie promptly set off to summon and question ministers accused of corruption or incompetence, a welcome development but one that bore the whiff of an anti-Maliki campaign.

¹⁵ The five governing parties were the Islamic Daawa Party, Islamic Supreme Council of Iraq, Patriotic Union of Kurdistan, Kurdistan Democratic Party and Iraqi Islamic Party. The five leadership committees covered disputed territories (chaired by the PUK’s Nermin Othman), power-sharing and constitutional reform (ISCI’s Adel Abd-al-Mahdi), security and *peshmergas* (Daawa’s Nouri al-Maliki), foreign policy (the KDP’s Hoshyar Zeibari) and economics and oil/gas (the IIP’s Tareq al-Hashimi).

¹⁶ In November 2008, the disputed areas committee issued a report that the committee’s chair, Nermin Othman Hassan (a Kurdish official of the Patriotic Union of Kurdistan), claimed was “based on a consensus of views” but that reportedly failed to gain the support of the committee’s Arab members. “Report of the Disputed Areas Committee”, 22 November 2008, unpublished; and Crisis Group email communication, UN official, 20 December 2008.

cated their work. Since then, the chief obstacle appears to be open animosity between Maliki and Barzani. The committees have suspended their work, reflecting the leaders’ failure to overcome their personal differences for the sake of the greater good, as well as Maliki’s sense that he does not need to compromise, as his position is gaining strength.

Mahmoud Othman, an independent Kurdish lawmaker, lamented:

Each of the committees is chaired by a senior leader but they have not met since November. So the work of the committees has been frozen, with each side waiting for the other to make a move. The Executive Council also hasn’t met for seven months; the same goes for the National Security Council. No meetings mean no solutions.¹⁷

What may be changing this unhappy equation is the recent surge in violence and the reiterated U.S. deadline for a military pullout. This has proved sobering for groups on both sides of the divide – those who may have thought the U.S. could yet be persuaded to stay (the Kurds) and those who may have thought they could prevail following a U.S. departure (Maliki). Mahmoud Othman said:

Maliki thought that with time he could win. But with the latest violence he may be becoming more flexible. He came to the conclusion that the situation may not be so good for him. As for the KRG, it was hoping that the U.S. would intervene on its behalf, but the Americans told them to solve their own problems. In response, the KRG is becoming more flexible as well. Hopefully the two sides will start talking again.¹⁸

¹⁷ Crisis Group interview, Mahmoud Othman, independent member of the Kurdistan Alliance list in the council of representatives, Erbil, 24 May 2009.

¹⁸ Ibid. At the end of May 2009, there were rumours of a Maliki-Barzani meeting, but no such meeting has yet taken place.

III. THE DEEPENING KIRKUK IMBROGLIO

A. THE ILL-FATED ARTICLE 23 EFFORT

The most difficult of all the issues on the table appears to be the status of Kirkuk.¹⁹ Upon entering office, the Obama administration seemed to acknowledge its centrality. Vice President-elect Joseph Biden visited Basra, Baghdad and Kirkuk in mid-January, a week ahead of his and Obama's inauguration, promising that the administration would conduct a "responsible" troop withdrawal that would not threaten security gains. Biden also delivered a message from Obama to selected Kirkuki politicians that reportedly expressed the president's "special interest" in the Kirkuk question. Provincial council member Hasan Turan described the meeting:

Biden surprised us with his message. He said the Obama administration will set off with a \$1.2 trillion debt and will need to spend an additional \$1 trillion to fix the economy. This means that after 2009, there will be no more money for Iraq.²⁰ There are four principal issues that need to be addressed, including Kirkuk.²¹ He said: "If you fail, we will not defend democracy in Iraq. If you choose dictatorship, it's your choice. As Americans, we don't like to be humble, but we are forced to be. We have made mistakes in Iraq". And Biden addressed directly the question how we should deal with Kirkuk. He emphasised the need for a locally-generated solution.²²

¹⁹ See Crisis Group Report, *Oil for Soil*, op. cit; Crisis Group Middle East Report N°64, *Iraq and the Kurds: Resolving the Kirkuk Crisis*, 19 April 2007; and Crisis Group Middle East Report N°56, *Iraq and the Kurds: The Brewing Battle over Kirkuk*, 18 July 2006.

²⁰ A former U.S. diplomat in Iraq who was present at the Kirkuk meeting explained that Biden did not say there would be no more money for Iraq but something closer to: "There will be no more U.S. government development funds for Iraq". He asserted that "Biden stressed continuing USG involvement in Iraq that would be focused on civilian and military advisors, etc." Crisis Group email communication, 25 June 2009.

²¹ The others were the hydrocarbons law, the constitution and the integration of the awakening councils.

²² Crisis Group interview, Hasan Turan, provincial council member, Kirkuk, 4 February 2009. See also Associated Press, 13 January 2009. Rizgar Ali, the council chairman, missed the meeting but received the same message from U.S. officials afterwards: "He told us that we would have to settle the matter between ourselves". Crisis Group interview, Kirkuk,

In his confirmation hearings in April, the new U.S. ambassador to Iraq, Christopher Hill, underlined the importance of resolving the Kirkuk issue, a view echoed by members of the Senate Foreign Relations Committee.²³ The U.S. intelligence community's annual threat assessment listed failure to resolve the Kirkuk question as a key factor that could reverse security progress and predicted that "resolving disputed boundaries, primarily in northern Iraq, probably will be the most fiercely contested political issue to face Iraq in the next several years and poses the greatest threat to government stability".²⁴

However, the political situation in Kirkuk continues to stagnate. The mechanism ostensibly designed to break the deadlock, Article 23 of the September 2008 provincial elections law, proved just as ineffective in charting a way out of Kirkuk's predicament as Article 140 of the constitution before it. Under Article 23, a committee consisting of seven Kirkuki members of the council of representatives in Baghdad was to make recommendations on three principal issues: power sharing, voter rolls and property violations. Its deadline, 31 March, was extended by two months when the committee, which had hardly begun its work at that time, proved unable to reach consensus. On 31 May, having failed to make significant headway, it handed the matter back to the council of representatives.²⁵

Aided by Kirkuki politicians, the committee achieved limited progress only on the power-sharing question. Kirkuk's leaders agreed early on how to divide senior positions (which they refer to as "sovereign" positions): a Kurd would become governor, an Arab deputy governor and a Turkoman chair of the provincial council. But at that point, trouble started, as Article 23 also calls for distributing less senior local government

3 February 2009. Hasan Turan also reported that in response to a question about his perceived earlier support for partitioning Iraq, Biden claimed that this was a Republican idea, that he had merely advocated federalism and that Obama did not support partition.

²³ In introducing Hill, Senator John Kerry, chairman of the Senate Foreign Relations Committee, listed the Kirkuk question as his top concern and said, "if progress is not made in defusing Arab-Kurdish tensions while American forces remain in Iraq, the window for peaceful resolution in Kirkuk and other disputed territories may close". Hearings, 25 March 2009.

²⁴ Dennis Blair, Director of National Intelligence, "Annual Threat Assessment of the Intelligence Community for the Senate Select Committee on Intelligence", 12 February 2009.

²⁵ In early July 2009, discussions were still ongoing about extending the 31 May deadline.

positions.²⁶ While all sides agreed to share positions according to a 32-32-32-4 formula (the Arab, Kurdish and Turkoman communities would each get 32 percent, while the Christians would get 4 percent), the problem lay in timing: the Arabs and Turkomans, who dominated local government at all levels until April 2003 and continued to do so below senior level afterwards, agreed to give up some positions in which they were over-represented but insisted on a process based on natural rotation (for example, through pensioning off older civil servants rather than lay-offs) that inevitably would take time.²⁷

The Kurds, by contrast, said they would be willing to forfeit some senior positions (mostly directors-general of the main departments) but insisted on guarantees that they would receive fair representation at the lower levels, from which they were long excluded, within a reasonable timeframe.²⁸ Why, they asked, should they give up those senior positions if there was no certainty they would receive their share of junior ones?²⁹

²⁶ Article 23 (1): “The elections in Kirkuk governorate, districts and sub-districts will take place after the implementation of the process of sharing administrative and security powers and public jobs including the Chairman of the Provincial Council, the Governor and the Deputy Governor among the main three components of Kirkuk governorate in equal percentages. The component which has the majority in the Provincial Council has the right to choose any one of the three top positions (the Governor, the Deputy Governor or the Chairman of the Provincial Council)”.

²⁷ A Kurdish politician explained: “There are three levels. First, there are the sovereign positions; these can be awarded within 24 hours. Then there are the director-general and sub-director positions; these are relatively easy, needing three to four months to resolve. Finally, there is the civil service, some 60,000 people. Of these, 56 percent are Arabs, 22 percent are Turkomans, 18 percent are Kurds and the rest are Christians. This third level will require time. Reallocating positions will need to be carried out in stages over several years. This has been the main obstacle in our negotiations”. Crisis Group interview, Awad Amin, independent Kurdish provincial council member, Kirkuk, 20 May 2009.

²⁸ A Kurdish leader said, “we are asking for guarantees from the executive and legislative branches of the federal government for the implementation of power-sharing with a deadline. We want official instructions from the leadership to determine what the vacancies are, funding for these positions and written commitments from all pertinent government agencies to implement the agreements within the given deadlines”. Crisis Group interview, Rizgar Ali, provincial council chairman for the PUK, Kirkuk, 20 May 2009.

²⁹ At a workshop organised by the Friedrich Naumann Stiftung in Berlin in late April 2009, 25 Kirkuki politicians (including eleven members of the provincial council, as well as the deputy governor) agreed to share power but remained stuck on the implementing mechanism. The compromise language (Article 4-7-a) read: “According to a time frame

The problem was that in theory only the Maliki government could provide guarantees, but it was unclear whether it was capable or willing to do so.³⁰ Even if it provided guarantees, how long would it take to implement the job changes? As a provincial council member put it, “in Northern Ireland, they still haven’t fully implemented the 1998 Good Friday accord”.³¹

No progress was made on the other two issues. When Kurdish leaders asked that Kurds displaced as part of Arabisation be allowed to register to vote, Arab and Turkoman politicians accused the Kurds of post-2003 demographic manipulation (bringing Kurds to Kirkuk who, they claimed, did not originate there) and called on them to surrender properties they allegedly had confiscated after April 2003 and remove their security forces, the Asaesh, from Kirkuk. This suggested that if Article 23 was to be implemented, it would have to be through a package deal, but the Baghdad-based committee was too far removed from Kirkuk realities and too internally divided to accomplish anything.

Some committee members suggested that sending the problem back to the council of representatives would be the better option in any event. For example, Omar Khalaf Jawad al-Jbouri, one of two Arab members, declared two weeks before the second deadline:

It was clear from the beginning that we would not succeed. The priority now should be to find a national solution for Kirkuk, to place Kirkuk in the Iraqi context. If we fail to reach a solution by 31 May, the matter will revert to the council. This would be better, as it will serve the national interest.³²

The all-important subtext here is that from the Arab perspective, the Kirkuk question could only be resolved in their favour if (Arab-dominated) Baghdad weighed

to be agreed upon as soon as possible by the pertinent specialised authorities, so that it reflects the urgent needs and interests of all Kirkuk’s communities”. Berlin Accord, 30 April 2009. The accord is unofficial, as the congregants were not a body authorised to negotiate agreements. Upon his return to Kirkuk, however, the provincial council chairman, Rizgar Ali, initiated a process to bring the accord to a vote in the full council.

³⁰ A Kurdish leader said, “we have reached a basic understanding. The problem is that we don’t trust the federal government. It cannot guarantee anything. It is unstable”. Crisis Group interview, Rizgar Ali, provincial council chairman for the PUK, Kirkuk, 20 May 2009.

³¹ Crisis Group interview, Tahsin Kahyeh, provincial council member for the Turkoman Islamic Union, Kirkuk, 20 May 2009.

³² Crisis Group interview, Omar Khalaf Jawad al-Jbouri, Kirkuk, 19 May 2009.

in directly against the Kurds, who have been stronger on the ground.³³ At the same time, Kurdish politicians were becoming so exasperated by lack of progress that some also began to view the federal government as the better venue to resolve the conflict, in part because they think they can count on support from some predominantly Arab parties in Baghdad, such as the Islamic Supreme Council of Iraq (ISCI) and former Prime Minister Iyad Allawi's group, both long-time allies of the Kurdish parties.³⁴

Once the Kirkuk question reverted to the council of representatives, the focus was on drafting an electoral law for the governorate.³⁵ That hardly solved the problem. If the council could draft a law without first settling the voter roll issue, or any of the three issues raised by Article 23, there would have been no need to empower a committee to study these matters in the first place. The only possible way forward, therefore, would be for the council to draft a law based on the existing rolls, which the Kurds reject because they reflect demographic realities forged as part of Saddam Hussein's Arabisation campaign. A decision by the council to push ahead could trigger a repeat of the July 2008 scenario, when its provincial elections law was vetoed by the three-member presidency council, one of whom is a Kurd and another of whom, ISCI's Adel Abd-al-Mahdi, frequently votes with the Kurds. To pre-empt another abortive effort, some Kurdish politicians now propose to leapfrog the council by asking the country's leaders to set the terms for Kirkuk elections with UN assistance, consistent with Article 23's final clause.³⁶

³³ An Arab politician in Kirkuk made this point as early as October 2008: "Perhaps, nothing [of Article 23] will be implemented. This is not a problem. The victory [inserting Article 23 into the provincial elections law] was that we moved Kirkuk from the local to the national level, and now the council of representatives can find out who is the real problem. If the committee fails, the matter goes to the council. This is what we want. We don't want to face the Kurds here; the Kurds will have to face the council. All the Kurds' actions will become evident to the council. Eventually, the matter will go to the national leadership. This will further broaden the issue. It will become a truly national concern with many different sides weighing in, a national dialogue". Crisis Group interview, Rakan Saeed al-Jbouri, deputy governor, Kirkuk, 28 October 2008.

³⁴ Crisis Group interview, Rizgar Ali, provincial council chairman for the PUK, Kirkuk, 20 May 2009.

³⁵ Article 23 (7) states in part: "Should the Committee fail to present its recommendations to the council of representatives, the council of representatives shall enact a special law for elections of the Kirkuk provincial council".

³⁶ An independent Kurdish provincial council member said, "the Kurds believe that with the existing conditions and the

There could be other ways forward.³⁷ The U.S. and the UN assistance mission (UNAMI) jointly could resurrect the Article 23 effort without reinstating the committee, mediating between Kirkuk's politicians to reach a power-sharing agreement while letting local technical committees address the thorny questions of voter rolls and property confiscations. Although this would exclude Baghdad, the council of representatives might have trouble ignoring the local people's expressed will.³⁸ A second option could be to move negotiations up to the country's top leadership; the KRG and federal government would jointly hammer out an electoral law for Kirkuk that they would then ask the council of representatives to pass.

Rakan Saeed, the deputy governor, painted a darker scenario in the last days of the committee's mandate:

Once the Article 23 committee fails, all talk of power sharing in Kirkuk will end. In that case, Arab members of the provincial council may call for a council boycott and ask the central government to take on the security file. The situation is getting worse, because we are reaching a dead end. We Arabs have reached the conclusion that this is all a waste of time. Some are even talking about armed opposition. This would lead to chaos. The other side is already using violence. The security situation might collapse. I am really afraid of what will happen next. Council members say they will

same approaches of each faction, no result will be reached that could persuade everyone. Rather than repeating the 22 July 2008 scenario, they prefer to submit the issue to the three presidencies, as stated in Article 23". Crisis Group email communication, Awad Amin, Kirkuk, 1 June 2009. Article 23 (7) reads in full: "Should the Committee fail to present its recommendations to the council of representatives, the council of representatives shall enact a special law for elections of the Kirkuk provincial council, and if this proves impossible, the three presidencies (the presidency council, prime ministry and the presidency of the council of representatives), with international assistance from the United Nations, will determine the appropriate conditions to carry out elections in Kirkuk".

