

**Introduction to the Laws of Kurdistan, Iraq
Working Paper Series**

**Oil & Gas Law of
Iraq**

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OIL AND GAS LAW OF IRAQ

“A century ago, petroleum - what we call oil - was just an obscure commodity; today it is almost as vital to human existence as water.” -James Buchan (1954)

I. INTRODUCTION

Evidence of humans using oil extends far back to the ancient Greeks, but only since the early 1900s has it played an important role in our politics, economics, and daily lives. Today, **oil and gas** provide more than half of the world’s energy needs. The commodity has shifted huge amounts of wealth across the world and played a major role in international relations.

Oil and gas in Iraq is significant to Iraq’s history, modern economy, and domestic and international politics. The International Energy Agency (IEA) estimates that Iraq produced 2.95 million barrels of crude oil per day (mbd) in 2012, and in its 2012 report, projected that production would more than double to 6.1 mbd by 2020. In the same report, IEA estimated that such an increase would bring Iraq a total of \$5 trillion in revenues from oil exports between 2012 and 2035, averaging \$200 billion per year.

Iraq’s economy is dependent on the oil and gas sector. More than 90 percent of Iraq’s annual federal budget comes from **oil revenues**, and as of 2012, revenues from oil account for about two-thirds of Iraq’s **Gross Domestic Product (GDP)**. As a result, Iraq’s economy depends on the oil sector and is vulnerable to changes in oil prices.

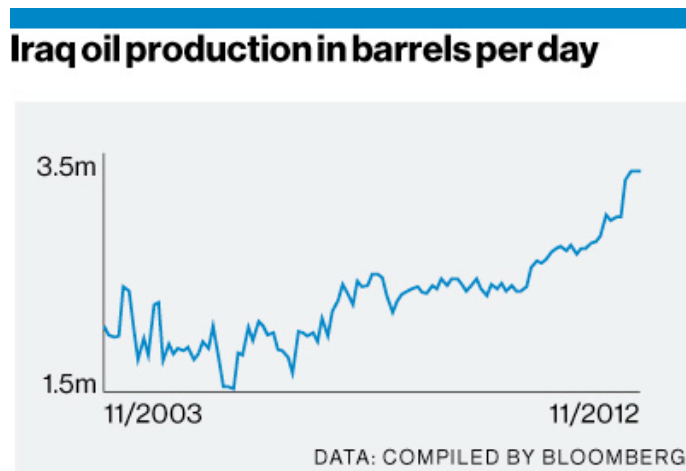
Iraq’s valuable oil resources are related to the state’s ability to fund the building of hospitals, schools, roads and bridges and pay its policemen, soldiers, and teachers their salaries. The oil and gas sector is the prime source of this funding. Unlike the **income tax** in Iraq for individuals and businesses, which is 15 percent, the **tax rate** for oil and gas and related industries is 35 percent.¹ On top of these taxes, many of the individual oil **production contracts** signed with federal government and the regional governments include terms that require companies to share revenues earned from **drilling** with the government.

There are several reasons why oil and gas is an important topic and was included in this textbook. The presence of oil and gas in Iraq has shaped the country’s history and will play a large role in its political future. Second, oil and gas political and legal issues are connected to the major debates about how the government should distribute power and resources. In this way, the oil

¹Article 1, Law of Income Tax 19 on Foreign Oil Companies, 2010. Entire legislation available here: <http://www.iraqoilforum.com/wp-content/uploads/2012/05/The-Law-of-Income-Taxation-on-Foreign-Oil-Companies-Working-inIraq.pdf>

and gas chapter is critical to understanding other topics in the book, such as **federalism** and the **constitution**. Because oil and gas are such a large part of Iraq's economy, understanding this topic will help students learn about trade and commerce issues. Lastly, disagreements about oil and gas are responsible for much of the tension between leaders of the central government and the KRG. Understanding the material in this chapter will make students more aware of the important Baghdad-Erbil relationship.

Figure 1: Oil Production per Day, 2003 to 2012



Despite being one of the most important and fiercely debated topics in Iraq right now, it is not always clear which law governs oil and gas activities. First, there is the Constitution of Iraq, which is the supreme law of the land. The provisions of the Federal Constitution govern every Iraqi, whether they are from Basra, Baghdad or Erbil. The Federal Parliament – Iraq's main legislative body – can also pass laws that can clarify, execute, or expand on some areas of the Constitution. The Iraqi Constitution also allows the legislative bodies of autonomous provinces to pass laws, as long as they conform to the Federal Constitution. These laws only apply to the region itself and do not affect the rest of Iraq. Finally, Iraq has signed on to a number of international treaties and has signed **contracts** with various individual businesses which further govern both parties' actions. Iraqi oil and gas law is a complicated mix of all of these sources of law. How do all of them interact? As you move through this chapter, keep in mind this hierarchy of sources and try to remember which type of source we are talking about in each section.

II. BACKGROUND AND HISTORY

The purpose of this section is to introduce readers to the complicated history of oil in Iraq. Many books and lengthy articles describe this history in depth.² This chapter does not replicate those efforts, and instead focuses on the most important historical developments. Understanding this history is important because it shows why oil laws were developed. The history also indicates that Iraq previously faced difficult decisions about oil that are similar to the tough decisions encountered by Iraq's leaders in the years after independence.

As early as 100 A.D., Plutarch described seeing oil bubbling from the ground near Kirkuk. By the early 20th century, oil had become a highly valued commodity traded on the international market. Throughout the 20th century, Iraq developed its oil industry, often with the help of outsiders from Europe or America. Oil has also figured prominently in the various wars that Iraq has been party to – the Iran-Iraq War of the 1980s, the first Gulf War of the early 1990s, and the 2003 U.S. Invasion. This section will take the reader through these historical periods to provide context for today's oil and gas laws and politics. Some key themes to keep in mind when reviewing this section are the way Iraq's oil resource has been developed by both international companies and the Iraqi Government and the debate about nationalization.