³⁷ The two options described here were proposed by independent Kurdish council member Awad Amin. Crisis Group interview, Kirkuk, 20 May 2009.

³⁸ Kirkukis of all ethnic backgrounds and political persuasions are becoming increasingly convinced that they might be better off with a "local" solution rather than one imposed by outside parties. A Kurdish politician said, for example, "there is a growing sentiment that Kirkukis should decide for themselves. There is also a growing realisation on the part of Kirkukis that if they join the Kurdistan region, they will become second-class citizens. So imagine what the Arabs and Turkomans will become". Crisis Group interview, Dead Sea, Jordan, 2 December 2008.

respond to the demands of the street. It won't be a political decision but a response to public pressure. The other side will accuse us of supporting violence when it breaks out, but we cannot ignore the will of the people.³⁹

The likelihood that local elections will take place in Kirkuk remains small. The council of representatives has many pressing issues on its plate, including a referendum on the status of U.S. forces, a law for parliamentary elections in January 2010 and a hydrocarbons law. The Kirkuk issue is so nettlesome that the council may simply prefer to put it on the back burner; its members might also be reluctant in an election year to reach the sort of compromise it requires. This means that Kirkuk residents, who missed out on the January 2009 provincial elections, would remain disenfranchised and that both the council elected in questionable circumstances in January 2005 and senior local government officials would increasingly come to be seen as illegitimate;⁴⁰ this would likely affect governance. Moreover, in the absence of agreed voter rolls, Kirkuk residents may also be unable to vote in parliamentary elections in January 2010, increasing their frustration and powerlessness.⁴¹

Hasan Turan, a member of the Kirkuk provincial council, lamented:

In the absence of an Article 23 committee report, the issue will be taken out of our hands, and for the next six months any aspect of the Kirkuk question discussed in the council of representatives will be linked to the electoral issue, not the others

³⁹ Crisis Group interview, Rakan Saeed al-Jbouri, Kirkuk, 19 May 2009. In October 2008, shortly after the Article 23 Committee's appointment, he had this to say: "I'm comfortable with the idea that the committee will accomplish nothing. It may be a useful shock for the people and a message to the council of representatives that the matter has to be taken seriously". Crisis Group interview, Kirkuk, 28 October 2008.

⁴⁰ An Arab leader noted, for example, that in the December 2005 elections, five Arabs, five Kurds and one Turkoman were elected to the council of representatives from Kirkuk. He argued that if the earlier elections, in January 2005, had been fair, the Kirkuk provincial council would have reflected the same ratio – the same number of Arabs as of Kurds – rather than the one it ended up with (26 Kurds, nine Turkomans and six Arabs). Crisis Group interview, Berlin, 29 April 2009.

⁴¹ An Arab politician said, "we cannot participate in the national elections without having Kirkuk elections. If we vote in the national elections, it means that we accept the electoral records. But if we do, then we can vote locally as well". Crisis Group interview, Rakan Saeed al-Jbouri, deputy governor, Kirkuk, 19 May 2009.

[power sharing, properties], and according to the national interest, not ours. Council members will use the Kirkuk question for their own electoral purposes. Or they may postpone it until the next council takes its seats, which would mean we Kirkukis won't be able to participate in the legislative elections, because our voter rolls would have to be fixed first.⁴²

A tool designed to help untangle the complex demographic issue – the national census scheduled to take place on 24 October 2009, including in Kirkuk – could just as easily serve to complicate things even further, given the stakes and various actors' ability to manipulate demographics ahead of the count.

B. UNAMI'S REPORT ON DISPUTED INTERNAL BOUNDARIES

Meanwhile, the core question of Kirkuk's status remains unaddressed, as Article 23 calls for elections to be held before it can be settled.⁴³ Yet, there is no way around tackling Kirkuk's status. Crisis Group previously reported on lack of progress in implementing Article 140 of the constitution, which laid out a process for rolling back Arabisation and organising a census and referendum. However, the referendum deadline expired at the end of 2007, prompting UNAMI to chart an alternative path toward a solution.⁴⁴ In the next year, it undertook a thorough investigation of the disputed territories' history – demographic, administrative, military and otherwise – as a basis for assisting the federal government and the KRG in finding a mutually agreeable boundary between the Kurdistan region and the rest of Iraq.⁴⁵

In April 2009, UN Special Representative Staffan de Mistura formally presented UNAMI's long-awaited report on "disputed internal boundaries" to the presidency council, the prime minister and the KRG president. It proposed four possible scenarios for Kirkuk, while suggesting certain confidence-building mecha-

⁴² Crisis Group interview, Hasan Turan, provincial council member for the Turkoman Justice Party, Kirkuk, 21 May 2009.

⁴³ Article 23 (5) states in part: "The status of Kirkuk governorate, as provided for in the constitution, will remain as is until elections are conducted".

⁴⁴ Crisis Group Report, *Oil for Soil*, op. cit., pp. 7-11.

⁴⁵ Under the terms of UN Security Council Resolution 1770 of August 2007, UNAMI was charged with assisting the government of Iraq in addressing the internal boundaries question. In effect, however, UNAMI has assisted both the federal government and Kurdistan regional government in finding a solution.

nisms in other disputed areas that could lessen tensions and thus enable a durable solution.

The four Kirkuk scenarios were particularly important, especially for what they left out. They did not include the possibility of either Kirkuk's incorporation into the Kurdistan region – the Kurds' demand – or its remaining as a governorate directly under Baghdad. Each scenario envisioned stakeholders reaching a political agreement on the following: reformulating Article 140 to make it into a more detailed and legal formula; amending the constitution to keep Kirkuk a governorate not organised into a region (as with other governorates); linking Kirkuk as a governorate or region to both Baghdad and the KRG ("dual nexus", a form of shared custody); and granting Kirkuk "special status" as a governorate or region with significant administrative self-rule. The last two options would have to be endorsed by Kirkuk governorate residents in a referendum. In particular, the UN seemed to prefer a combination of options three and four – some kind of special status, with flexibility on how much control both Baghdad and Erbil would be allowed to exert.

Significantly and wisely, all four options were based on a broad reading of Article 140 of the constitution (which is conveniently vague) by embracing the notion of a referendum to settle Kirkuk's status. This way, UNAMI kept the Kurds on board, who have insisted on applying the constitution, even if they differ in their interpretation of what type of referendum Article 140 prescribes. UNAMI suggested a "confirmatory" (yes/no) referendum following a negotiated consensus-based solution rather than – the Kurds' interpretation – asking residents what Kirkuk's status should be based on uncertain and hotly contested demographics.⁴⁶ In sum, there was something in these

⁴⁶ Article 140 (2) of the constitution states: "The responsibility placed upon the executive branch of the Transitional Government stipulated in Article 58 of the Law of Administration for the State of Iraq for the Transitional Period shall be extended and conferred upon the executive authority elected in accordance with this constitution, provided that it completes normalisation, a census, and a referendum in Kirkuk and other disputed territories to determine the will of their citizens before 31 December 2007". By embracing Article 140 and the constitution more broadly, the UN report addresses the call of Kurdish leaders, from Masoud Barzani on down, that Article 140 should be implemented. As Barzani has invariably made clear, he expects the outcome of a referendum under Article 140 to be Kirkuk's incorporation into the Kurdistan region. In accusing the Maliki government of not implementing Article 140, therefore, he and others are referring to the Kurdish definition of the referendum mentioned in Article 140. By providing a new definition – a confirmatory rather than an ethnically-

proposals for all parties, which may help point the way toward compromise.

The responses were muted – for two principal reasons: the UN did not release the report publicly, instead giving the parties time to address factual errors and allow them to bring the report gradually into wider release; and it did not make explicit recommendations. While there have been few public statements, it appeared that Kurdish leaders were less opposed to the report's findings than Arab leaders, or at least wanted to make sure they looked that way. While the report did not contemplate Kirkuk's incorporation into the Kurdistan region, Kurdish leaders may have felt that because it did not preclude this option, and because UNAMI acknowledged the need to find a solution consistent with the terms of the constitution, it would be better to go along with the diplomatic process, given the likely fallout from rejecting a report that appeared to have the full backing of the Kurds' principal protector, the U.S.⁴⁷

The UN approach promptly led to a modification in the hitherto staunch Kurdish stand on Kirkuk's incorporation; leaders say they still want Kirkuk inside the region but would offer it a special governing status with power sharing and minority rights enshrined in the region's constitution.⁴⁸ Among Kurdish politicians in

based referendum – the UN stays squarely within the terms of the constitution.

⁴⁷ Crisis Group has not yet surveyed elite opinion on the UNAMI report, but anecdotally it appears that Kurdish leaders have decided to go along with the report and started preparing a thorough response to it; the Maliki government likewise does not want to look like it is rejecting the UN's ideas out of hand; Turkoman politicians are relatively satisfied with the report, especially its apparent preference for a special status for Kirkuk; but Arab politicians in Kirkuk strongly oppose, saying it is biased toward the Kurds; they insist on Kirkuk's remaining under Baghdad's direct control. Crisis Group interviews, Kirkuk and Kurdistan, May 2009, and Crisis Group email communication, Sadeq al-Rikabi, senior political adviser to Prime Minister Maliki, Baghdad, 28 May 2009. For example, a Kurdish politician said, "the KRG is none too pleased with the UN effort, and the same is true for the Arabs. But the Kurds will not reject the UN report and this will put the ball into the others' court. That would be the smart thing to do. The KRG worries that if it rejects the report, Maliki will pick one of the four proposed options. Instead, the KRG will evaluate the pros and cons of each option. The Arabs [of Kirkuk] all reject the report. The Turkomans have yet to stake out a unified position, but they are sounding positive". Crisis Group interview, Kirkuk, 20 May 2009.

⁴⁸ Crisis Group interview, Fuad Hussein, chief of staff to Kurdistan region President Masoud Barzani, Salah al-Din, 2 February 2009.

Kirkuk itself, the debate has evolved. They recognise that a special status outside the Kurdistan region may be inevitable. Awad Amin, an independent Kurdish provincial council member, posited the need for a workable power-sharing arrangement in the governorate's mixed-population areas prior to addressing the status question and resolution of property disputes before that, as a way of reassuring all communities.⁴⁹

Local Arab and Turkoman politicians also favour a special status, recognising it will give them greater powers than if Kirkuk remained a simple governorate, but they differ on the role Baghdad or Erbil should play.⁵⁰ Even some Kurdish politicians in Baghdad have sounded a more accommodating tone. Mahmoud Othman, for example, acknowledged that it would be "very difficult" for the KRG to bring Kirkuk into the Kurdistan region, given the alignment of political forces, and proposed a consensus solution instead, buttressed by a confirmatory referendum. He added, though, that

reaching a consensus-based agreement would prove equally difficult.⁵¹

All recognise that time is pressing. Provincial council member Hasan Turan verbalised it as follows:

There is international momentum toward solving Kirkuk, and it is coming from different sides. The Americans want a solution, and so it is supporting UNAMI and others. This is a historic opportunity. If it fails, there will be a war. Then opportunity won't come again.⁵²

Acknowledging the obstacles ahead, especially concerning Kirkuk, the UN report highlights the need for a broader Iraqi discussion on all key political issues – concerning territory, power and resources – in tune with Crisis Group's October 2008 grand bargain proposal. In a tentative start, in mid-June, de Mistura announced a new mechanism for the KRG and Baghdad government to "discuss issues of common concern, with UN facilitation ... based on the principles of a single united Iraq and respect for the Constitution".⁵³

The task force for dialogue on the UNAMI reports held its first joint meeting on 16 June, after the federal government and KRG agreed to a set of principles to guide its work. Meeting weekly under UN auspices, it is studying districts on an individual basis, highlighting areas needing attention and seeking agreement on basic confidence-building measures and covering relatively "easy" districts first, those whose population is overwhelmingly of one ethnicity. From there it is likely to move on to more complex ones, those with a broader mix of populations. At the end will loom Kirkuk, as the most difficult case.

The challenge lies in making this mechanism work, extending its scope and parlaying it into a broader channel for negotiations on all key issues beyond the territorial question, especially if things get stuck over Kirkuk, as is likely. This in turn will depend on how much effort UNAMI will be able and willing to expend and how much support it will receive from an Obama administration whose focus, resources and personnel risk shifting to other war zones. It also will

⁴⁹ Crisis Group interview, Awad Amin, independent Kurdish provincial council member, Kirkuk, 20 May 2009. He suggested classifying Kirkuk governorate by districts and sub-districts that have ethnic majorities and therefore need no power-sharing arrangement (for example, Shwan, which is Kurdish, and Hawija, which is Arab); mixed areas in which there are no property claims and where power sharing could be instituted right away (for example, Leilan); and mixed areas with property disputes, where claims should be settled before power sharing is attempted, as "those who have lost their land will not agree to share power" (Kirkuk itself, as well as Daqouq, Dibs and others). He also recommended that the federal government reinstate sub-districts that the former regime cancelled as part of its counter-insurgency campaign during the Iran-Iraq war, as the population is returning gradually but has no administrative recourse at the sub-district level, creating all sorts of social and economic problems.

⁵⁰ Local Arab politicians have raised the possibility they might agree to Kirkuk's special status, but with continuing ties to Baghdad. A new Arab group, the Kirkuk National List, included it as part of its agenda when it announced its formation in June 2009. BBC Monitoring, 2 June 2009. Those same politicians, who are invariably Sunni, generally want Baghdad to retain major influence, especially in relation to the KRG, but their sentiment is tempered by their distrust of the Maliki government, or indeed any government run by Shiite Islamist parties. Turkoman politicians say they harbour deep suspicions toward both the federal government and the KRG and therefore prefer a minimum of interference from either Baghdad or Erbil. They especially fear that the KRG will exercise greater influence because of geography, demography and the presence of its security forces. Crisis Group interview, Hasan Turan, provincial council member, Kirkuk, 4 February 2009.

⁵¹ Crisis Group interview, Mahmoud Othman, independent member of the Kurdistan Alliance list in the council of representatives, Erbil, 24 May 2009. He welcomed the UN's effort to create dialogue and pursue consensus and applauded its approach, saying the UN provided an umbrella against interference from Turkey and Iran and could be an honest broker in negotiations.

⁵² Crisis Group interview, Hasan Turan, provincial council member, Kirkuk, 4 February 2009.

⁵³ UNAMI press release, 15 June 2009, at www.uniraq.org.

depend on the KRG's willingness to compromise on a question it has held so dear. Signs have not been good. On 24 June 2009, in a move that immediately inflamed the debate, the Kurdistan region's parliament passed a draft constitution (subject to ratification by popular referendum) that defined the region as an entity that includes Kirkuk and other disputed territories, identified the *peshmerga* as the primary military force within the region, asserted the region's right to deploy *peshmerga* outside of the region and appeared to cement a disquieting centralisation of power in the region's presidency.⁵⁴

The KRG subsequently called for the draft to be submitted to a popular referendum on 25 July 2009, the day of KRG parliamentary and presidential elections. Protests over this development came swiftly from not only an array of Iraqi politicians, such as the prime minister, but also U.S. and UN diplomats, as well as Kurdish opposition parties. Several of the above called for the referendum to be postponed until after Iraq's legislative elections in January 2010. Some expressed concern that by placing the disputed territories inside the region, the constitution would foreclose any possibility of Kurdish compromise in negotiations now unfolding.⁵⁵

IV. FLASHPOINTS ALONG THE TRIGGER LINE

A. THE DISAPPEARING GREEN LINE

The Kirkuk conundrum reflects the broader question of the Kurdistan region's internal boundary with the rest of Iraq. For twelve and a half years, this border – also known as the Green Line – was the ceasefire line created unilaterally by retreating Iraqi forces in October 1991. It was erased in April 2003, when Kurdish *peshmerga* fighters crossed into Iraqi-held terrain during the U.S. war. They have exercised control in these areas with U.S. approval since then and helped the U.S. fight insurgent groups. In the words of the KRG *peshmerga* minister, “we liberated some areas in 2003 and stayed there, and we have assisted American and Iraqi forces in capturing terrorists”.⁵⁶ However, the Kurds also claim these areas as majority-Kurdish and historically part of Kurdistan, and in reality their presence should be seen as a bid to reclaim them by establishing facts on the ground in advance of a law-based resolution of their status.

While the KRG moved administrative staff and other personnel into these areas in addition to its fighters, its presence has remained *de facto*, not *de jure*. The KRG's non-status was reinforced by Iraq's interim constitution, the 2004 Transitional Administrative Law (TAL), which in Article 53(A) recognised the KRG only in the territories it had administered until the war.⁵⁷ The 2005 permanent constitution absorbed Article 53(A), and the KRG's formal jurisdiction, therefore, remains today as it was before the war – strictly within the Kurdistan region.⁵⁸ Both Article 58 of the TAL and Article 140 of the constitution refer to “disputed territories” in addition to Kirkuk but fail to define these. Based on Article 53(A), however, these territories lie outside the area controlled by the KRG until 19 March 2003 and thus outside the Green Line. That line, therefore, remains the Kurdistan region's *de*

⁵⁴ “Draft Constitution of the Kurdistan Region – Iraq”, 22 June 2009.

⁵⁵ Crisis Group interviews, July 2009; *Rozhnama*, 6 July 2009; *Rudaw*, 6 July 2009.

⁵⁶ Crisis Group interview, Sheikh Jaafar Sheikh Mustafa, KRG *peshmergas* minister (ie, defence minister), Erbil, 24 May 2009.

⁵⁷ Article 53(A) states: “The Kurdistan Regional Government is recognised as the official government of the territories that were administered by that government on 19 March 2003 in the governorates of Dohuk, Arbil, Sulaimaniya, Kirkuk, Diyala and Neneveh”.

⁵⁸ Article 143 of the constitution states: “The Transitional Administrative Law for Iraq shall be annulled along with its Annex upon the formation of the new government, except for the provisions contained in its Article 53(A) and Article 58”.

jure boundary until the disputed territories' legal status is changed.

That said, a new, de facto, unnamed line now separates the Kurdistan region from the rest of Iraq. It reflects positions the Kurdish *peshmergas* occupied in April 2003 in agreement with U.S. commanders but which they have consolidated and even extended outward since then. A 17 May 2003 memorandum called "Repositioning of Peshmerga Forces", signed by two U.S. generals and a representative of the Kurdistan Democratic Party (KDP) and Patriotic Union of Kurdistan (PUK) each, specified *peshmerga* force levels outside the Green Line and required "excess forces" to relocate behind the Green Line within 48 hours of signature.⁵⁹

The document allowed for 2,545 PUK fighters and 3,445 KDP fighters in areas in Ninewa, Kirkuk, Salah al-Din and Diyala governorates that later came to be called disputed territories.⁶⁰ Moreover, in a provision that has since been violated, it stated that "The Mosul to Irbil road will not have any Peshmerga checkpoints west of Kaleck".⁶¹ A former U.S. diplomat in Iraq stated in reference to this and similar agreements between U.S. forces and the *peshmergas*: "We saw the agreements, whether written or verbal, as open-ended, no end date, but the understanding was that the pesh were there until an all-Iraq force could handle the job".⁶²

If the KRG used to recognise the Green Line, it stopped doing so sometime in the past two years. Ashti Hawrami, the natural resources minister, has made several public remarks since late 2007 to the effect

that he does not recognise the Green Line.⁶³ Moreover, ministry officials instructed oil and security companies operating under KRG contracts to remove any maps they had that showed the Green Line, while contracts of employees working for such companies state they are employed in the Kurdistan region, even when they are operating in disputed territories.⁶⁴

In 2009, senior KRG officials also became more vocal and explicit. Masrour Barzani, son of the Kurdistan region's president and head of the KDP's intelligence and security agencies, declared unequivocally that "the Green Line is an imaginary line from Saddam's time. We don't believe in the Green Line and never have. It doesn't determine what the boundary of Kurdistan is".⁶⁵ Sheikh Jaafar, the *peshmerga* minister, expanded:

The Green Line was created by Saddam Hussein and we don't acknowledge it. These so-called disputed territories are inhabited by people who were forced to flee [during the days of Saddam's regime] and were subject to Arabisation. Today, Arabs have freedom of residence, but they should not be permitted to displace Kurdish inhabitants. As the name implies, there is a dispute. We don't want to pre-judge its outcome; we want a constitutional solution. It is the federal government that is trying to pre-judge the outcome.⁶⁶

⁵⁹ "Repositioning of Peshmerga Forces (101200May 03) Change 3", Department of Defense, memorandum for KDP/PUK leadership, AFVB-CG, 17 May 2003. Copy in Crisis Group possession.

⁶⁰ The difference in force levels between KDP and PUK in some areas can be attributed largely to the fact that Sinjar, which lies within the KDP's zone of influence, hugs the Syrian border. The U.S. therefore had an interest in having a strong force on the border, which by default had to be a KDP force. The KDP was allowed to have 900 fighters there against the PUK's 100. For the same reason, the KDP was allowed to deploy more fighters (225) than the PUK (75) at the dam in the Tigris north of Mosul. On The PUK deployed more fighters (400 each) than the KDP (100 each) in Mandali and Khanaqin, areas within its zone of influence on the Iranian border.

⁶¹ Since January 2008, KDP *peshmergas* have established checkpoints along this road up to the outskirts of Mosul, some 40 kilometres west of the Green Line, and fortified its positions. Denise Natali, "Managing Arab-Kurdish Tensions", unpublished paper, May 2009.

⁶² Crisis Group email communication, 25 June 2009.

⁶³ He said, "you show me the green line in the constitution. You show me a green line that officially anybody signed on to. There are many green lines. But what counts really is what is currently under the KRG authority". Quoted in United Press International, 17 June 2008. Hawrami had earlier said, "there is no hard line drawn somewhere that says this is KRG controlled territory, and these are disputed territories; it is all gray areas. We provide the security; administratively we run the towns and villages in that area. It is and has always been under control of KRG, under our security". Quoted in United Press International, 28 November 2007.

⁶⁴ Crisis Group interview, company officials, Erbil, October 2008 and February and May 2009. The companies all have maps that purportedly show the Green Line. However, these maps display significant differences, and all are very much at odds (in the KRG's favour) with a 1996 UNICEF map that an adviser to the KRG prime minister gave Crisis Group in January 2008 as showing the Green Line's correct location. This latter map is reproduced in Appendix D. For example, the 1996 map shows the Khor Mor gas field at Qader Karam to lie squarely in what today are deemed disputed territories, while in some of the later maps the Green Line is drawn much closer to the field's installations.

⁶⁵ Crisis Group interview, Masrour Barzani, Sari Blent (formerly known as Sari Rash), 23 May 2009.

⁶⁶ Crisis Group interview, Sheikh Jaafar Sheikh Mustafa, KRG minister of *peshmergas*, Erbil, 24 May 2009.

Kurdish leaders counter the charge that denying the Green Line's legitimacy is unconstitutional by stating that "all aspects" of the constitution should be discussed.⁶⁷ In particular, they mean Article 140, whose non-implementation has triggered their ire as well as their intent to press for de facto control in those disputed areas they wish to retain.⁶⁸ The fact is that both sides are now openly flouting the constitution and seek to prejudge the status question's outcome, if not by law, then at least by physical presence. In the Kurds' case, this means they have lost the moral high ground in condemning the federal government for its wilful failure to implement Article 140. For all intents and purposes, the constitution is, therefore, a dead letter concerning the disputed territories, unless both sides reverse gears, make a renewed pledge to abide by it and act accordingly.

B. A TENSE STAND-OFF

The legal and rhetorical battle is complicated by movement on the ground. As noted, in August 2008 Iraqi forces pushed into three mixed-population sub-districts of Khanaqin (Jalawla, Saadiya and Qara Tepe) in Diyala governorate, forcing out the *peshmergas* and putting pressure on Khanaqin itself, which is a majority-Kurdish town. Two months later, the army began deploying its 12th division in Kirkuk governorate, a process that is still underway; in June 2009 it had some 9,500 troops there.⁶⁹ Its commander, Gen. Abd-al-Amir Ridha al-Zaydi, said his dual mission was to protect the oil infrastructure and fight terrorism in

non-urban areas, tasks he said he was empowered to carry out by law: "We treat all citizens equally: we are against all who think they are above the law and terrorists, regardless of who they are. This is a federal army, established according to the constitution. Our only reference is the ministry of defence, not any party or ethnic group or governor".⁷⁰ Concerning the federal army's presence in disputed territories, he said:

The disputed territories are a problem between politicians, between two political entities, not between two peoples. We are one people. All the disputed territories are Iraqi territories. Kurdistan is also part of Iraq. Masoud Barzani himself has said so. Just like Kurdish units came to protect Baghdad against terrorism, Arabs are ready to defend the northern border if the Kurds are attacked.⁷¹ As for Kurdish forces defending Kurds in disputed territories, that's an issue for politicians to decide. Since we cannot cover all areas of the governorate [at current deployment levels], we rely on awakening councils, but our plan is to cover all these areas, as there are still terrorists there. The same holds for the Kurds: If they can maintain security in their areas, for example north of Kirkuk [city], we won't need to move army units there.⁷²

⁶⁷ Crisis Group interview, Masrour Barzani, Sari Blent, 23 May 2009.

⁶⁸ Another critique, which enjoys broad popular appeal in Kurdistan, holds that Kurdish leaders were wrong not to seize Kirkuk when they (supposedly) had the chance to do so in April 2003 and were wrong again in agreeing to all the constitutional steps that in the end resulted in nothing. Muhammad Tawfiq, a former PUK official now with the opposition Change (*Goran*) List, said, "The biggest mistake the Kurds made was not to press forward in 2003. The Arabs were scared and would have settled if it meant they could stay. And then, in 2004, it was again a mistake to agree to Article 53 of the TAL, which recognises the KRG within its 19 March 2003 boundaries only. The only ones who were happy about Article 53 were the five Kurdish members of the interim governing council. Subsequently, the referendum idea in Article 140 of the constitution was stillborn". Crisis Group interview, Suleimaniya, 21 October 2008.

⁶⁹ The 12th division established its headquarters in Kirkuk in October 2008, taking command of the army brigade that was present (which used to fall under the Tikrit-based 4th division). At full deployment it will have 13,000 troops on the ground.

⁷⁰ Crisis Group interview, Gen. Abd-al-Amir Ridha al-Zaydi, 12th division commander, Kirkuk, 19 May 2009. He also said that his division comprised men of different ethnic backgrounds: "We are unique in having officers and soldiers from all over Iraq. They are Arabs, Kurds, Turkomans, Christian, Sunnis and Shiites, totally mixed. There are no problems between them. This is the Iraqi army". Gen. al-Zaydi's two deputies are a Turkoman and a Kurd, Gen. Khurshid. A Kurdish leader in Kirkuk alleged, however, that the 12th division consists mostly of Shiite Arabs and has only 10 per cent Kurds. Crisis Group interview, Rizgar Ali, provincial council chairman (PUK), Kirkuk, 20 May 2009. Other sources report that the 12th division is 75 per cent Arab. *The Los Angeles Times*, 26 March 2009.

⁷¹ The KRG *peshmergas* minister agreed: "We agreed with the federal government that we would coordinate our responses to any crisis involving the international border. If Turkey or Iran were to attack, we will notify the government. It should send federal troops if we need them. This is according to the constitution. However, they should leave once they have accomplished their mission". Crisis Group interview, Sheikh Jaafar Sheikh Mustafa, KRG *peshmergas* minister, Erbil, 24 May 2009. Article 110 (2) of the constitution states that the federal government has exclusive authority in "setting and executing national security policy, including establishing and managing armed forces to ensure protection and guarantee security of Iraq's borders and to defend Iraq".

⁷² Crisis Group interview, Gen. Abd-al-Amir Ridha al-Zaydi, 12th division commander, Kirkuk, 19 May 2009. Two months earlier, Gen. al-Zaydi was quoted in the media as going a

These are alarming words and worrisome developments for the KRG, which seeks to hold on to areas it wants to bring into the region. Its *peshmergas* minister said, “the 12th division’s real objective is to control Kirkuk. This is part of a process of kicking out the Kurds. They have failed only because we haven’t left our places [in the disputed areas]. Their interest is in war, not in peace”.⁷³ He also accused the Maliki government of acting unconstitutionally in appointing Gen. al-Zaydi, which “could lead to Iraq’s destruction”.⁷⁴

Rizgar Ali, the provincial council chairman, said the army should not interfere in the disputed territories: “There is no need for them. The army has two missions only: to protect the borders and to fight terrorism. This is not the case here”.⁷⁵ And Fuad Hussein, chief of staff to Masoud Barzani, said, “What Maliki is doing, moving the army, for us is history repeating itself. I hope he doesn’t go the way that Saddam went, but it doesn’t look good. The federal government has no authority in the disputed territories. They are disputed, according to the constitution”.⁷⁶ From the government’s perspective, however, it is reasserting state sovereignty in all parts of Iraq after an absence due to weakness.

The *peshmerga* units, operating as the Kurdistan regional guard but in effect responding to their respective PUK and KDP commanders, are entrenched in positions they intend to defend until the end along a so-called trigger line. In Kirkuk governorate, the *peshmergas* operate as part of the 10th regional guard brigade under command of the PUK’s Gen. Sherko; their headquarters is in Qara Hanjir on the Kirkuk-Suleimaniya

road, and they number 3,000.⁷⁷ North of Kirkuk city, the trigger line runs across a ridge adjacent to the Avana Dome installations, part of the Kirkuk super-giant oil field, along the Kirkuk-Dibs road. Units of the 12th division have taken up positions on the field; Kurdish forces are east, across the ridge.⁷⁸ As incidents in Kirkuk and Ninewa earlier this year (and in Khanaqin in 2008) have shown, the tense face-off could inadvertently spark broader conflict in the absence of swift and accurate communication and strong political leadership.