A. Beginnings

Oil exploration in Iraq began in the early 20th century when a British entrepreneur named William Knox D'Arcy was granted a concession by the fading Ottoman Empire to explore oil fields in modern day Iraq and Iran in 1901.³ After failing to find oil, D'Arcy worked with several European oil companies to found the Turkish Petroleum Company (TPC). The TPC would be a powerful force in the development of Iraqi oil reserves for many years to come.⁴

B. History from 1918 to 1945

In the years after World War I, Iraq was placed under British control. Great Britain gained control over Mosul and installed Faisal as King of Iraq in 1921. After much negotiation between the Turkish Petroleum Company and the Iraqi government, a 75-year concession was signed in March 1925. In 1927, oil was discovered in Baba Gurgur, just north of Kirkuk.⁵

² Other works consulted for this section include: Abbas Alnarsrawi, *The Economy of Iraq: Oil, Wars, Destruction of Development and Prospects, 1950-2010*, Greenwood Press, 1994.; Adeed Dawisha, *Iraq: A Political History from Independence to Occupation*, Princeton University Press, 2011.; William L. Cleveland, *A History of the Modern Middle East*, Westview Press, 2nd Edition, 1999.; Albert Hourani, *Arabic Thought in the Liberal Age 1798-1939*, Cambridge University Press, 2nd Edition, 1983.; David Fromkin, *A Peace to End All Peace: The Fall of the Ottoman Empire and the Creation of the Modern Middle East*, Owl Books, 2001, and Phillippe Le Billon, "Corruption, Reconstruction and Oil Governance in Iraq," *Third World Quarterly* 26, no. 4-5 (2005).

³ Rex Zedalis, *The Legal Dimensions of Oil and Gas in Iraq: Current Reality and Future Prospects*, Cambridge University Press, 2009. 3.

⁴ Daniel Yergin, *The Prize: The Epic Quest for Oil, Money & Power*, Touchstone Publishers, 1991. 185.

⁵ Yergin, *The Prize*, 200-01.

In 1929, TPC (now called the Iraqi Petroleum Company (IPC)) revised their concessionary agreement in a way which included many other oil companies. Calouste Gulbenkian, an obscure Armenian businessman who orchestrated the first oil concession agreements, retained a 5% ownership stake as well. This agreement was called the Red Line Agreement after a red line was drawn around the Ottoman Empire, binding partners to cooperate within the line. In 1931 a new concession was granted to IPC, giving a 70-year concession over a larger area. In exchange, Iraq sought increased payments and a commitment to build two pipelines to the Mediterranean by 1935.⁶ The IPC operated another company called the Mosul Petroleum Company and won a third concession in 1938 in the south of Iraq that would be developed by a company called the Basrah Petroleum Company (BPC).⁷ The IPC remained in stable control of the Iraqi oil industry for decades. Production of oil was around 100,000 bpd before WWII, but rose to 400,000 bpd by 1952. While oil production increased, a rise in Arab nationalism precipitated demands for a larger share of revenue for Iraq in late 1940s.⁸

C. History from 1945 to 1980

After World War II, international oil companies began to extract large amounts of oil from Saudi Arabia. The agreements reached in the 1950s between Saudi Arabia and the United States increased the amount of oil to be extracted and provided for the payment of 50% of profits to Saudi Arabia. Like in Saudi Arabia, the IPC agreed to pay Iraq 50% of their profit from Iraqi oil and to expand production to 225 million barrels per year.⁹

On July 14, 1958, Abd Al-Karim Qasim overthrew King Faisal II in a military coup and installed himself as the country's leader. Before the coup, Qasim had used the foreign control of oil as a major issue to distinguish himself from the government. During this time, the Iraqi populace had become skeptical about the international companies extracting Iraq's oil and the IPC was widely criticized.¹⁰

Qasim sought to renegotiate the agreements that were made with the IPC. Qasim demanded that the IPC grant more favorable terms, but he decided not to nationalize the oil industry because of the fear that international companies would boycott oil from Iraq, as had happened when western countries boycotted Iranian oil after Iran's Prime Minister Mohammad Mosaddegh nationalized the Iranian oil industry in 1951.

⁶ U.S. Department of State, "The Red Line Agreement," *Milestones: 1921-1936*, <http://history.state.gov/milestones/1921-1936/RedLine>

⁷ Amy Myers Jaffe, "Iraq's Oil Sector: Past, Present and Future," *The Changing Role of National Oil Companies in Energy Markets*, 2007. 22

⁸ *Id.*, 23

⁹ Michael Eppel, *Iraq from Monarchy to Tyranny: From the Hashemites to the Rise of Saddam*, Miami University Press of Florida, 2004: 94.

¹⁰ *Id.*

In response to the strength of the IPC, Iraq became a lead champion of the Organization of the Petroleum Exporting Countries (OPEC). Iraq convened the first meeting of oil producing countries to discuss the formation of OPEC in 1960. The idea was to strengthen the producer country's hand in revenue negotiations and limit company discretion to change production or price practices.¹¹

Negotiations between Iraq and the IPC continued to be unproductive, leading Iraq to pass Law 80. The law reduced the IPC's holdings. Later, Iraq created the Iraq National Oil Company (INOC) to develop land obtained under Law 80. In 1970, the government issued a new set of demands asking for more control of the IPC. When these negotiations failed, Iraq's government nationalized the IPC and placed it under the control of the INOC.¹² Despite nationalization, the Iraqi government granted several contracts to French and Soviet companies. The Soviet Union guaranteed a market for Iraqi oil, which kept the Iraqi economy afloat during a period when the Ba'ath Party was criticized for the nationalization. Despite the outside pressure, the nationalization was domestically popular and the Ba'ath Party earned credit and praise for the act that would help support the party for many years to come.¹³

D. The 1980s and 1990s: War Years

The rest of the 1970s were years of expansion and profit. The Iraqi oil industry was booming and by 1980, Iraq was producing about 3.4 million barrels per day. These gains were reversed as relations with Iran deteriorated and the two countries began an eight-year war that would have disastrous consequences for the oil industry.¹⁴ Oil facilities became immediate targets for attacks from Iran. Almost as soon as war was declared, all oil installations in the south were damaged or destroyed which eliminated oil exports from the Gulf. Iraq had only one means of export (a pipeline through Turkey) that could only export about 750,000 barrels per day. By 1990, Iraq was producing less than 3 million barrels per day. On August 2, 1990, Iraq invaded Kuwait. In return, the United States began bombing Iraq on January 17, 1991, following up with a ground invasion of Kuwait later that month and of Iraq itself in February. Almost immediately, Iraqi oil production plummeted. By the middle of the year, Iraq was only producing 75,000 barrels per day – the lowest amount since the early days of the oil industry. By the end of February, 100 hours after the ground campaign started, U.S. President George H.W. Bush declared a ceasefire.¹⁵

Simultaneous to the invasion of Iraq and continuing, more or less, until 2003, the United Nations (UN) imposed a complete **trade embargo** (a legal prohibition on importing or exporting goods to or from Iraq), especially on the export of oil. As a result of the embargo's crippling effect on

¹¹Yergin, *The Prize*, 522-23.