In January 2009, army patrols began to venture onto roads in majority-Kurdish areas with the sole apparent purpose of showing their presence. For example, they proceeded as far as the checkpoint at the entrance to Chamchamal, the main town on the Kirkuk-Suleimaniya road.⁷⁹ Whatever the objective, to the Kurds this was alarming *déjà vu*: it was at this Green Line checkpoint that Saddam’s army had dug itself in from 1991 until 2003, mining the surrounding area, humiliating those crossing the barrier and routinely sniping at Kurdish civilians.⁸⁰

On 31 January, the day of provincial elections, a small army patrol drove into Altun Kupri, a town on the Kirkuk-Erbil road with a mixed Turkoman-Kurdish population but firmly under Kurdish control, declaring it wanted to secure polling stations.⁸¹ Kurdish police at the site protested vigorously and local people joined in, nearly starting a riot. The U.S. military intervened by brokering a meeting between the adversaries, and the Iraqi battalion commander averted violence by ignoring orders to fire; he subsequently was removed from his post and investigated for coward-

step further, suggesting the Kurdish forces would have to leave Kirkuk: “What’s the point of the [*peshmergas*] going outside the boundaries of Kurdistan? When they do this, they are a militia carrying weapons”. Yet he indicated that the *peshmergas*’ removal would have to be the result of negotiations, not force. *The Los Angeles Times*, 26 March 2009.

⁷³ Crisis Group interview, Sheikh Jaafar Sheikh Mustafa, KRG minister of *peshmergas*, Erbil, 24 May 2009.

⁷⁴ He said that al-Zaydi had no legitimacy, as the council of representatives had not approved his appointment. Crisis Group interview, Sheikh Jaafar Sheikh Mustafa, KRG *peshmergas* minister, Erbil, 24 May 2009. He reportedly also headed the 15th brigade of the army’s 1st division in the Kirkuk area in 1996-1998. *The Los Angeles Times*, 26 March 2009.

⁷⁵ Crisis Group interview, Rizgar Ali, provincial council chairman (PUK), Kirkuk, 20 May 2009.

⁷⁶ Crisis Group interview, Fuad Hussein, chief of staff to Kurdistan region President Masoud Barzani, Salah al-Din, 2 February 2009.

⁷⁷ At this stage, the 12th division’s level of skills, capability and commitment is lower than that of the PUK fighters. Crisis Group email communication, independent military expert, 7 June 2009.

⁷⁸ In discussions mediated by U.S. military officers, the KRG agreed that the 12th division could deploy at Avana Dome but not on top of the ridge (which would have given it control of the Kirkuk-Erbil road). Crisis Group interview, U.S. Maj. Kevin Capra, brigade fire support officer and planner, 2nd brigade, 1st cavalry division, who has worked closely with the Iraqi army’s 12th division, Kirkuk, 20 May 2009.

⁷⁹ Crisis Group interview, Western traveller in these areas, Chamchamal, 5 February 2009.

⁸⁰ Observations by a Crisis Group analyst visiting Chamchamal in 1992 and 1993 in a different capacity.

⁸¹ Although there were no provincial elections in Kirkuk governorate (or the Kurdistan region) on 31 January 2009, displaced Iraqis from the other fourteen governorates were allowed to vote in their areas of displacement. In effect, polling stations were open in Kirkuk, as well as in Suleimaniya, Erbil and Dohuk governorates.

ice.⁸² “Maliki wants to prove himself in these areas”, an Arab politician said afterwards. He added, referring to an Arab nationalist list’s victory in provincial elections in Ninewa (Mosul) in January 2009, “and now, after the Hadba List’s victory, he can claim that the Ninewa council is asking for his help in [disputed] areas there as well”.⁸³

Perhaps with this in mind, Ninewa’s newly elected governor, Athil al-Nujayfi, made good on his election campaign pledge to seek to restore government authority to all parts of the governorate. On 8 May, escorted by a caravan of heavily armed four-by-fours, he tried to enter Bashiqa, a mixed town of Chaldo-Assyrian Christians and Yazidi Kurds north east of Mosul. However, he was blocked at the first checkpoint outside Mosul by Kurdish *peshmergas* with apparent shoot-to-kill orders and forced to return.⁸⁴ A similar incident occurred a few days later involving the Ninewa police chief in the Makhmour area.

Apart from armed forces, the Kurdish parties have Asaesh agents (security police) on the streets in the disputed territories, an issue that deeply rankles some of the other ethnic groups. These groups’ leaders have accused the Asaesh of abusive practices, including the arrest of suspected armed elements and their transfer to prisons in the Kurdistan region. In December 2007, local Arab and Kurdish leaders in Kirkuk signed a U.S.-brokered agreement on power sharing and other measures, including the return of these detainees and their referral to local courts, an end to illegal detentions and the removal of “unofficial security agencies” – an unambiguous reference to the Asaesh.⁸⁵

While the policy of detaining and transferring security detainees from Kirkuk appears to have ended, the Asaesh remain omnipresent. The director of the KDP’s Asaesh, Esmat Argushi, went further, saying, “there is no talk of the Asaesh leaving Kirkuk. Kirkuk is very important to us. We provide security. We don’t accept that agreement”.⁸⁶ The continuing presence of the Asaesh, while providing protection to the Kurdish popu-

lation, is a source of anger and bitterness to others and, therefore, a source of possible future conflict, especially if the Maliki government moves to assert state sovereignty.

C. THE NEED FOR EARLY WARNING AND COMMUNICATION

If the incident involving the Ninewa governor was a reality check for the Kurds, it was a wake-up call for the U.S. The U.S. army had started ramping up its presence in Kirkuk once it observed the start of the 12th division’s deployment in October 2008. In January, the Americans deployed the 2nd brigade, 1st cavalry division, replacing the battalion that had previously been there.⁸⁷ They saw one of their roles as “managing tensions, urging all sides to be transparent about *peshmerga*, police or ISF [Iraqi Security Forces] operations and enabling dialogue between all sides”.⁸⁸

To this purpose, the U.S. military set up Joint Coordination Centres (JCC) in urban areas in Kirkuk governorate to promote communication, dialogue and coordination between the police and emergency services, with an army and *peshmerga* liaison officer present at a central coordinating JCC in Kirkuk city. However, once the interior ministry in Baghdad discovered that the Kurds had appointed a *peshmerga* officer as liaison, it ordered him removed two weeks after his arrival. The U.S. military says it is now trying to create similar military-focused coordination centres at both the U.S. and Iraqi bases on Kirkuk city’s outskirts that would have both *peshmerga* and police liaisons and cover the governorate’s non-urban areas.⁸⁹

⁸² Crisis Group interviews, Kirkuk, May 2009.

⁸³ Crisis Group interview, Rakan Saeed al-Jbouri, deputy governor, Kirkuk, 3 February 2009.

⁸⁴ *The New York Times*, 13 May 2009.

⁸⁵ The 2 December 2007 agreement is described in Crisis Group Report, *Oil for Soil*, op. cit., pp. 8-9.

⁸⁶ Crisis Group interview, Esmat Argushi, director of KDP Asaesh Erbil, 24 May 2009. He claimed that the Asaesh had never detained people outside the Kurdistan region and brought these inside the region, but that in 2004-2005 it had acted on a U.S. request to imprison armed elements arrested by its forces. These detainees had all been sent back to their home governorates, he said.

⁸⁷ From the start of the 12th division’s deployment in October 2008 until the 2nd brigade completed its deployment by the middle of February 2009, the U.S. battalion in Kirkuk was given a brigade headquarters for key-leader engagement.

⁸⁸ Crisis Group interview, U.S. Maj. Kevin Capra, brigade fire support officer and planner, 2nd brigade, 1st cavalry division, Kirkuk, 20 May 2009.

⁸⁹ *Ibid.* Because Kirkuk has been relatively calm compared to Mosul and Baaquba, the police have primacy over the army, and the army is not even allowed to enter the city. By contrast, the army has conducted operations inside Mosul and Baaquba, which have been racked by violence. Whether these operations have been effective is another question. In Kirkuk’s case, this suggests a dual approach: town-based coordination led by the police, and rural-based coordination led by the Iraqi military.

The Kurdish leadership discussed the need for a mechanism to deal with crises in the disputed territories,⁹⁰ and Barzani's chief of staff, Fuad Hussein, suggested in February that a joint security role for the army and *peshmergas* might work.⁹¹ Indeed, joint counter-insurgency patrols were initiated in Diyala governorate in May.⁹² However, it is one thing to put mechanisms in place to reduce chances of small altercations escalating into major conflicts; it is quite another to address the sources of conflict directly. Referring to the Ninewa situation, Masrour Barzani insisted that "the solution is to implement Article 140. Searching for alternatives won't work. Short-term solutions won't work". He refused to be drawn out on intermediary steps that could help alleviate conflict on a day-to-day basis.⁹³

This suggests that the failure to resolve the disputed territories question could lead to endemic conflict all along the trigger line, from the Syrian to the Iranian border. While neither side stands to benefit from outright combat, and both probably would seek to avert it, they appear unwilling to proactively put mechanisms in place to avoid inadvertent conflict. Furthermore, the two may even see an interest in advancing their own agendas by taking provocative steps (such as the Ninewa governor's foray in May), even if they risk igniting a larger conflict.

It is an open question whether any procedure established by the U.S. military will survive its scheduled departure. The former head of the PUK's security agency warned, "Maliki is waiting for the Americans to leave. At that point, he will try to retake the areas that the army held until 2003, and only then will he sit down to negotiate with the Kurds".⁹⁴ Conversely, Kirkuk's deputy governor said, following a visit to the Kurdish president in January 2009, "I told Masoud Barzani that once the U.S. leaves and the Kurds try to

fill the vacuum in Kirkuk, we will ask Baghdad to intervene. Then it could get very ugly for ordinary Kirkukis".⁹⁵

Still, the trigger line's emergence suggests an interesting potential solution. To the extent that it is a line the Kurds are prepared to defend at all cost, it could be seen as the true *de facto* boundary of the Kurdistan region – well westward from the old Green Line but far from covering all of the disputed territories – and thus arguably suggest a workable territorial compromise. Some Kurdish officials are proposing a "status quo plus": a police-only presence in demilitarised majority-Kurdish areas in the disputed territories, as was negotiated in Khanaqin in August 2008, and no final determination of these areas' status.⁹⁶ The federal government, while averse to making any territorial deal, would face the difficult choice to either accede to a *fait accompli* in Kurdish-majority areas or use military means to confront the Kurds. The challenge, therefore, will be to translate realities on the ground that may be prohibitively difficult to alter into negotiated deals that all concerned parties would accept for lack of better options, for example via the UNAMI-led process, which could yield just such an outcome.

⁹⁰ Crisis Group interview, Mahmoud Othman, independent member of the Kurdistan Alliance list in the council of representatives, Erbil, 24 May 2009.

⁹¹ Crisis Group interview, Fuad Hussein, chief of staff of Kurdistan region President Masoud Barzani, Salah al-Din, 2 February 2009.

⁹² Reuters, 3 June 2009. There is a precedent for this. After the Saddam regime crushed the March 1991 uprising in Kurdistan and redeployed its forces there, it soon discovered it could not maintain security without the help of Kurdish *peshmergas*. Thus, in an unlikely alliance, government troops and Kurdish fighters staged joint patrols for several months until the regime decided in October 1991 to withdraw unilaterally to what became known as the Green Line.

⁹³ Crisis Group interview, Masrour Barzani, Sari Blent, 23 May 2009.

⁹⁴ Crisis Group interview, Saif al-Din Ali, Suleimaniya, 17 May 2009.

⁹⁵ Crisis Group interview, Rakan Saeed, deputy governor, Kirkuk, 3 February 2009.

⁹⁶ Crisis Group interview, Washington DC, 27 February 2009. The Kurds might prefer no solution on Kirkuk and other disputed territories over a solution that would foreclose the possibility of incorporating Kirkuk into the Kurdistan region.

V. THE COMBUSTIBLE OIL AND GAS QUESTION

A. OPPOSING STRATEGIES

Nothing has bedevilled the territorial question more than the presence of huge oil and gas resources in some of the disputed areas. Crisis Group earlier discussed the obstacles to negotiating a federal hydrocarbons law and the destabilising impact of its continued absence.⁹⁷ No progress has been made, and each side – the federal government and the KRG – has continued to take unilateral steps that have angered the other.

Basing itself on its own 2007 oil law and its interpretation of the Iraqi constitution,⁹⁸ the KRG has issued more production-sharing contracts (PSCs) to foreign companies, without open or any bidding and without making terms public, igniting the federal government's ire over lack of transparency and the fact that these companies, in return for their investments, their work and the commercial and political risks they assume, receive a share of profits rather than compensation for their services, as Baghdad prefers. Moreover, they will be allowed to list oil reserves they discover as their own holdings, which will help drive up the value of their stock market shares. However, many Iraqis consider such practices an intolerable transfer of control over their country's national resources to foreigners.

In turn, the federal oil ministry, using pre-2003 laws, announced a bidding round in late June for six oil and two gas fields in an effort to jack up lagging production levels and inject new revenues into the country's cash-strapped economy.⁹⁹ However, by including two

fields in Kirkuk governorate – Kirkuk and Bai Hassan – it poked the Kurds in the eye, given Kirkuk's unresolved status.¹⁰⁰

The government's hydrocarbons strategy is premised on an approach that considers the country a single, integrated economic unit requiring the oil industry's centralised management. Anything less, it holds, would lead to inefficiency and could undermine Iraq's unity. By contrast, the KRG aims to reverse decades of discrimination and neglect by developing the region's own resources. By inviting foreign companies to build installations and pump oil, it seeks to press Baghdad to allow this oil to be exported, lest revenues be lost to the federal treasury, especially during an economic downturn that has also seen a drop in oil prices.¹⁰¹ To the extent that the struggle, at heart, is over the degree of decentralisation, it reflects first and foremost a constitutional debate (as exemplified by the Maliki-Barzani exchanges referred to above) that is playing itself out in the hydrocarbons arena.

⁹⁷ Crisis Group Reports, *Oil for Soil*, op. cit., pp. 23-26, and *Iraq After the Surge II*, op. cit., pp. 4-10.

⁹⁸ Article 111 of the constitution states: "Oil and gas are the property of all the Iraqi people in all the regions and governorates". The KRG has long held that this means that the Kurds own the oil and gas that exists in the Kurdistan region and can, therefore, manage it (under Articles 112 and 115), while sharing the revenues. The federal government, by contrast, has interpreted Article 111 to mean that the Iraqi people are sole owners of all of the country's oil and gas. The head of the North Oil Company (NOC) explained: "This is why the KRG receives 17 per cent of the federal budget even if it does not sell any oil. This money comes from the sale of oil from Basra and Kirkuk. It reflects the implementation of Article 111. If Article 111 means something else, the KRG should not have been paid a penny". Crisis Group interview, Manaa Alobaydi, NOC director, Kirkuk, 21 May 2009.

⁹⁹ For an analysis, see Gina Chon, "Big oil ready for big gamble in Iraq", *The Wall Street Journal*, 24 June 2009.

¹⁰⁰ In an ironic twist, Iraq's oil minister intimated that the government might consider production-sharing contracts in a future bidding round as a necessary measure to bring on stream new fields. Hussein al-Shahristani said, "we are not ruling out completely production-sharing agreements, but this will most likely be for exploration fields that have not been discovered and assessed yet. We are considering offering these in a bid round sometime this year. There are 65 blocks with fairly good chances of discovering oil and gas in Iraq". *The New York Times*, 19 March 2009. Although there is irony in this suggestion given Shahristani's vociferous opposition to the KRG's production-sharing contracts not so long ago, the February 2007 draft hydrocarbons law did allow for such arrangements. This is one of the reasons it stalled, as the proposal provoked a nationalist backlash. For this reason, the Maliki government may try to circumvent the council of representatives as it signs new oil and gas contracts. Production-sharing contracts typically are used for new, unexplored fields, where investment risks are particularly high.