¹²Jaffe, "Iraq's Oil Sector," 29-30.

¹³*Id.*

¹⁴Ghanim Anaz, *Iraq Oil and Gas Industry in the Twentieth Century*, Nottingham University Press, 2012. 172-74

¹⁵*Id.*, 172-74

Iraq's economy, the UN created the Oil for Food Program, which allowed Iraq to sell some of its oil to earn enough revenue to provide social services to the people of Iraq.

E. The Coalition Provisional Authority and the Interim Government of Iraq

Like with the other conflicts, when the U.S. invaded Iraq in 2003, oil production dropped briefly before returning to pre-conflict levels. Immediately following the fall of Baghdad, the Coalition Provisional Authority (CPA), led by the United States and the United Kingdom, governed Iraq. The CPA tried to restore the oil infrastructure in the country. In 2004, the CPA transferred power to Iraq's interim government. In 2004, the interim government set up the Supreme Oil and Gas Council to formulate oil and gas policy. At their first meeting, the new body proposed reestablishing the Iraq National Oil Company. INOC would be a public company owned by the state and responsible for all production, headed by an Oil Minister and a board of directors. The idea was very unpopular among local political groups, who opposed centralizing control of Iraq's oil. The Kurds, in particular, were adamant about giving regional governments power over oil and gas resources.¹⁶

The U.S. allocated \$1.72 billion in aid for oil reconstruction but results did not meet expectations due to poor coordination and corruption.¹⁷ Additionally, between April 2003 and October 2005, there were 282 documented attacks against oil infrastructure, which also made it more difficult to operate.¹⁸

Iraq's oil and gas history shows several important trends that are very much reflected in the legal issues that are discussed in the sections below. First, the history shows a tense relationship between the Iraqi Government and international oil companies. The government has historically sought increased production and an increase in its share of the profits. Oil companies, on the other hand, have historically sought to control their production decisions and to increase their own share of profits. Second, the history shows that when these desires come into conflict, Iraq's leaders have challenged the oil companies. One example of this strategy can be seen in the nationalization of the IPC and efforts to encourage the creation of OPEC. Third, the history shows that oil is often impacted by international conflicts, such as the Iran-Iraq War. Fourth, the history shows that control of oil and gas resources is important to debates between the central government and regional authorities.

¹⁶ U.S. General Accounting Office, *Rebuilding Iraq: Restoring Oil and Electricity Sectors*, Nova Publishers, 2008. 23-26.

¹⁷ Amy Jaffe, *Iraq's Oil Sector: Past, Present, and Future*, James A. Baker Institute, 2007. 5. Available at: http://bakerinstitute.org/media/files/page/97579f52/noc_iraq_jaffe.pdf.

¹⁸ *Id.*, 6.

III. IRAQ'S OIL AND GAS LEGAL FRAMEWORK

The management of Iraq's oil and gas resources and the allocation of revenues from oil and gas are important. Both the central government and the KRG have sought to assert their control by securing contracts with international oil companies (IOCs) and increasing production in the years following the fall of the last regime. Both have also passed, or attempted to pass, laws establishing rules for various aspects of oil production and trade. While the central government wishes to consolidate power, the KRG strongly prefers to control the oil and gas in its territory. In this section, we will discuss the central government's efforts to legislate oil and gas within Iraq's borders. As of 2013, their efforts have yielded relatively little, as they have been unable to pass a federal oil law or revenue-sharing law, or to amend the Constitution. What has emerged in place of federal law is a mix of temporary agreements, budget arrangements, and oil and gas contracts. Taken together, these documents paint a murky picture of who regulates oil and gas. The picture gets even murkier when we also consider the Kurdish oil law in the next section.

In this section, we will discuss the most important documents related to the federal oil and gas legal framework, which are: (1) the 2005 Constitution; (2) the proposed 2007 federal oil and gas law and annexes; (3) the draft 2007 revenue sharing law; and (4) the interim revenue sharing agreements. After highlighting the key features of each, we will discuss the various ways that these legal documents can be interpreted.

Several themes appear repeatedly through this debate that you should keep in mind. As you read about each law below, pay attention to how it attempts to address these key issues of ownership, control, and revenues:

Key Themes in the Debate

- (1) Concerns about Iraqi ownership and management of resources.
- (2) Power-sharing between the federal government and the regions.
- (3) The allocation and control of revenues.
- (4) The management of existing production relative to new exploration.
- (5) The significant gap between proposals and current practice.

A. The Constitution and Impact of Federalism

For such an important aspect of Iraq's economy and political future, oil and gas is the subject of only 2 of the 144 articles in the Constitution. Oil and gas is not mentioned in the list of exclusive federal authorities (Article 110) or the list of authorities shared by the autonomous regions (Article 114), leaving us only two brief and vaguely worded articles (111 and 112, below) and the federalist framework (Articles 1, 13, 115, 116, 121, and 126) and the Kurdistan region-specific articles (Articles 117 and 141) for guidance.

First, let us consider Articles 111 and 112, which explicitly address oil and gas:

Oil and Gas Provisions of Iraq's Constitution¹⁹

Article 111:

Oil and gas are owned by all the people of Iraq in all the regions and governorates.

Article 112:

First: The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the Country, and this shall be regulated by a law.

Second: The federal government, with the producing regional and governorate governments, shall together formulate the necessary strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encouraging investment.

As you can see from the text of Articles 111 and 112, a host of important questions related to oil and gas are not answered by the Constitution. First, however, we will analyze what the articles do tell us.

¹⁹ *The Constitution of Iraq*, 2005, Articles 111 & 112.

B. The Meaning of Article 111

The starting place for the argument that the federal government should manage Iraq's oil resources is Article 111. The federal draft oil law begins by reciting Article 111 of the Constitution and indicates that the related articles (110, 112, 114, and 115) should be read in light of Article 111. The suggestion is that if all of Iraq's oil belongs to the people of Iraq and the federal government is the sovereign representative of the people, the resources should be managed by the federal government.

However, it's not exactly clear what Article 111 means, or how it should be read with the rest of the Articles of the Constitution. The KRG position emphasizes the fact that Article 111 mentions that oil and gas belong to all the people of Iraq "in all the regions and governorates" and argues that Article 111 must be read in concert with the federalism provisions in the Constitution. Thus, the article allows for Iraq's oil to be considered the subject of federal or regional government jurisdiction. Similarly, the KRG position stresses that oil and gas is a residual power left for the regions, because it is not listed as an exclusive or shared authority.

Discussion Questions

- 1) How do you interpret Article 111 and what arguments would you make to justify your interpretation?
- 2) Does Article 111 answer questions about how to specifically allocate revenues and control over oil and gas resources? What provisions would you have included in the Constitution regarding oil and gas if you had been asked to draft it?

1. The Requirements of Article 112, Part 1

Article 112, Part 1 provides authority for the federal government to manage oil and gas, as long as three conditions are met:

1. The federal government manages the oil and gas "extracted from *present* fields";
2. It does so *with* the producing governorates and regional governments; and
3. The revenues from the oil and gas extracted from present fields is *shared fairly* among the country according to population and harm experienced by different regions.

What does “present fields” mean? The Constitution does not define the term, nor does the 2007 draft federal oil law. As a starting point, we may want to look at a dictionary definition of “present.” A simple read of the definition indicates that Article 112 is referring to gas and oil fields that are currently and actual serving as oil and gas fields, or in other words, where gas and oil were being extracted as of the time the Constitution was written. However, it’s unclear whether a present field means one that is currently producing, currently operational, or just known to exist.

What does “with the producing governorates and regional governments” mean? Again, we don’t know simply by looking at the text of the Constitution. Does it mean that the federal government will be in charge of management and will consult periodically with the regional governments? Does it mean that the regional governments and the federal government have an equal vote or voice? One possible interpretation is that this language means the central government and regional governments will make joint decisions about resource management in present fields. This approach would be enabled by the creation of joint management committees where both the central and regional government would manage daily operations and approve or deny proposals. Another interpretation is that the central government would lead the management process and ask for the opinion of the regional government on important questions. A third approach would involve the central government primarily managing operations but require both governments to approve major decisions. The intended interpretation of the drafters is impossible to know and the later debate on the 2007 draft oil law shows that the different parties have very different views on these questions.

Third, what is a *fair* way of sharing the revenues from oil and gas? The Constitution says that the split of revenue shall be regulated by a law, but no law has been passed that determines the allocation of revenues. Instead, every year, the federal government establishes an annual budget featuring a calculation negotiated by political leaders from across the country. Many observers note that this approach does not provide certainty to the different regions, because their budgets are subject to annual negotiations. Others say that passing a revenue sharing law is important because it will limit the influence of annual political developments on budget decisions.

There are a number of revenue sharing questions that Article 112 does not answer. For example, should oil and gas revenue be split perfectly by population? If Iraq lacks a reliable census, which estimate of population should be used? And, how should Iraq’s leaders balance the population factor and the history of damages factor? In place of answering these tough questions, Iraq’s leaders have largely decided to provide the KRG with approximately 17 percent of the annual federal budget. Some observers argue that this allocation is too high because the KRG economy is performing better than the economy in the rest of Iraq. Others believe the proportion is too high because the population in the KRG is likely to be less than 17 percent of the total population of Iraq. Still others dispute the fact that the KRG collects its own revenue rather than allowing the

central government to collect the region's oil and gas revenue. However, many in the KRG believe that the 17 percent it receives is actually too low, because certain charges are subtracted from the total by the central government. Others emphasize that the budget allocation should not fall below 17 percent because of the historical injuries caused by the previous regime ("...for the damaged regions which were unjustly deprived of them by the former regime..." Art. 112).

2. Present Fields and Development

Many observers believe that Sections 1 and 2 of Article 112 indicate that the Constitution was drafted in order to establish different mechanisms for present fields and new development. There are unique arguments for and against this position from the text itself.

Some suggest that because Section 2 also uses the term "producing regional and governorate governments," that both sections are meant to be read together and consistently. In other words, if the Constitution meant to separate the two concepts, Section 2 would say something like "where oil and gas will be produced." On the other hand, the drafters of the Constitution chose to create two separate clauses in Article 112, which indicates there was an intention to treat different concepts differently. Also, Section 2 discusses the concept of formulating policies to "develop . . . oil and gas wealth." The definition of the term "develop" is "to make available or usable" in the case of natural resources. Does Section 2's mention of "encouraging investment" indicate that it is referring only to new developments, or does the fact that the federal government has sought investment to improve fields such as Rumaila mean that this phrase does not establish that it is referring only to new developments?

While there are many uncertainties related to the meaning of Article 111, the concept of fair divisions of revenue, and what constitutes "existing fields", the consensus position is that Sections 1 and 2 were intended to grant more authority and power to the regions for new development than for existing production. This concept is reflected in the approach included in the draft oil law that will be discussed below.

Oil and Gas Questions Unanswered by the Constitution

(1) Which law is supreme for oil and gas? The Constitution states that it is the supreme law in Iraq in Article 13, but the oil and gas provisions in the Constitution are brief and vague. The Constitution also says that residual powers are left to the regions and in areas of shared authority, preference is to be given to the region. Does this mean that regional oil law is supreme to federal law?

(2) Which entity is responsible for signing contracts with IOCs, and formulating oil and gas policy? Possibilities include the Ministry of Oil, the Prime Minister, the Council of Ministers, the

Council of Representatives, the North and South Oil Companies, and the governorates and regions.

(3) Who collects the revenues earned from oil and gas sales -- the federal government or the regional governorates?

(4) What types of contracts can be entered into by the government? Are technical service contracts the only allowable contracts, or can the government sign PSAs? Does the Constitution discuss competitive bidding process, transparency, or priorities for the terms of contracts?

(5) How will oil and gas revenues be divided among the different regions of the country?

Discussion Question: If you were Prime Minister, how would you answer these five questions? Think about how you would balance the goals of treating the regions fairly, protecting the jurisdiction of the central government, and ensuring transparency and efficiency.

C. The Draft Federal Oil Law

1. Background

Iraq continues to lack a federal oil law and revenue sharing law despite efforts to pass legislation. Instead, as mentioned above, oil and gas policy is determined by budget arrangements, contract practices with international oil companies (IOCs), and temporary arrangements between the central and regional governments. Even though a final law has not been passed, it is important to understand the history of efforts to pass laws. Reviewing the history will make students aware of the types of issues that have been discussed and how they are likely to be viewed in future debates. This section provides a history of the legislative debate and analyzes the key components of the legislation.