¹⁰¹ The government drafted its 2009 budget in 2008, as oil was peaking at \$147 per barrel. It conservatively based revenue projections on a price of \$80 per barrel, but by the end of the year, the price had plummeted to \$40; in June 2009 it hovered in the low \$70s. Despite budget amendments, Iraq is expecting an \$18 billion deficit in 2009 that could grow further if oil exports fail to pick up. Even if projected oil revenues of \$36.5 billion are realised, these will not cover even the government's day-to-day expenses, mostly salaries for the huge public sector. *The Los Angeles Times*, 11 May 2009.

B. THE KURDISH EXPORT DEAL

The KRG's strategy may have paid off, but at a cost. In an apparent compromise deal, the government allowed oil exports from two Kurdish fields, Taq Taq and Tawke, as of 1 June 2009. The volume was expected to reach 100,000 barrels per day (b/d) initially¹⁰² and, according to KRG projections, 450,000 b/d by the end of 2010 and one million b/d within four years.¹⁰³ The deal was unprecedented: never before had Kurdish oil been produced and found an outlet other than through smuggling. And it addressed Baghdad's budgetary problems by promising to deliver an estimated \$2 billion in revenues within a year.

Although this was a partial victory for the KRG, it was forced to accept that sales revenues be deposited into the federally managed Development Fund for Iraq rather than an independent offshore escrow account from which both Baghdad and the KRG could draw independently (according to agreed budget shares), let alone be placed into KRG coffers directly. Moreover, the government refused to recognise the KRG's contracts with the oil companies (DNO at the Tawke field, and Addax Petroleum and Genel Enerji at the Taq Taq field), which it had not seen, thus leaving it to the KRG to sort out its own contractual obligations.¹⁰⁴ This

¹⁰² While KRG and North Oil Company officials, as well as industry sources, have been equally coy about the exact export volume from the two fields, the consensus appears to be that 100,000 b/d was an aspiration, not a reality, on 1 June 2009. An authorised source at Genel Enerji declared in early July that exports "have not reached 100,000 b/d yet but are going up. We will soon be at that level". Of this, Tawke is expected to produce 55,000-60,000 b/d and Taq Taq 40,000 b/d. Crisis Group telephone interview, Ankara, 2 July 2009.

¹⁰³ Ashti Hawrami speech, 1 June 2009, www.krg.org.

¹⁰⁴ The North Oil Company director contended: "If the KRG wanted these contracts recognised, it should have gone to the government in Baghdad to arrange for the sale, because this is Iraqi oil. But how could the government accept a contract it has not seen? Is it a good contract? A bad one? The government is not being obstinate in not approving the contracts". Crisis Group interview, Manaa Alobaydi, Kirkuk, 21 May 2009. Tariq Shafiq, a former oil minister, has written that the KRG contracts "were not issued under transparent or accountable competitive tenders and were never passed to the national parliament and the central Ministry of Oil, nor have they been published to this date". Moreover, they "have not yet been tested against the five principal objectives and criteria set out in the draft petroleum law, which are designed to ensure the conservation and optimisation of oil and gas assets". Those criteria are, he said: national control, ownership of resources, optimum economic return to the country, appropriate return on investment to the investor and reasonable incentives for the investor to ensure so-

meant that it remained unclear how the KRG would pay these companies for their costs.¹⁰⁵

As a result, both sides expressed continuing displeasure. The government first denied, then acknowledged the deal, clearly without enthusiasm.¹⁰⁶ It stayed away from the event in Erbil on 1 June at which the first exports were inaugurated, and it remained adamant on the illegality of the contracts.¹⁰⁷ To facilitate the exports, it went no further than to instruct the North Oil Company (responsible for managing Iraq's northern oil fields on the federal oil ministry's behalf) to offer technical support.¹⁰⁸ The North Oil Company helped build the 550-metre connector pipeline that allowed the oil to flow from the Tawke field to the Kirkuk-Ceyhan pipeline and similarly made available its installations for the export from Taq Taq via the Khurmala dome to Kirkuk and onward into the same pipeline.¹⁰⁹

lutions that are optimal for the country in the long term. *Middle East Economic Survey*, 25 May 2009.

¹⁰⁵ As part of its contractual obligations, the KRG should pay the companies for their costs ("cost oil") and share the profits ("profit oil"). Since the KRG did not pre-pay these costs, the companies had to put up the capital themselves and wait for the revenues to come in. Now that these revenues accrue to the federal budget, however, of which the KRG receives 17 per cent annually, and since the federal government refuses to recognise the contracts' legality and thus refuses to pay the companies for their costs, the KRG has to find alternative means to cover the costs and pay out the agreed share of profits. The KRG's position is that the federal government should pay for these costs, since the oil is Iraqi oil, exported through the Iraqi pipeline. As of early July, the companies had not been paid. Nonetheless, their share prices went sky-high at the announcement of the export agreement, reflecting the hope that the dispute between the KRG and federal government would be settled soon and more oil would flow. Crisis Group telephone interview, oil industry expert, 15 June 2009.

¹⁰⁶ On 8 May 2009, the KRG announced that the federal government had agreed to expedite an earlier agreement to export Kurdish oil, and that exports would start on 1 June. On the same day, the government denied that this was the case, but it reversed itself two days later. See www.krg.org, 8 May 2009; Reuters, 8 May 2009; and *The Wall Street Journal*, 11 May 2009.

¹⁰⁷ Maliki government spokesman Ali Dabbagh said the KRG's contracts "need to be ratified by the Iraqi federal Oil Ministry. Till that time they are illegal". Quoted in *Iraq Oil Report*, 10 June 2009.

¹⁰⁸ The export deal was originally agreed between the federal government and the KRG in November 2008. Associated Press, 26 November 2008. The North Oil Company was charged with technical implementation, enabling exports to start on 1 June, 2009.

¹⁰⁹ Because of the absence of a pipeline from the Taq Taq field to the Kirkuk-Ceyhan pipeline, the KRG is trucking

In turn, while blasting the federal government for its failed oil strategy (with overall output stagnating at around 2.4 million b/d) and celebrating the deal publicly,¹¹⁰ the KRG faced a serious concern about how to pay for the contracts. Senior officials hinted they might be able to solve it by circumventing the oil minister. It was not clear, however, how this could be done.¹¹¹ Moreover, the precedent the KRG set by exporting Kurdish oil for the first time was limited, as the government accepted the oil as “Iraqi oil”, conveyed by Iraqi pipelines according to existing export arrangements between Iraq and Turkey; no new export licence was required,¹¹² and the KRG could not claim it was exporting oil to Turkey directly (ie, ignoring the federal state and its oil marketing organisation, SOMO), an aspiration it will find difficult to realise as long as Ankara favours strong ties with Baghdad.¹¹³

the oil from Taq Taq to a pipeline starting at the Khurmala dome, which is part of the Kirkuk oil field. From there, the oil flows to Kirkuk and on to the main Kirkuk-Ceyhan pipeline. Trucking oil is hazardous, inefficient and could encourage diversion, but plans for a connector pipeline are lagging. In March 2009, Addax announced that it was considering construction of an 85-kilometre pipeline from Taq Taq to the Khurmala dome. *IHS Global Insight*, 25 March 2009. The North Oil Company opposes this pipeline, however, citing technical difficulties, and favours one that would connect Taq Taq directly to the K-1 pumping station in Kirkuk. Crisis Group interview, Manaa Alobaydi, NOC director, Kirkuk, 21 May 2009.

¹¹⁰ On 1 June 2009, Kurdish leaders triumphantly announced the start of oil exports from the Kurdistan region through the Iraqi pipeline. For the KRG prime minister’s speech, see www.krg.org, 1 June 2009.

¹¹¹ KRG Prime Minister Nechirvan Barzani and other officials hinted that they would use their allies in Baghdad to secure payment for the contracting companies: “We will go to everyone, not to [oil minister] Shahrastani alone”. Crisis Group interview, Nechirvan Barzani, Erbil, 21 May 2009. The KRG has allies inside the oil ministry and the council of representatives’ oil and gas committee. It is unlikely that the KRG would be able to get around Prime Minister Maliki, however, who takes the same position on the KRG’s contracts as the oil ministry and is allied politically with Shahrastani. In a June press conference, the Maliki government firmly backed its oil minister on the KRG contract issue. *Iraq Oil Report*, 10 June 2009.

¹¹² Crisis Group interview, Manaa Alobaydi, Kirkuk, 21 May 2009.

¹¹³ A Turkish official said a separate Turkey-KRG deal on oil exports would be impossible due to opposition from the U.S., which does not want to jeopardise prospects of a federal hydrocarbons law. Crisis Group interview, Ankara, 28 January 2009. A U.S. diplomat put the onus on Turkey’s strategic interests: “Turkey would like to deal directly with the KRG but it cannot afford to alienate the Iraqi government, because it wants to preserve the unity of Iraq”. Crisis

Furthermore, the deal fails to satisfy the KRG’s goal of securing a guaranteed revenue stream that would loosen its heavy budgetary reliance on Baghdad. The KRG would like to have access to its own income as leverage against the federal government instead of being held hostage to Baghdad’s whim and a constant tug of war over deductions for supposed federal expenses.¹¹⁴ Prime Minister Nechirvan Barzani said as much in his 1 June speech announcing the start of oil exports,¹¹⁵ and he told Crisis Group:

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”. I told them: We have a pumping station in Zakho and several kilometres of [the Kirkuk-Ceyhan] pipeline inside Kurdistan. If you cut our budget, what do you think we will do in response?¹¹⁶

Lastly, while the KRG’s strategy of “creating facts” on the ground by issuing contracts in defiance of Baghdad’s wishes and starting to pump may be paying off, some of the over 25 oil companies active in Kurdistan fear their projects may turn into what one oil industry expert referred to as “white elephants”. As long as these companies have no assured export channel, they are unlikely to be paid for their services, let alone earn profits, and because they are relatively small with huge start-up costs and their money tied down, they may

Group interview, Ankara, 29 January 2009. In effect, both Turkey and the U.S. see a federal hydrocarbons law as an indispensable measure to secure Iraq’s continuing unity, as revenues from oil sales constitute the bulk of its overall income. See also Crisis Group Middle East Report N°81, *Turkey and Iraqi Kurds: Conflict or Cooperation?*, 13 November 2008.

¹¹⁴ Baghdad claims a number of federal expenses, which it deducts from the KRG’s allotted 17 per cent. Reportedly, it is also seeking to deduct estimated revenues deriving from the KRG’s alleged smuggling of oil by truck to Iran and Turkey, which it considers exports of Iraqi oil. Crisis Group interview, Kurdish political adviser and entrepreneur, Erbil, 22 May 2009.

¹¹⁵ “First, the constitution demands a modern law by which the oil industry should attract investment and boost oil production. Secondly, the constitution demands a revenue-sharing law based on fairness and supervised by the constitutional committee. We still do not have either of these vital laws. 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”. See www.krg.org, 1 June 2009.

¹¹⁶ Crisis Group interview, Nechirvan Barzani, KRG prime minister, Erbil, 21 May 2009.

find it impossible to pull out. Their only hope, which they share with the KRG, is that a larger company will buy them. In apparent vindication of the KRG's strategy, the June export deal began to make that possible (see below).¹¹⁷

Overall, the KRG can boast of important progress. Not only is Kurdish oil being pumped and sold abroad, but it can also rightfully claim that it is contributing to Iraq's financial health during a budget crisis. Prime Minister Nechirvan Barzani said:

For us the only thing that mattered was to export. Shahrastani kept saying, "The Kurds cannot do it; they don't even have a single barrel". But now we have the oil, and Iraq needs the revenue. We wanted to send a political message to the rest of Iraq: the oil belongs to all Iraqi people and the KRG gets 17 per cent. This is our commitment to Iraq.¹¹⁸

Moreover, the deal is part of an overall KRG strategy to attract international interest in its oil and gas reserves and thus increase the potential for future international support for Kurdish autonomy, if not independence.¹¹⁹ The KRG hopes that its oil and gas will become indispensable to Turkey and other European countries and that these states, in return, will lean on Baghdad to make further concessions. In an early sign of the success of this strategy, the oil industry cheered when the KRG announced progress on the Tawke/Taq Taq deal in early May 2009, and the contracting companies, DNO and Addax/Genel Enerji, saw the value of their market shares shoot up.¹²⁰

Perhaps even more promisingly for the industry, Heritage Oil and Gas, a Canadian company with its own contracts on Kurdish oil fields, purchased Genel Enerji for \$2.45 billion in stock only days after oil

started flowing to Turkey.¹²¹ And Addax faced a takeover bid from Sinopec, a large Chinese state-owned oil corporation,¹²² which offered \$7.2 billion in a deal that reportedly was likely to go through.¹²³ As a result, not only would Addax finally be compensated (indirectly) for its work at Taq Taq, but the KRG would also confront the federal government with the sort of dilemma it has long tried to generate.

In 2008, the government pre-approved Sinopec to bid on oil fields in the south; if Sinopec indeed acquires Addax and thus assumes the latter's contract with the KRG, which Baghdad deems illegal, the federal oil ministry would have to decide whether to blacklist Sinopec as it has done with other companies that have signed contracts with the KRG (and thus forgo its services at a time when it needs all the help it can get to boost production) or go along and thereby accept the validity of the KRG's contracts. The takeover bid is, therefore, as an oil industry expert put it, "hugely significant" for the future of Kurdish oil exports and relations between the KRG and Baghdad.¹²⁴

C. THE INCENDIARY PRESENCE OF OIL AND GAS IN DISPUTED TERRITORIES

If economic emergency points the way toward further pragmatic deals of the sort involving exports from Tawke and Taq Taq, continuing disputes between the federal government and KRG suggest that an overall accord over a hydrocarbons law remains a distant prospect. The matter is complicated by developments in the disputed territories, whose resources are contested by Baghdad and Erbil. Some oil experts contend that while there may be significant oil and gas reserves in the Kurdistan region, the biggest reserves and the best quality are in areas whose status is disputed.¹²⁵ The two main conflicts concern the Khurmala dome oil field and the Khor Mor gas field, where an incendiary situation threatens to become explosive.

¹¹⁷ Crisis Group interview, oil industry expert, Erbil, 31 October 2008.

¹¹⁸ Crisis Group interview, Nechirvan Barzani, KRG prime minister, Erbil, 21 May 2009. Ten days later he stated publicly: "We are happy to be part of a federal Iraq within a democratic constitutional framework. When we open these valves today, the Kurdistan region will be earning hundreds of millions of dollars in revenue for all the people of this country". See www.krg.org, 1 June 2009.

¹¹⁹ This argument has been developed in Crisis Group Report, *Oil for Soil*, op. cit., pp. 15-19.

¹²⁰ Crisis Group telephone interview, oil industry expert, 13 May 2009. He said the oil industry was "ecstatic about the KRG's announcement", which came only days after UK-based Heritage Oil reported it had uncovered a field in the Kurdistan region that could yield up to 4.2 billion barrels of oil. This increased the value of its shares by 25 per cent overnight. *The Financial Times*, 7 May 2009.

¹²¹ Bloomberg.com, 9 June 2009.

¹²² Associated Press, 9 June 2009. Sinopec Corporation is China's largest refiner by capacity.

¹²³ *The Financial Times*, 24 June 2009.

¹²⁴ Crisis Group telephone interview, oil industry expert, 15 June 2009.

¹²⁵ As one expert put it, "one of the KRG's main problems is that the largest quantities of oil lie in the disputed territories, not even including Kirkuk, and this is also of the best quality. The closer you get to Kirkuk, the better it gets. This offers high potential for conflict". Crisis Group interview, oil industry expert, Erbil, 28 October 2008.

1. The Khurmala dome oil field

The Khurmala dome (*qubbat Khurmala*) is, along with Avana and Baba, one of the super-giant Kirkuk field's three domes – typical oil-bearing geological structures.¹²⁶ The entire field (*haql Kirkuk*) stretches northeast from Kirkuk city to Dibs in Kirkuk governorate and, with the Khurmala dome, extends into Makhmour district of Erbil governorate. The field lies adjacent to the Dibs-Mosul road, just north of the Erbil-Makhmour road. While the Kurds consider Makhmour an integral part of Kurdistan – administratively it belonged to Erbil governorate historically, and it has a Kurdish population – it is located in an area that fell under Baghdad's control until 19 March 2003, ie, outside the Green Line. Thus it was administered de facto by Ninewa governorate from 1991 until 2003. Because of the area's undecided status, and although the KRG provides the bulk of services, Makhmour district and its sub-districts, including Dibaga (also known as Kandinawa) in which the Khurmala dome is located, have voted in Ninewa instead of Erbil since 2003, most recently in the January 2009 provincial elections.

The area is policed by the 5th brigade of the army's 2nd division, a former Kurdish *peshmerga* unit that was absorbed into the federal army. Moreover, KDP *peshmergas* guard the ridge separating the Khurmala dome from the Erbil plain, and KRG security personnel man checkpoints on the roads. The Khurmala dome is divided into three parts, each with a connector station that collects the oil from an average of twenty wells each. They are referred to as Khurmala North, Middle and South. Security on the north and middle fields is provided by the KRG, which has contracted an Iraqi company to undertake construction there; the south field is being developed by the North Oil Company but is essentially a no-man's land in security terms.

The North Oil Company says its personnel have worked at the Khurmala dome since 1989, but post-August 1990 international sanctions delayed construction of installations and oil production. It also claims it has been producing 35,000 b/d at the Khurmala South field and pumping the oil into the Kirkuk-Ceyhan pipeline since August 2004.¹²⁷ Moreover, it contends

that the field can produce at least twice that volume if additional facilities are built.¹²⁸ The Khurmala dome currently has over 60 drilled wells, but the necessary degassing stations are in Kirkuk rather than at the field itself. In December 2004, the ministry of oil signed contracts with an international consortium headed by the Iraq-based KAR Group for the design and procurement of materials needed to build degassing stations at the site.¹²⁹ These started arriving in 2006 and were placed in storage sheds. A year later, construction of three degassing stations was set to begin. What happened next is indicative of the emerging conflict over who owns and should be allowed to manage Khurmala's oil.

In November 2007, the KRG, staking a claim to the field, awarded a service contract to build a refinery for Khurmala oil to the newly established, KRG-owned Kurdistan National Oil Company (KNOC).¹³⁰ Later that month and again in June 2008, KDP *peshmergas* reportedly blocked North Oil Company workers from upgrading Khurmala South.¹³¹ A North Oil Company employee working at the site claimed that the KRG mineral resources ministry summoned the site engineer to Erbil and told him: "You can receive and store materials, but you cannot build".

The same employee claimed that *peshmergas* once interrupted the flow of Khurmala South oil for a couple of days and twice stopped new drilling at the site, which has yet to resume.¹³² Moreover, he said that "looters" carted away materials from storage sheds over a period of time in 2008; given the *peshmergas'* effective control of the site, he implied that the KRG was responsible. "We spent \$135 million on above-ground installations at the Khurmala dome and another \$120 million on drilling. For two years we could not pump at the field's full potential of 100,000 b/d because the KRG did not allow us to complete the pro-

¹²⁶ The Kirkuk field has a fourth dome, the Zab dome north of the Greater Zab, which however is a non-producing field. A dome is a geological structure in which a layer of relatively impermeable shale overlies a layer of permeable sandstone, forming a trap for oil and natural gas (*Encyclopaedia Britannica*).

¹²⁷ NOC Director Manaa Alobaydi declared the field has been producing 35,000 b/d since 14 August 2004. Faxed letter to Crisis Group, 3 March 2008. KRG Minister of Natural Re-

sources Ashti Hawrami claims that no production whatsoever has taken place at the Khurmala dome (United Press International, 17 June 2008) and industry experts have expressed doubts about the alleged volume of 35,000 b/d. Crisis Group telephone interview, oil and gas expert, 2 July 2009.

¹²⁸ United Press International, 17 June 2008.

¹²⁹ *The Oil Daily*, 3 January 2005, http://goliath.ecnext.com/coms2/gi_0199-3573577/Iraq-Awards-136M-Contract-for.html.

¹³⁰ KRG media release, 6 November 2007, www.krg.org/articles/detail.asp?lngnr=12&smap=02010100&rn=223&anr=21217. KNOC was established under the KRG's 2007 oil and gas law.

¹³¹ United Press International, 28 November 2007 and 17 June 2008.

¹³² He said that the interruption was not publicised and that it took U.S. intervention to get the oil flowing again.

ject. The oil ministry may seek to recoup the money we lost by deducting it from the KRG's 17 per cent".¹³³

Unable to proceed, the federal oil ministry sought recourse via Prime Minister Maliki, who in turn contacted the KRG, but the matter remained unresolved, even after a meeting between Oil Minister Hussain al-Shahristani and KRG Prime Minister Nechirvan Barzani in Erbil on 24 November 2008. In that meeting, however, two important pragmatic deals were struck. One was the export agreement for Taq Taq and Tawke oil (see above); the other was the oil ministry's assent to development of Khurmala North and Middle to produce oil and gas for a Khurmala central processing facility and a refinery in Erbil, both of which are set to open in mid-July 2009 (and to be used for domestic consumption).¹³⁴

The KRG has argued that because the field extends into Erbil governorate, it is inside the Kurdistan region rather than in disputed territory, so the Kurds have full rights to it.¹³⁵ The North Oil Company director claims, however, that the field always lay outside the Green Line (a Turkish and a Russian company were operating there under contracts with the Baghdad government before 2003) and, moreover, constitutes an integral part of the Kirkuk field's structure: "The KRG claims that there is a boundary conflict. However, I don't recognise the border question, nor will I segment a field, as this would create a technical problem".¹³⁶

Both sides are making moves to thwart the other's objectives. In the bidding round announced for late June 2009, the federal oil ministry pointedly included the Kirkuk field, which comprises the Khurmala dome, in an evident attempt to establish federal authority over the area and its resources. In turn, the KRG proceeded with its own strategy of creating facts on the ground by insisting that its Taq Taq oil be put into the

export pipeline at the Khurmala dome rather than Kirkuk's K-1 station, ostensibly because of Khurmala's closer proximity (the two places appear equidistant from Taq Taq on a map).¹³⁷ These moves may be subtle, but they are unmistakable indications that both sides seek to increase their stakes in, and hence their claim to, Khurmala.

As a result, both are likely to suffer economically. International companies interested in operating the Kirkuk field (such as Royal Dutch Shell, which discovered and first developed it 80 years ago) would have to think twice before risking their investments as part of multi-year contracts. They would have no certainty of access to the Khurmala dome nor guarantees they could protect their personnel in case of on-site conflict between KRG *peshmergas* and North Oil Company oil workers. Nor could they ensure that oil would flow without interruption as long as the stand-off remained unresolved. As a reminder of what could happen, the KRG natural resources minister, Ashti Hawrami, warned that "to work in the Kirkuk field ... requires our protection. Most of it is under our security protection. So how can a company work there, if we are not partner to the agreement, and expect us to protect them?"¹³⁸

In late June, the KRG prime minister, Nechirvan Barzani, went further. Referring to the federal oil ministry's announced bidding round for six major oil fields (and two gas fields), he called on it "to reconsider its decision" because, he said, the contracts resulting from the bids would be unconstitutional on two grounds:

For all producing fields in Iraq, Article 112 of the Constitution demands joint decision-making between federal authorities and the producing governorates and regions. As far as we can establish, this has not happened with any of the six fields. This is a clear violation of the Constitution.

Two of the six fields, Kirkuk and Bai Hassan, are located in disputed territories as defined by Article

¹³³ Crisis Group interview, NOC employee, Kirkuk, 21 May 2009. The KRG has its own calculations of financial losses due to lack of exports, for which it blames the federal government. Ashti Hawrami attributed a loss of \$10 billion to its lack of cooperation with the KRG, delaying oil exports from the Kurdistan region, over \$30 billion to gas flaring and an estimated \$60 billion to damage to fields from poor reservoir management. Speech, www.krg.org, 1 June 2009.

¹³⁴ Reuters, 24 November 2008.

¹³⁵ Ashti Hawrami said, "Khurmala Dome is not in a disputed area. It's in Kurdistan, period. ... People say KRG are not allowing them [federal workers] to work in Khurmala. What that really says is it's under KRG control, and we'd like to get it back from them". Quoted in United Press International, 17 June 2008.

¹³⁶ Crisis Group interview, Manaa Alobaydi, Kirkuk, 21 May 2009.

¹³⁷ Because of the absence of a pipeline from Taq Taq, the oil is being trucked from the wells to a manifold at Khurmala South, which combines the crude from Taq Taq and Khurmala South and sends it through a trunk line to the K-1 station in Kirkuk. All oil exports from Kirkuk area fields (including also Bai Hassan) are mixed and sold in Ceyhan, Turkey, as "Kirkuk Blend". Crisis Group telephone interview, oil and gas expert, 2 July 2009.

¹³⁸ Quoted in Reuters, 1 June 2009. A few days earlier, the KRG declared in an official statement that "international oil companies are ill advised to venture in to such contracts with the Oil Ministry without the involvement of the KRG". "Federal Oil Ministry's proposed contract awards legally vulnerable, sub-economic", www.krg.org., 21 June 2009.

140 of the Constitution. ... Accordingly, any decision related to contracting for Kirkuk and Bai Hassan fields requires the direct involvement of the Kurdistan Regional Government (KRG) as a party to the dispute. Regrettably, the KRG has been involved in no such decision-making. This is a violation of the federal Constitution.¹³⁹

Should major international companies fail to sign contracts with the government to develop Kirkuk oil fields, Iraq's overall production will suffer.¹⁴⁰ This would add to the rhetorical ammunition the KRG has directed at Hussein al-Shahristani, the federal oil minister, whom it repeatedly has accused of incompetence,¹⁴¹ and could increase pressures on Baghdad to accept additional exports from Kurdish fields once they start producing. If this is the KRG's strategy, it may work in terms of increasing returns on its hydrocarbons wealth. So far however, although it has made possible exports from Tawke and TaqTaq, it also has provoked the 12th division's deployment in Kirkuk. It is not inconceivable that the Maliki government will use additional military muscle to strengthen its claim to the disputed territories, replace the Kurdish soldiers of the army's 2nd division, 5th brigade with Arabs, remove the *peshmerga* irritant on the ridge overlooking the Khurmala dome and steer Kurds and Arabs further onto a collision course.

2. The Khor Mor gas field

While the KRG has contracts with foreign companies to develop oil and gas in other fields that straddle the Green Line, its work at the Khor Mor gas field is the most significant and, because of its export potential to Europe, the most fateful. The field is located in Sulei-

maniya governorate but in a majority-Kurdish area that fell outside the Green Line after October 1991 and was administered in effect by Kirkuk governorate.¹⁴² The North Oil Company surveyed the field before 2003 but deemed it to contain insufficient gas to warrant commercial exploitation;¹⁴³ it retained a local company to station guards to protect the wells, but reportedly they spent little or no time there.¹⁴⁴

The KRG has controlled the area since April 2003 and has deployed its *peshmergas* there.¹⁴⁵ In April 2007, it awarded a contract to develop Khor Mor to two UAE-based companies, Dana Gas and Crescent Petroleum, which are co-owned by Hamid Jaafar, an Iraqi entrepreneur whose family has longstanding relations with the Kurdish leadership. It announced the start of production in October 2008, and gas was piped to a 500-megawatt power station at Pir Daud outside Erbil, where it was converted into electricity that was distributed to Erbil homes. This was the first time since 1991 that residents received fifteen hours of government-provided electricity per day (which is supplemented by seven hours of electricity from neighbourhood generators); before that date, the KRG had supplied only two to three hours a day.

Under the deal, the companies were to provide the KRG with 300 million cubic feet per day and would be allowed to sell the excess they produced, as well as

¹³⁹ "Statement by Prime Minister Barzani on Iraq oil fields first bidding round", www.krg.org, 26 June 2009. A few days earlier, Hawrami had released a more elaborate statement against the federal oil ministry's decision to open bids on six oil and two gas fields. "Minister Ashti Hawrami: Proposed Federal Oil Ministry service contracts not in the best interests of Iraq", www.krg.org, 22 June 2009.

¹⁴⁰ During the first open-bidding round on six oil and two gas fields on 30 June 2009, the oil ministry accepted only a single bid, involving the super-giant Rumaila oil field in the south. It remained unclear whether it would continue negotiating with the bidding companies, change the terms, or cancel the process altogether. *Iraq Oil Report*, 30 June 2009.

¹⁴¹ The accusation that Shahristani is incompetent drips off the pages of the KRG's statements concerning the impending bidding round in late June 2009, cited above. In May 2009, KRG Prime Minister Nechirvan Barzani said he "should clarify to the public his own policies, for he is a failure as a minister and unable to present anything to the people and nation of Iraq". *Al-Sharq al-Awsat*, 29 May 2009.

¹⁴² The sub-district town near which the field's installations are located is called Qader Karam. Saddam Hussein's regime razed it, along with several other small towns, during its village destruction campaign in 1987-1988, and cancelled the sub-district. From October 1991 onwards, Kirkuk governorate in effect administered the area, but no Kurds were allowed to live there. The Baathist regime used to refer to the Khor Mor gas field as "al-Anfal", a cruel name, as its genocidal Anfal campaign was fiercest in this particular area, from which entire families were methodically removed and killed. See Human Rights Watch, *Iraq's Crime of Genocide: The Anfal Campaign Against the Kurds* (New York, 1993).

¹⁴³ Crisis Group interview, Manaa Alobaydi, Kirkuk, 21 May 2009.

¹⁴⁴ Crisis Group interview, NOC employee, Kirkuk, 5 February 2009.

¹⁴⁵ The *peshmergas* belong to the PUK and have been overseen by the Suleimaniya-based *peshmerga* affairs ministry (until its unification with the Erbil-based ministry in 2009). The KRG has other security forces in the area as well, which belong to its interior ministry; jurisdictional, bureaucratic and patronage disputes have arisen between these two sets of forces, with KRG-contracted foreign security companies caught in the middle. Additionally, there have been intra-KRG turf battles between the natural resources ministry, which operates the pipelines, and the electricity ministry, which runs the power stations.

by-products, such as condensate.¹⁴⁶ Since no other pipelines yet exist that would allow Dana Gas and Crescent Petroleum to sell excess gas, to date they have seen no major returns on their investments.¹⁴⁷ Moreover, a major gas project in nearby Chamchamal, called Gas City, was suspended in 2009.