Iraq's Cabinet approved a draft federal oil law in February 2007, and sent it to be considered by the Council of Representatives in May 2007.²⁰ The bill can be viewed as a response to four factors: (1) the constitutional uncertainties we have already discussed; (2) the desire of leaders to increase energy production and government revenues; (3) pressure from the U.S. Government; and (4) the rapid increase in oil and gas contracts being signed by the KRG.

The first two motivations are linked. By 2007, oil production had stopped increasing and rested at a level of about 2 million barrels per day. Political leaders were calling for increased

²⁰ "Breakthrough in Iraq Oil Standoff," *BBC News*, Feb. 2, 2007. Available at: http://news.bbc.co.uk/2/hi/middle_east/6399257.stm

production and hoping to increase revenues for reconstruction activities. At the same time, IOCs were uncertain about how to bid for contracts, which officials were responsible, and contract terms. Many IOCs believed that an oil law would facilitate the bidding process and investment in energy production.

Pressure from the United States was also a major motivation for the country's leaders to pass a federal oil and gas law. According to many reports, leaders from the U.S. made passage of an oil and gas law a priority.²¹

Lastly, at the time of the legislative debate, the KRG was engaging in a rapid process of signing contracts with IOCs and planning for expanded production in oil fields in the Kurdistan region. By the end of 2006, the KRG had signed production-sharing agreements (PSAs) for nine fields and in 2007 signed deals for twelve more. Iraq's political leaders were aware that the Kurdistan region was attracting investment and were motivated to clarify the country's legal framework in order to promote investment in the rest of the country.

The legislative debate around the oil and gas law is very important, but it should not be viewed on its own. At the same time that the federal oil and gas law was being drafted and debated, Members of Parliament were attempting to amend the Constitution to resolve the same questions being addressed in the text of the legislation.²² The legislative and constitutional amendment processes should be viewed as two similar efforts, inspired by the same motivations, and sharing many of the same goals.

2. Text of the Draft Oil Law – Key Themes and Provisions

As you read through the key aspects of the legislation in the text box below, think about the way that it answers the five unanswered questions above. Does the text address the issue of the allocation of revenues? Also keep in mind the way the drafters of the law tried to increase the central government's power over oil and gas resources. Lastly, it's important to note that some important decisions in the draft law are contained in the Annexes, which allocate different territories to the central and regional governments.

a. *Iraqi ownership and management of resources*

The legislation's preamble refers to Article 111 of the Constitution and states that the "oil and gas are owned by all the people of Iraq." This language is restated again in Article 1. This goal is advanced by granting authority to the Iraq National Oil Company to manage the territories in

²¹ See, e.g., "General Says Iraq Pullback Would Increase Violence," *N.Y. Times*, Apr. 27, 2007 (General Petraeus quoted as saying, "The hydrocarbon law is of enormous importance, and I think it is reasonably doable as well").

²² Jason Gluck, "Iraq's Constitutional Review Committee Delivers its Final Report to Parliament," *ConstitutionMaking.org*, Aug. 20, 2009. Available at: http://www.comparativeconstitutions.org/2009/08/iraqs-constitutional-review-committee_20.html

Annex 1 and 2 and granting authority to INOC to own and manage pipeline networks and export terminals.²³ Similarly, the listing of priorities for contracts in Article 9 highlights national control and ownership of resources. Chapter 9 states that “The granting of rights for the activities referred to in Article 9A shall always respect national interests,” language that appears in many other sections of the text. Article 12 also reflects this priority by preserving the right of the state to participate in contracts and assigning pipeline ownership to INOC. In many ways, the legislation was drafted to ensure that contracting practices and preserve Iraqi ownership of resources.

b. Power sharing between the federal government and the regions

The draft bill would significantly increase federal control over policy and contracting. For example, the legislation establishes a powerful Federal Oil and Gas Council chaired by the Prime Minister. The Council would be given responsibility for deciding federal petroleum policies, exploration plans, field development, and pipeline plans. The Council is responsible for reviewing and approving exploration and production contracts and the model contract.²⁴ All contracts must be submitted to the Council within 30 days of signing, and the Council may reject contracts,²⁵ including contracts previously signed by the KRG. The draft bill also provides more power to the federal Oil Ministry to regulate oil companies, sign contracts with oil companies, and propose and implement federal policy and regulations. Lastly, the draft bill establishes the state-owned Iraq National Oil Company to manage and operate existing fields, pipelines, and export terminals. The bill would allow the Company to compete for oil contracts. These elements would all expand the oil and gas powers of the central government.

However, the legislation does not make oil and gas an area of exclusive federal authority under Article 110 of the Constitution or declare that federal oil and gas law is supreme to regional law. The draft law continues to allow regional governments to sign oil contracts for Annex 3 territories, as long as they are submitted to the federal Council for review and approval. This being said, the allocation of the territories under the Annexes would only preserve a very small amount of territory for regions, including the KRG, to engage in contracting with IOCs. In addition, the draft law would require the KRG to review its existing contracts and allow the federal Council and federal Oil Ministry to cancel existing contracts if they don’t follow national priorities. The federal government would also have authority to amend contracts and revise the model contract, and the sole authority to manage pipelines. Although in various places the legislation states that the federal government will negotiate contracts and formulate policy “in coordination” with the regions and that regional governments will be represented on the Council

²³ *The Constitution of Iraq*, 2005, Article 6.

²⁴ *Id.*, Article 5(c).

²⁵ *Id.*, Article 10(c).

and the board of INOC, it's clear that the federal government would play the primary role in making policy, implementing decisions, and signing contracts.

c. The allocation and control of revenues

The legislation only addresses this concept briefly by directing the Council of Ministers to develop legislation to establish a revenue sharing mechanism. In other words, the legislation directs the Council to write a law that was described in Article 112 of the Constitution. The law would divide oil and gas resources between the central and regional governments and replace the 17 percent arrangement described above. It's not clear from the legislation whether the federal government or regional government would collect the revenues from oil and gas sales. The oil and gas law also does not discuss what percentage of revenue will be allocated to each region. This concept will be discussed in Section 4 below.

d. The management of existing production relative to new exploration

The allocation of authority for the Iraq National Oil Company (INOC) to manage production and contracting for territories listed in Annex 1 and 2 clarifies who has control over these fields. In addition, the legislation authorizes regional governments and INOC to manage and contract the territories in Annex 3, depending on where they are located. However, the legislation fails to establish whether the federal government or regional governments have authority over new areas of exploration listed in Annex 4.