As long as the KRG was recovering gas for local consumption, the federal oil ministry remained silent on the premise that Erbil residents are Iraqi citizens fully entitled to their share of electricity.¹⁴⁸ Furore broke out, however, in May 2009 when two other international companies, Austria-based OMV and Hungary's MOL, announced they were each buying a 10 per cent stake in Dana Gas and Crescent Petroleum's Khor Mor and Chamchamal projects with plans to produce gas for export to Europe.¹⁴⁹ OMV declared that it expected to produce 3 billion cubic feet of gas per day by 2015, enough to "satisfy the requirements of local industry with substantial quantities available for export to destinations, primarily Turkey and Europe, via the planned Nabucco pipeline".¹⁵⁰ The KRG natural resources minister, Ashti Hawrami, declared that the KRG would be "a willing partner to facilitate the supply of all the Kurdistan Region's surplus gas to the Nabucco pipeline owners".¹⁵¹

¹⁴⁶ In a pragmatic, unheralded deal, the KRG has trucked condensate, a mixture of hydrocarbon liquids derived from natural gas, to the oil pipeline at the nearby NOC-managed Jambour oil field, which connects to the Kirkuk-Ceyhan pipeline. Because adding condensate to oil improves the latter's quality, it has high value. Crisis Group interview, Crescent Petroleum employee, Suleimaniya, 31 October 2008.

¹⁴⁷ Ibid.

¹⁴⁸ The federal government reportedly has sent reconnaissance teams to Khor Mor, however, raising tensions. Crisis Group interview, oil industry expert, Erbil, 28 October 2008.

¹⁴⁹ The deal was a financial boon for Dana Gas and Crescent Petroleum, which had seen no return on their investments in the Kurdistan region and reportedly were short on cash. Crisis Group interview, Crescent Petroleum employee, Kirkuk, 20 May 2009.

¹⁵⁰ BBC News, 17 May 2009. OMV and MOL each have a 16.67 per cent stake in the Nabucco project. Reuters, 18 May 2009. The KRG, which appeared to have been caught off-guard by the deal, responded the next day with a statement of approval. www.krg.org, 18 May 2009. The KRG routinely is the first to announce oil and gas deals pertaining to the Kurdistan region.

¹⁵¹ Media release, www.krg.org, 18 May 2009. He added: "The gas supply arrangement from the Kurdistan Region would increase the economic links and cooperation between the private sector of the Kurdistan Region and Turkey. It would also undoubtedly contribute to regional stability and establish Turkey's potential as a strategic energy partner to Europe".

This announcement raised the stakes significantly. Nabucco is a strategic project to diversify Europe's gas sources and in particular to reduce its dependence on Russian gas and the Gazprom pipeline network.¹⁵² The Nabucco pipeline, currently under construction and scheduled to become operational by 2014, eventually will run from eastern Turkey through the Balkans to Austria, conveying gas from Turkmenistan, Azerbaijan and Iran. All these sources are problematic, however, and there are doubts that they will produce enough gas to make the project viable.¹⁵³ Turkey is, therefore, in search of additional gas sources. It is looking at Iraq's Akkas field on the Syrian border but also at the KRG's Khor Mor and Chamchamal. Should the KRG succeed in piping gas (through a yet-to-be-built pipeline) to Turkey and onward to Europe, it would be a huge coup that would raise the Kurdistan region's strategic importance and give it tremendous leverage in its relations with Baghdad.¹⁵⁴

That said, the fact remains that both Khor Mor and Chamchamal (where no production is taking place) lie at least partially in disputed territory, or what some oil companies refer to as "inside the new Green Line", equivalent to what in this report is called the trigger line. The Maliki government's response to the companies' announcement was, therefore, swift. Oil Minister Shahristani declared unequivocally the next day: "We will not allow any side to export gas from the region without approval of the central government and the Iraqi Oil Ministry".¹⁵⁵ The North Oil Company director added:

¹⁵² Russia is building its own South Stream pipeline, scheduled for completion in 2015. A direct competitor to Nabucco, it is meant to pipe gas from Russia via the Black Sea and the Balkans to Italy, thus bypassing Ukraine.

¹⁵³ Azerbaijan's gas would be insufficient to make the Nabucco project viable, while both Turkmenistan and Iran are posing political obstacles to Turkey's demand that it buy gas at the well rather than at the border, wanting to control their own resources in the face of fluctuating domestic demand. Crisis Group interviews, U.S. embassy official and Murat Yetkin, Ankara bureau chief, *Radikal* daily, Ankara, 29 January 2009.

¹⁵⁴ Nabucco's managing director was quoted as saying that the possible export of Khor Mor gas "is an important and promising development for the acquisition of a huge volume of natural gas for Turkey and for Europe via Nabucco". Reuters, 18 May 2009.

¹⁵⁵ Ibid. The North Oil Company has sent reconnaissance teams to Khor Mor, at least in part because of its pre-2003 guard presence on the field and perhaps as Baghdad-inspired probes of the KRG's responses. Crisis Group interviews, oil industry expert, Erbil, 28 October 2008, and NOC employee, Kirkuk, 5 February 2009.

When Khor Mor was generating power for Erbil and Suleimaniya, this was a good thing. I supported that. But if there are plans to export to Europe, then it becomes political. These are steps toward independence. But the Kurds are not independent. And Khor Mor lies partly on this side and partly on the other side of the Green Line.¹⁵⁶

The KRG is engaged in a high-stakes gamble aimed at expanding its leverage vis-à-vis Baghdad by turning the Kurdistan region into an indispensable energy source for Europe, with Turkey playing a key role. Kirkuk and other disputed territories with oil and gas reserves play a central part in this, both as prize to acquire and obstacle to overcome. This suggests that resolution of the disputed territories' question will take time, diplomacy and international support, conditions Iraq lacks as the U.S. is set to withdraw its troops. While the UN, with the Obama administration's support, is considering moving toward a grand bargain strategy that combines the interlocking issues of power, territory and resources, as first proposed by Crisis Group, time constraints may dictate a different outcome.¹⁵⁷

¹⁵⁶ Crisis Group interview, Manaa Alobaydi, Kirkuk, 21 May 2009.

¹⁵⁷ Crisis Group Report, *Oil for Soil*, op. cit. Such a deal could take various forms but essentially would give Kirkuk a special status as a stand-alone region and would allow the KRG to manage its own oil and gas fields and export both crude oil and gas through Turkey. Washington and others would recognise and guarantee the boundary between the Kurdistan region and the rest of Iraq, and Turkey would become the Kurds' de facto protector and main trading partner. (Other steps would have to be taken as part of the deal, for example concerning the PKK.) The fact that none of the Kurdistan region's neighbours, all of whom have sizable Kurdish populations, would accept Kirkuk's absorption into the region reduces chances they would want to spoil the proposed bargain.

VI. NEW VISTAS?

Kurdish leaders are unanimous that a U.S. withdrawal would be calamitous for Iraq, including the Kurdistan region.¹⁵⁸ The KRG's *peshmerga* minister said that "once U.S. troops leave, there will be a catastrophe in all of Iraq".¹⁵⁹ Masrour Barzani went further: "If the Americans do leave, and if there is no solution to Iraq's problems, it will be disastrous for the entire region and may force them to come back in much bigger numbers".¹⁶⁰

If they fostered any hopes several months ago that President Obama would not act on his campaign pledge to withdraw, some no longer appear to do so and have started to prepare for that day. Historically, the Kurds have been caught between the needs to fight to protect their national movement – an endeavour that has forced them into the mountains and inflicted huge damage on their people – and to seek accommodation with stronger actors surrounding them. In either case, they require a reliable protector, and this they have never had.

Iran's support in 1974-1975 proved fickle. U.S. post-1991 protection was never fully satisfying, even if it kept the Kurdistan region safe.¹⁶¹ The Kurds had greater hopes for U.S. support after 2003, but while Washington provided unprecedented political space for them to operate in Iraq, their leaders complained that the U.S. should have done more in support of their main goal, which has been to incorporate Kirkuk.¹⁶² Still, Iraqi Kurds have flourished like none of their regional brethren, enjoying both protection and development, however uneven. The prospect of the loss of the U.S. as their direct protector against both Baghdad and neigh-

¹⁵⁸ Crisis Group interviews with politicians in the rest of Iraq in May and June 2009 suggested that this perception is shared by many, regardless of public statements supporting a U.S. troop withdrawal.

¹⁵⁹ Crisis Group interview, Sheikh Jaafar Sheikh Mustafa, KRG *peshmergas* minister, Erbil, 24 May 2009.

¹⁶⁰ Crisis Group interview, Masrour Barzani, Sari Blent, 23 May 2009. Prime Minister Nechirvan said during an earlier interview that if key disputes remain unresolved when U.S. forces depart, "it will be war between both sides [Baghdad and Erbil]". Quoted by the Associated Press, 14 February 2009.

¹⁶¹ In 1991-2003, the U.S. and EU, in deference to Turkey, limited their material support of the Kurds to humanitarian assistance.

¹⁶² Masoud Barzani said, "we have had a historic and friendly relationship [with the U.S.], but frankly speaking, we were expecting more. They could have played a much larger role in solving this problem [Kirkuk] than they did". Interviewed by Reuters, 13 May 2009.

bouring states – just as the Maliki government is seeking to reverse some of the KRG’s territorial gains – is now forcing Kurdish leaders to view one of those states, Turkey, as the only viable alternative, even if the U.S. retains a residual military presence.

Turkey may be a traditional Kurdish enemy, but it has the great advantage of offering a lifeline to Europe, an export channel for the Kurdistan region’s oil and gas, trade and investment for its booming economy and protection from the one old enemy the Kurds distrust even more – Baghdad. Kurdish leaders started talking openly about the need to deal with Turkey in 2007, after the re-election there of the Justice and Development Party (Adalet ve Kalkınma Partisi, AKP); relations have improved steadily since then, despite repeated Turkish bombardments of suspected bases of the Kurdistan Workers Party (Partiya Karkerên Kurdistan, PKK) in northern Iraq.¹⁶³ The relationship is based on recognition that Turkey and the KRG may need each other. Fuad Hussein, Masoud Barzani’s chief of staff said:

If the Shiites choose Iran, and the Sunnis choose the Arab world, then the Kurds will have to ally themselves with Turkey. In turn, Turkey will need the Kurds in that case. We are compelled to be with Turkey, and from Turkey’s perspective they have no other friend or partner in Iraq. We don’t love each other, but we don’t need to. If the Americans withdraw soon without [mediating] a good political arrangement [for the Kurds] with Baghdad, there will be conflict, and then Turkey will have no choice.¹⁶⁴

Senior Turkish and KRG leaders have met on several occasions (though President Barzani has yet to meet with either President Abdullah Gül or Prime Minister Recep Tayyip Erdoğan¹⁶⁵), and both sides have stressed the need for a process of confidence-building steps that would lead to an agreement on relations, including Turkey’s formal recognition of the KRG.¹⁶⁶

¹⁶³ For an analysis, see Crisis Group Report, *Turkey and Iraqi Kurds*, op. cit.

¹⁶⁴ Crisis Group interview, Fuad Hussein, chief of staff to Kurdistan region president, Erbil, 24 May 2009.

¹⁶⁵ A planned meeting between President Gül and President Barzani in Baghdad in March 2009 fell through. Various reasons have been offered, the common theme being Turkey’s failure, in Kurds’ eyes, to extend formal recognition to the Kurdistan region and its government. Crisis Group interview, Kurdish adviser, Washington DC, 14 April 2009. (See also next footnote.)

¹⁶⁶ When President Gül visited Baghdad in March 2009, he reportedly used the word “Kurdistan” twice in reference to

Surprisingly, these developments have revived the notion of “Mosul *vilayet*”, Iraq’s old Mosul province to which post-Ottoman Turkey laid claim. However, this time the impetus is coming not from Turkish nationalist circles but from the Kurdish side, even at senior levels. A KRG minister said, “we have the right to be independent, but if that doesn’t work out, then I’d rather be with Turkey than Iraq, because Iraq is undemocratic”. The best way forward, he said, was for “the Kurdistan region to join Turkey as part of a new Mosul *vilayet* and for Turkey to join the EU, with a solution for the situation of the Kurds in Turkey”.¹⁶⁷ Ankara officials have made clear, however, that Turkey’s formal incorporation of an additional population of Kurds would be undesirable and politically inconceivable. Instead, an official said:

An economic confederation with the Kurds of Iraq will be possible in the future, but it would have to be a de facto, not a de jure arrangement. We want Iraq to remain unified. Iraq is like a barometer of the ethnic and sectarian balance in the region. But economic incentives are possible. Via agreement with Baghdad, we can make our border with the Kurdish areas flexible and create an economic zone.¹⁶⁸

Fuad Hussein, chief of staff to the KRG president, offered a lesser but still radical proposal. Declaring that “we don’t want to be part of Turkey and Turkey doesn’t want more Kurds”, he indicated that Kurdish leaders were now convinced that the Obama administration indeed intends to leave by the timetable it has

the Kurdistan region, but not “Kurdistan regional government”. He did, however, agree with a journalist who suggested that the term “Kurdistan regional government” was mentioned explicitly in the Iraqi constitution, which Turkey has said it accepts as legitimate. Crisis Group interview, Kurdish adviser, Washington DC, 14 April 2009. Regardless, Gül’s words come closer to recognising the KRG than those of any other senior Turkish official speaking publicly. And while these appear to be small differences, every nuance has huge emotional importance both in Turkey and among the Kurds.

¹⁶⁷ Crisis Group interview, Erbil, 22 May 2009. A senior Kurdish leader told Crisis Group the same in June 2008, and in December 2008 a Kurdish politician from Kirkuk also mentioned Mosul *vilayet* as the Kurds’ best option: “The KRG’s strategic interest is with Turkey. Turkey’s influence in the Kurdistan region far exceeds Baghdad’s. The Kurds are ethnically closer to the Persians, but strategically and economically a rapprochement with Turkey would make a lot more sense. We could see the revival of Mosul *vilayet*”. Crisis Group interview, Amman, 2 December 2008. None of these officials or politicians suggested that Mosul itself should be part of the new Mosul *vilayet*, however.

¹⁶⁸ Crisis Group interview, Ankara, 21 July 2008.

set and that Iraq, as a result, would collapse. This, he said, would leave the Kurds no choice but to ally themselves with Turkey, while remaining in what would be a highly dysfunctional Iraq, possibly racked by endemic war and regional intervention. In that case, he said, the Kurds would benefit from Turkish protection, and in exchange Turkey would gain direct access to the Kurdistan region's oil and gas, even the huge reserves of Kirkuk: "Turkey will have Kirkuk indirectly. It's the only way for Turkey to get it", ie, through the Kurds, who would extend their dominance in Kirkuk, taking advantage of chaos in Arab Iraq.

This scenario, which places Kirkuk inside Kurdistan as a result of Iraq's disintegration, would be a Faustian bargain for the Kurds dictated by the existential fear of a resurgent central state. They would have to trade any hope for independence for protection from an erstwhile enemy that remains bitterly opposed to Kurdish statehood but would benefit from a stable Kurdish entity on its eastern border, firmly under Ankara's tutelage.

So far Turkey has approached developments with extreme caution, apparently acknowledging there could be a potential need for a new arrangement with the Kurds that would bypass Baghdad, but only if and when it has become convinced that the situation in Arab Iraq has become so unstable that it threatens its strategic interests. "We have more shared interest with Iraqi Kurds than with anyone else in Iraq", said an official.¹⁶⁹ Ankara officials have indicated they wish to ramp up Turkish investments in the Kurdistan region and open export channels for oil and gas.¹⁷⁰ "We are trying to comfort the Kurds", the same official said. "We want to give them hope. We then would have more credibility to show them the limits they face". He suggested that an accommodation with the KRG over the PKK's presence in northern Iraq would be possible.¹⁷¹

Turkey's main concern is Iran, whose influence in Iraq it views as having extended worryingly since 2003 and whose nuclear program at least some senior officials believe is of a military nature.¹⁷² In this regard, Iraq's implosion as a result of U.S. military withdrawal would be a nightmare scenario, offering even greater

opportunities for Iran. To minimise the risk, Turkey has tried to strengthen its ties with Baghdad, with the objective of strengthening the government. A joint declaration on establishing a high-level strategic co-operation council was issued in July 2008 and a preliminary security cooperation accord was signed in June 2009. Turkey also opened a consulate in Basra in March 2009, a move officials privately have indicated was designed to curb Iranian influence in the south.