The annexes are clearly very important to understanding the way the draft bill would function and who would be given control over the various oil-producing regions of Iraq. However, the four annexes were never published with the legislation, so we are forced to rely on an article from the Dow Jones Newswire, the unofficial minutes of an April 2007 conference in Dubai, and an analysis done by the KRG that was posted on its website.²⁶

According to some reports, approximately 93 percent of Iraq's proven oil reserves would be subject to the jurisdiction of the federal government (Annexes 1, 2, and 4), while the KRG would exercise authority over the remaining seven percent (KRG portions of Annex 3).²⁷ The text of the oil law is unclear about which authority has primary responsibility for the Annex 4 territories. Some believe that the exploration blocks in Annex 4 are under the sole jurisdiction of the KRG, while others believe that they would be subject to federal control. The U.S. Institute of Peace

²⁶ "Tale No.1A: Primary Producing Fields – INOC," *Kurdish Regional Government*, 2007. Available at: http://www.krg.org/pdf/Dubai_Oil_Law_Annexes_with_KRG_analysis.pdf

²⁷ Christopher M. Blanchard, "Iraq: Oil and Gas Legislation, Revenue Sharing, and U.S. Policy," *Congressional Resource Service*, Apr. 2, 2008. Available at: <http://fpc.state.gov/documents/organization/104724.pdf>

suggests “the national oil company is given control of over 90 percent of known reserves in the law’s annexes.”²⁸ The confusion stems from the fact that the legislation confers Annex 1 and Annex 2 to INOC and states that the regions may issue licenses for Annex 3 fields, but says nothing about who has the right to manage contracts for territories in Annex 4.

Exercise

Divide the class into the following five groups and have each of them draft a list of the important authorities provided to them in the oil law: Federal Council, INOC, Oil Ministry, Energy Committee of Parliament, and KRG.

Compare the results to find out where the class agrees or disagrees – it will show where the draft law is clear and less clear.

3. Responses to the Proposal

There was widespread opposition to the legislation. Reflecting the historic concerns about national control of the country’s oil resources, many stakeholders expressed concerns about the possibility that international oil companies would control Iraq’s natural resources. The most strongly opposed to the bill were unions, Sunni Arab Parties, and Kurdish Parties.

Unions strongly opposed the legislation’s allowance for production sharing agreements and believed it would provide international oil companies with too much control over Iraq’s resources. Sunni Parties also called for a ban of production sharing agreements and worried that the lack of oil production in their regions would undermine their political power. Kurds opposed the way that the draft annexes allocated territory and claimed that the annexes were inserted without their approval. The Kurdish parties argued that the draft bill would dilute regional control too much.

Those opposing the legislation were able to block it from moving through the Council of Representatives. As of 2013, Iraq still lacks a federal oil law. In 2011, the Oil and Energy Committee of Parliament released updated versions of an oil law and an oil company law, and the Cabinet’s energy committee wrote a competing version of the legislation.²⁹ However, neither of these bills moved in the legislative process.

²⁸ Christina Parajon, “The Iraq Hydrocarbon Law: How and When?,” *The United States Institute of Peace*, Jun. 1, 2007. Available at: <http://www.usip.org/publications/iraq-hydrocarbon-law-how-and-when>.

²⁹ See Ben Lando, “Parliament Releases Official Draft Oil and INOC Laws,” *Iraq Oil Report*, Aug. 24, 2011. Available at: <http://www.iraqoilreport.com/politics/oil-policy/parliament-releases-official-draft-oil-and-inoc-laws-6104/>; for an Arabic version of the 2011 oil law, http://www.iraqoilreport.com/blando/INOCDraftLaw31Mar2011_ARABIC.pdf?bb7ee4; for an Arabic version of the oil company law: http://www.iraqoilreport.com/blando/OGDraftLaw17Aug2011_ARABIC.pdf?bb7ee4

D. Revenue Sharing

Also in 2007, as a companion to the oil and gas law, the federal government discussed with the Kurdistan Region the possibility of passing a law allocating oil revenues to the regions. Remember from our discussion in Section IV(2)(A) that Article 112 of the Constitution directs the federal government to allocate revenues in a “fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the Country.” Also remember that Article 11 of the draft oil law directed the Council of Ministers to submit a revenue sharing law to the Council of Representatives.

The draft revenue sharing law, called the Law of Financial Resources, would create a single fund that would hold all oil revenue from Iraq and other federal revenues.³⁰ The fund would be used to support economic development projects across the country and provide 17 percent of all remaining revenues to the Kurdistan Region. This arrangement would exist until a population census was conducted to determine the relative population of the region.³¹

The issue of revenue sharing is vitally important to the Kurdistan region, because it is estimated that the 17 percent allocation from Baghdad constitutes an estimated 95 percent of the KRG’s budget.³² The issue is important to the rest of the country, because many regions have no or few oil resources, and worry that they will be excluded from oil and gas decision-making and treated unfairly under a revenue allocation scheme.³³

³⁰ To review the brief Law of Financial Resources, please visit:

http://www.krg.org/pdf/English_Draft_Revenue_Sharing_law.pdf

³¹ According to the International Crisis Group, populations are calculated in the absence of a national census on the UN food ration system that was created in the 1990s and is now regularly updated in order to serve as a basis for elections. The one exception is the Kurdish region, which receives a flat 17 per cent of the federal budget annually (before deductions to cover federal expenditures from which the region benefits, which reduces the share to about 13 per cent). The ICG considers this flat figure to be somewhat arbitrary, based as it is on historic allocations under the UN “Oil for Food” program in the 1990s, when the Kurdistan region received a fixed amount of Iraq’s revenues directly from the UN. *See*: “Iraq and the Kurds: Confronting Withdrawal Fears,” *International Crisis Group*, Mar. 28, 2011. Available at:

<http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iraq%20Syria%20Lebanon/Iraq/103%20Iraq%20and%20the%20Kurds%20--%20Confronting%20Withdrawal%20Fears.pdf>

³² “Iraq and the Kurds: The High-Stakes Hydrocarbons Gambit,” *International Crisis Group*, Apr. 19, 2012.