Ankara's dilemma is that it does not know what will happen in the aftermath of a U.S. military departure and, therefore, whether it should place all its eggs in Baghdad's basket, risking alienating the Kurds, or bolster the KRG in order to create a buffer between itself and a future Iraq under strong Iranian influence, thus angering Baghdad. In effect, it is hedging its bets and balancing relations with both sides.¹⁷³ It also seeks to keep its Iraq policy aligned with that of the U.S.¹⁷⁴ Meanwhile it is encouraging the Kurds to dream that an economic union is in the offing – by supporting the KRG in its drive to export oil and gas. Small Turkish companies such as Genel Enerji and PetOil that operate with a green light from Ankara play a vanguard role through their contracts on Kurdish oil fields.¹⁷⁵

It would be easy to dismiss such scenario-plotting, but the lack of compromise, or even of the primary stakeholders' desire to sit down and negotiate, and the uncertainties that accompany a U.S. troop withdrawal leave Iraqi actors and neighbouring states alike with little alternative. Worse, such projections could shape policymaking in ways that reinforce rather than challenge current trends. For example, if Kurdish leaders become increasingly convinced that Iraq is lost and that their only chance of a viable future lies with Turkey – a future they believe would include control over Kirkuk – they will have little incentive to pursue compromise on disputed territories. This in turn would precipitate events that would further destabilise the country and turn the worst-case scenario into a self-fulfilling prophecy.

¹⁶⁹ Crisis Group interview, Turkish official, Ankara, 28 January 2009.

¹⁷⁰ For example, Turkish officials have met with Hamid Jaafar, the owner of Dana Gas and Crescent Petroleum, to discuss gas exports from Khor Mor and Chamchamal.

¹⁷¹ Crisis Group interview, Turkish official, Ankara, 28 January 2009.

¹⁷² Crisis Group interviews, Turkish officials, July and November 2008.

¹⁷³ Crisis Group interview, Turkish official, Ankara, 6 July 2009.

¹⁷⁴ Crisis Group interview, Soli Özel, commentator with *Habertürk*, Istanbul, 5 July 2009. U.S. diplomats credit Turkish diplomacy for playing a pivotal role in bringing Iraq-U.S. negotiations over the strategic framework and status of forces agreements to a successful conclusion in November 2008. Crisis Group interviews, Ankara, 29 January 2009, and Washington DC, 27 May 2009.

¹⁷⁵ Crisis Group Report, *Turkey and Iraqi Kurds*, op. cit., p. 15.

VII. CONCLUSION

In 2008 and 2009, even as security in Iraq improved markedly, a chasm between longstanding Kurdish claims against a gradually re-centralising state and Arab Iraqis' views on the need for a strong government in Baghdad began to widen, as the unresolved status of disputed territories remained a festering problem. In other contexts, such a development might merely reflect usual nation-building hiccups, but in Iraq, home to at least two major national groups, Arabs and Kurds, it is more than that. Given the near-unanimity inside and outside the country over the sanctity of post-Ottoman borders – only the Kurds challenge this notion, for obvious reasons – the two sides will have to find accommodation within the Iraqi state.

There is little time for Washington to exert positive influence to steer discussions toward a durable settlement. The prospect of a security vacuum is already concentrating many Iraqi minds – and not mainly on peaceful resolution of their differences. Rather, it is on gaining political, military and territorial advantage ahead of a U.S. troop withdrawal. Such a dynamic would entrench positions, create new permissive conditions for spoilers and thus vastly expand the chances of violent conflict, given the multiplicity of actors that have militias and the absence of a viable state that could arbitrate and impose its will. Actions based on the notion that Iraq's stability is at risk and that only an external guardian can protect against an uncertain future could help regionalise the conflict in ways that no neighbouring state might be able to control, however much they would oppose this trend.¹⁷⁶

To prevent such a scenario, the U.S. should act on its pledge to execute a "responsible" military withdrawal, one focused not merely on the safety of U.S. troops but also on what they leave behind. Crisis Group intends to discuss in a subsequent series of reports what a responsible U.S. exit strategy should look like. There is no question, however, that addressing the tumultuous relationship between the KRG and Baghdad government should be foremost on the political agenda. The disputed territories question is at the core of this. As KRG Prime Minister Nechirvan Barzani said, "the Obama administration talks about a responsible withdrawal from Iraq. It means the existing problems, in-

cluding the disputed territories, need to be addressed and resolved before the withdrawal takes place".¹⁷⁷

In late June President Obama expressed frustration about the lack of political progress in Iraq.¹⁷⁸ Several days later he appeared to act on his earlier commitment to prepare for a responsible troop withdrawal¹⁷⁹ by asking Vice President Joseph Biden to serve informally as his special envoy for Iraq, to deal with the evident lack of political progress.¹⁸⁰ Biden promptly paid a two-day visit, during which he met with political leaders and called on Iraqis to "use the political process to resolve their remaining differences and advance their national interest".¹⁸¹ He also indicated the Obama administration's intent to prod Iraqi leaders toward compromise over the key issues dividing them – power, resources and territory – and asserted that his appointment showed that the administration remained engaged on Iraq at the highest levels.¹⁸²

This was a welcome development – one that came early in a new administration but relatively late in the Iraq war, given the announced timetable for a troop withdrawal and the fact that Iraqi leaders are unlikely to make difficult compromises before elections in Janu-

¹⁷⁷ Quoted by the Associated Press, 14 February 2009.

¹⁷⁸ At a White House press conference in late June, President Obama said: "I think there's still some work to do. I think the Maliki government is not only going to have to continue to strengthen its security forces, but it's also going to have to engage in the kind of political give and take leading up the national elections that we've been talking about for quite some time. And I haven't seen as much political progress in Iraq, negotiations between the Sunni, the Shia, and the Kurds, as I would like to see.... I think the ... bigger challenge is going to be, can the Shia, the Sunni, and the Kurds resolve some of these major political issues having to do with federalism, having to do with boundaries, having to do with how oil revenues are shared. If those issues get resolved, then I think you will see a further normalization of the security atmosphere inside of Iraq". Text at www.whitehouse.gov/the_press_office/Remarks-By-President-Obama-And-Chancellor-Merkel-Of-Germany-In-Joint-Press-Availability/.

¹⁷⁹ In a speech at Camp Lejeune, N.C., in February 2009, he spoke of a three-part strategy involving the responsible removal of combat brigades, sustained diplomacy to secure a more peaceful and prosperous Iraq, and comprehensive U.S. engagement across the region. Specifically, he mentioned aiding the UN to support national elections, brokering agreements on basic issues dividing Iraqis and building the capacity of Iraqi institutions. *The New York Times*, 28 February 2009.

¹⁸⁰ *The New York Times*, 3 July 2009.

¹⁸¹ Quoted in *The New York Times*, 4 July 2009. Biden's scheduled meeting with Masoud Barzani had to be cancelled due to sandstorms in Baghdad that prevented flights.

¹⁸² *The New York Times*, 3 July 2009.

¹⁷⁶ Crisis Group first called attention to this dynamic in 2006, at the height of the civil war. See Crisis Group Middle East Report N°80, *The Next Iraqi War? Sectarianism and Civil Conflict* (27 February 2006), pp. 27-28.

ary 2010. Yet by reconfirming its commitment to brokering a solution, the administration may have halted the downward trend in relations between Baghdad and Erbil and opened a window to a negotiated peace.

In order to persuade all relevant players that, in this critical transitional year, the U.S. will make every effort to ensure a responsible military exit, it should move at three levels simultaneously:

- **Proceed with a grand bargain strategy.** The U.S. should strongly back a UNAMI initiative to make preparations to combine the interlocking issues of power, resources and territory into a single discussion aimed at reaching a grand bargain should discussions on individual tracks (such as on disputed territories, or power sharing in Kirkuk) run aground. Although an overarching deal would be virtually impossible to deliver in an election year, when politicians will be unwilling to compromise on such hot-button issues, technical experts representing the stakeholders could lay the groundwork for a deal that a newly elected council of representatives should consider shortly after its first seating.
- **Open channels of communication and coordination.** Because a grand bargain will not be reached soon, there is a need to address issues of burning interim concern that have high potential for destabilisation. One of these is the possibility of inadvertent conflict resulting from poor communication in a situation where military actors face each other in close proximity, such as in the oil and gas fields. Some steps have been taken to address this issue, for example the Joint Coordination Centre in Kirkuk, which is focused on urban areas under police supervision. An additional JCC should be created for non-urban areas, in which military representatives from both the Iraqi army and Kurdish *peshmerga* force play the predominant role. Moreover, the experiment with joint army-*peshmerga* checkpoints and patrols in Diyala governorate should be extended to other disputed territories, guided by a joint security committee in each governorate and coordinated by a joint committee that includes political representatives of the KRG and federal government.

At the national level, the KRG and Maliki government should consider assigning a non-voting official at cabinet level to each other's executive branches to help flag disputes at an early stage, as Mahmoud Othman has proposed.¹⁸³ More broadly, Nouri al-Maliki and Masoud Barzani should create a chan-

nel for frequent communication, even if via intermediaries.

- **Support mechanisms to resolve specific issues.** The Maliki government and KRG should unfreeze the five leadership committees in Baghdad established in November 2008 to deal with the most intractable political issues. Both sides should support the task force established under UN auspices to discuss and institute confidence-building steps in disputed districts, as per recommendations in UNAMI's report on disputed internal boundaries. In Kirkuk, UNAMI should organise and mediate talks consistent with the Article 23 track (despite the Article 23 committee's failure) concerning power sharing, voter rolls and property issues.

In the meantime, both sides should state unequivocally they will take no further unilateral steps in disputed territories, such as issuing new oil and gas contracts; tone down their rhetoric concerning the disputed territories, especially in the run-up to the 25 July elections in the Kurdistan region and the 30 January 2010 legislative elections in all of Iraq; and further reduce tensions by issuing clear instructions to their respective military forces that they are to remain in separate areas, except in those cases where joint operations against violent groups – an issue of shared concern – would make sense.

Baghdad/Erbil/Brussels, 8 July 2009

¹⁸³ Crisis Group interview, Mahmoud Othman, independent member of the Kurdistan Alliance list in the council of representatives, Erbil, 24 May 2009.

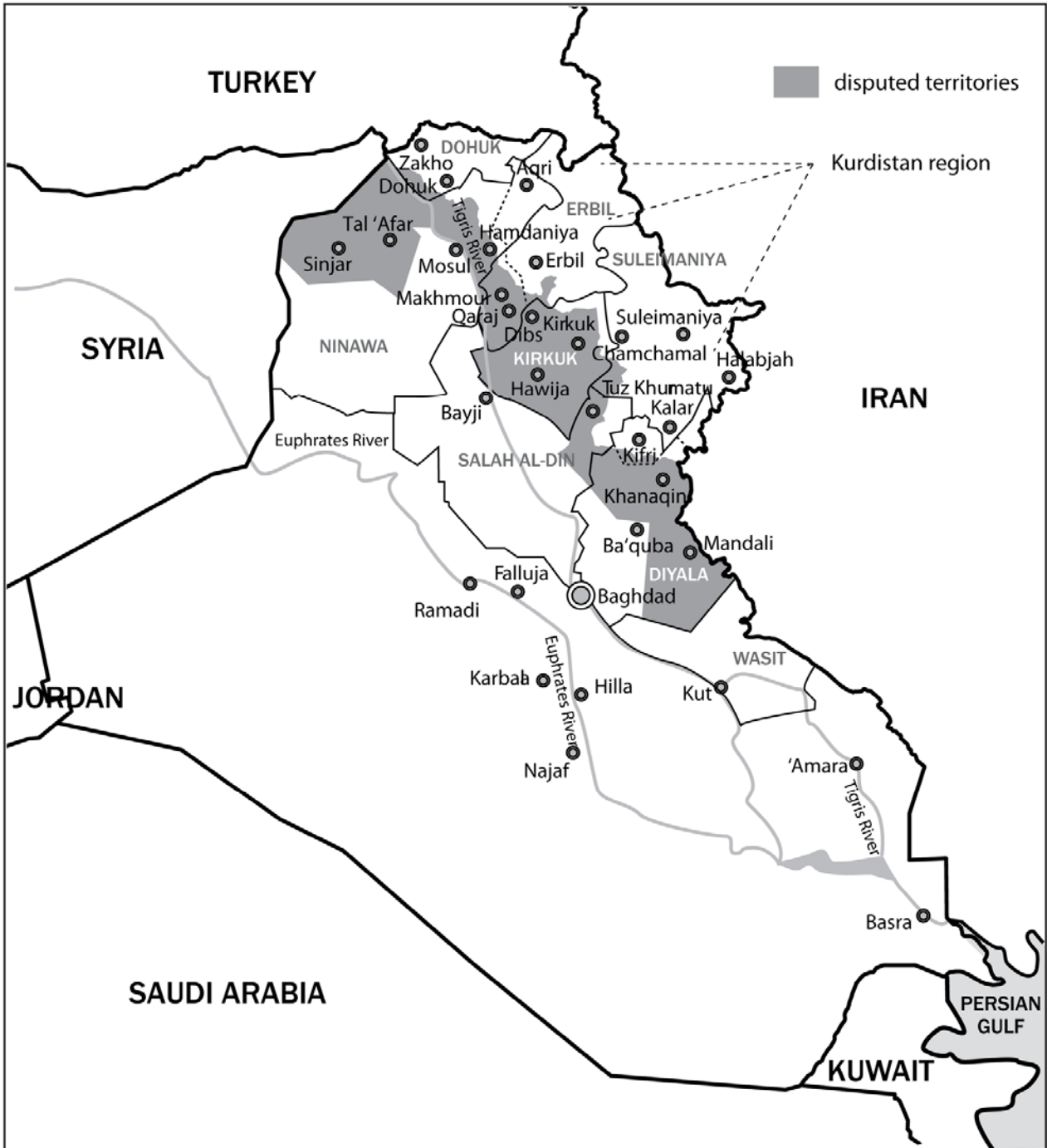
APPENDIX A

MAP OF IRAQ



APPENDIX B

DISPUTED TERRITORIES CLAIMED BY THE KRG



This map has been produced by the International Crisis Group. It is a modified version of a similar map appearing in Crisis Group Middle East Report N°80, *Oil for Soil: Toward a Grand Bargain on Iraq and the Kurds* (28 October 2008). Only the northern boundary of the disputed territories has been adjusted to add more detail.

APPENDIX C

OIL AND GAS CONCESSIONS IN THE KURDISTAN REGION



This map has been adapted by the International Crisis Group from a map made available by the U.S. Government. It is a modified version of a similar map appearing in Crisis Group Middle East Report N°80, *Oil for Soil: Toward a Grand Bargain on Iraq and the Kurds* (28 October 2008). The Green Line has been adjusted to add more detail, and the towns of Chamchamal, Khanaqin and Kifri have been added.

APPENDIX E

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Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

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