Available at:

<http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iraq%20Syria%20Lebanon/Iraq/120-iraq-and-the-kurds-the-high-stakes-hydrocarbons-gambit.pdf>

³³ Christopher M. Blanchard, “Iraq: Oil and Gas Legislation, Revenue Sharing, and U.S. Policy,” *Congressional Resource Service*, Apr. 2, 2008. Available at: <http://fpc.state.gov/documents/organization/104724.pdf>

Ultimately, the revenue-sharing legislation collapsed in the same manner as the 2007 draft oil and gas bill. Neither was ever submitted to the Council of Ministers or the Parliament for a vote, despite the support of KRG authorities.³⁴

E. Practice Compared to the Legal Framework

In view of the multiple failures to establish a legal framework to govern the management of Iraq's oil and gas resources, we must ask: what has emerged in place of clear legal and constitutional rules? Two mechanisms have emerged: (1) temporary budget allocations; and (2) contracting practices.

1. Budget Allocations

In place of a permanent revenue-sharing law, politicians now negotiate the distribution of the country's oil revenue through the annual budget process. In the 2011 and 2012 budgets, the regional government and the federal government reached one-year agreements in which the KRG promised to export a certain amount of oil per day (100,000 bpd in 2011 and 175,000 bpd in 2012) in exchange for the federal government providing 50 percent of the export revenues to the KRG in order to pay producing companies for their investment and operating costs. The budgets make the KRG's receipt of its 17% share of oil revenues contingent on compliance with these terms. The federal government would provide this revenue as long as it would be allowed to audit the KRG's receipts. More recently, the Kurdistan region revised up its estimate to 200,000 bpd, projected to reach 250,000 barrels per day for the 2013 budget.³⁵

In April 2012, after complaining that Baghdad had not made payments since May 2011 and was \$1.5 billion behind in its payments to the KRG, the KRG halted all exports via the Iraqi pipeline "until further notice."³⁶ The standoff was resolved with a temporary agreement that provided the KRG with back payments and allows oil exports to be sold from the region.³⁷

2. Contracting Practices

The absence of an oil law is an impediment to the development of the oil and gas sector, but contracting practices have emerged to ensure that companies can invest in Iraq's energy sector. In particular, what has emerged is a common pattern of contracting arrangements signed by international oil companies and the central and regional governments.

³⁴ Sean Kane, "Iraq's Oil Politics," *U.S. Institute of Peace*

³⁵ "Update 2 – Iraqi Kurds Defend Oil Policy, Reject BP Kirkuk Deal," *Reuters*, Jan. 18, 2013. Available at: <http://www.reuters.com/article/2013/01/18/energy-iraq-kurdistan-idUSL6N0AN19020130118>

³⁶ John Lee, "Iraq Beats Kuwait to Chinese Refinery Deal," *Iraq-Business News*, Nov. 4, 2013. Available at: <http://www.iraq-businessnews.com/tag/sinopec/>

³⁷ "Iraq: Kurdistan Regional Government Confirms Release of the First Oil Export Payments to KRG Contractors," *Energy-pedia News*, May 8, 2011. Available at: <http://www.energy-pedia.com/news/iraq/kurdistan-regional-government-confirms-release-of-the-first-oil-export-payments-to-krq-contractors>

Notwithstanding the absence of a federal oil law, as of early 2013, the Kurdistan region has signed roughly 48 oil and gas contracts, largely in the form of production sharing agreements. The federal government has gone through four rounds of competitive bidding on oil fields within its territories in the form of technical service contracts and is planning a fifth round. The fourth and upcoming fifth rounds go beyond the servicing of discovered fields and toward exploration and development activities.

The central and regional governments disagree strongly about the legality of the contracts signed by the KRG. The central government argues that contracts must be submitted to the federal authorities for their review and approval, and that oil revenues can only be collected by the central government. In April 2011, Iraq's Deputy Prime Minister Dr. Hussain Al-Shahristani reaffirmed Baghdad's position that it does "not recognize the [KRG] contracts . . . [u]nless the contracts are submitted to the government of Iraq and the government accepts them, modifies or rejects them, only then can the amended contracts be the responsibility of the government of Iraq."³⁸ KRG Minister Dr. Ashti Hawrami has countered:

"[W]e are confident that what we have done is fully constitutional . . . forty companies working here, everybody has a legal counsel, everybody looks at the constitution of Iraq, everyone looked at our model contract, everyone looked at our oil and gas law of the region. If these independent [companies] and expertise came to the conclusion we are sound constitutionally and legally, that is good enough for me and good enough for investors."³⁹

The strongest response from the federal government to the KRG's contracting practices has been to exclude oil companies with KRG contracts from competitive bidding rounds with Baghdad. According to various reports, Dr. Hussain Al-Shahristani sent letters to companies that have signed with the KRG, canceling deals the companies have with the Oil Ministry.⁴⁰

As can be expected, the contracting practices of the Kurdistan Region are very different from the approach in the 2007 draft oil law. For example, many have argued that the Kurdistan Region's contracts were negotiated in relative secrecy, without a public and competitive bidding process, and the terms of contracts were not released until years after they had been signed.⁴¹ The royalty rate of KRG contracts (10%) is less than the 12.5% envisioned in Article 34 of the oil law. Most significantly, KRG contracts do not follow the model contract drafted by the Oil Ministry and are

³⁸Middle East Economic Survey, 7 April 2011.

³⁹Oil majors could follow Exxon into Kurdistan", Financial Times, Nov. 21, 2011.

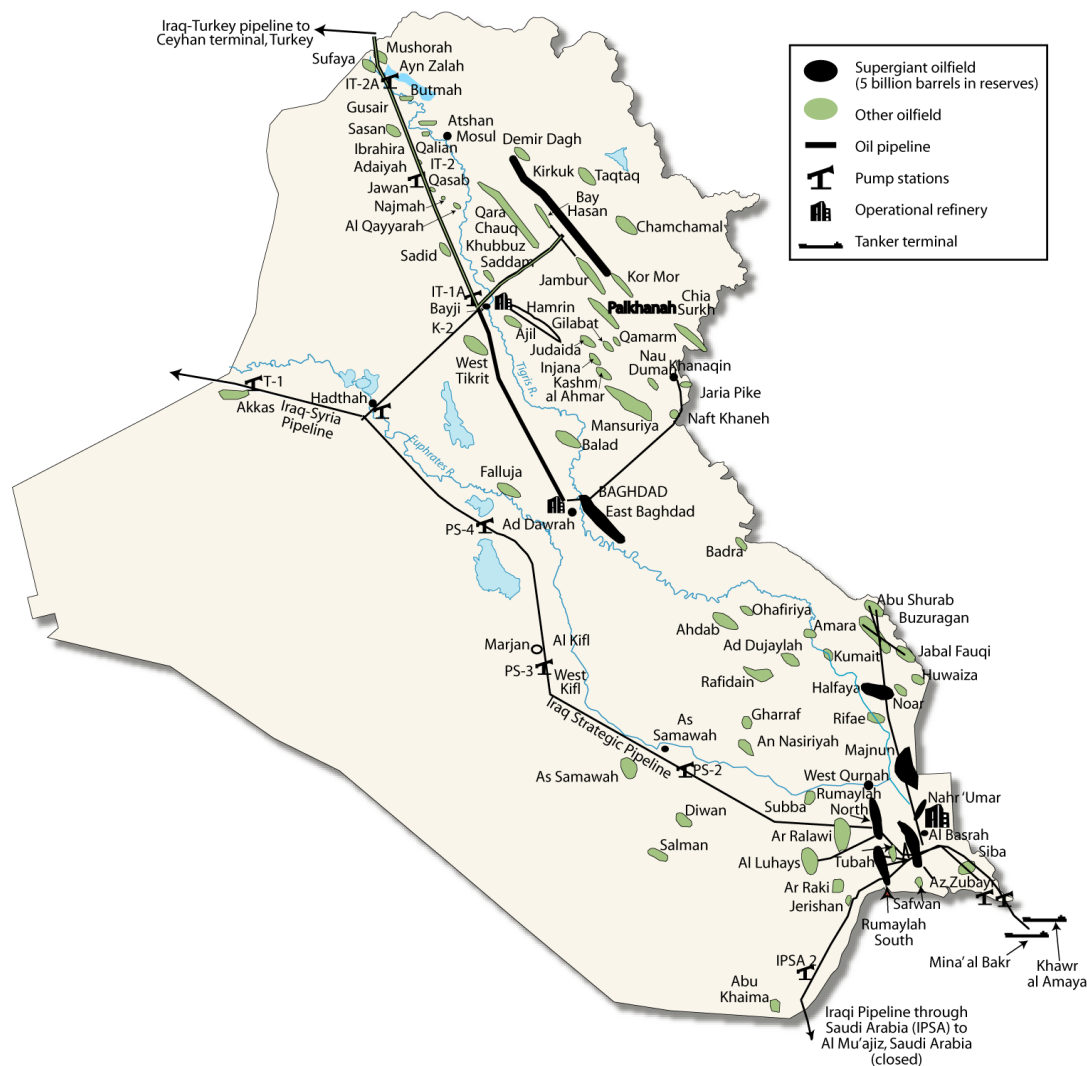
⁴⁰"Iraq Makes Good on Kurd Oil Blacklist," *United Press International*, Jan. 21, 2008. Available at: http://www.upi.com/Business_News/Energy-Resources/2008/01/21/Iraq-makes-good-on-Kurd-oil-blacklist/UPI-92691200950192/.

⁴¹Peter Wells, "Iraq's Technical Service Contracts – A Good Deal for Iraq?" *Middle East Economic Survey*, Nov. 23, 2009. Available at: <http://www.iraqoilforum.com/wp-content/uploads/2009/12/Iraqs-Technical-Service-Contracts.pdf>.

not reviewed or approved by a federal Council. Instead, the Kurdistan Region uses its own model contract and does not submit signed contracts for review to the federal government

Neither authority has followed the terms of the proposed law exactly. The federal government’s consideration in 2008 of issuing no-bid contracts would also likely have violated the proposals in Article 38 of the draft oil law. In addition, observers in the KRG could argue that the federal government’s delays in providing revenues to the KRG violated the annual budget deals.

Figure 2 - Location of Iraq’s Oil Reserves and Infrastructure⁴²



⁴² Susan L. Sakmar, “The Status of the Draft Iraq Oil and Gas Law,” *Iraq Oil Report*, May 1, 2008. Available at: <http://www.iraqoilreport.com/wp-content/uploads/2009/04/sakmarfinal.pdf>

IV. THE KURDISH LEGAL FRAMEWORK⁴³

Now that we have discussed the central government's efforts to consolidate power through the Federal Constitution, we need to consider Kurdish efforts to manage their own resources. Specifically, we will now examine the Kurdish Oil & Gas Law. The Kurds began seeking autonomy over their oil and gas operations almost immediately after the fall of Saddam Hussein. In 2004, Masoud Barzani and Jalal Talabani sent a joint letter to U.S. President George W. Bush seeking support from the United States for Kurdish autonomy in the new Iraqi government. Specifically, they asked that "the United States support [their] plans to own and manage Kurdistan's natural resources, and in particular [their] efforts to develop new petroleum resources in the Kurdistan Region, where the previous regime sought to block all exploration and development that might benefit the Kurdistan people."⁴⁴ Though the United States supported autonomy for Kurdistan within the Iraqi federal framework, it did not support the Kurdish requests about oil and gas. Instead, the United States supported the draft federal oil and gas law in 2007.

With the absence of a federal framework governing the oil industry, the Kurds passed their own legislation to govern their region. In 2007, the Kurdish Regional Government passed its own oil law that implements the Constitutional oil principles according to the Kurdish interpretation of the Constitution.

The Oil and Gas Law of the Kurdistan Region defines how Kurdistan manages its oil and gas resources. While the Constitution addresses ownership of oil and gas resources, the KRG statute attempts to create the institutions that will actually manage the resources. After introducing and defining key terms, the KRG statute establishes the duties and powers of the Ministry of Natural Resources and its Minister. Since there is no Federal oil and gas law, this law is the only statute that governs oil extraction in the country and it only affects the Kurdish Region.

In this section we will highlight several sections of the law to discuss and analyze. In particular, we will look at areas of the law that address the relationship between the KRG and the federal government. These provisions often make explicit mention of specific sections of the federal Constitution. The intention is to show compliance to the terms of the Constitution, but the effect is also often to put forward a specific interpretation of the provisions the law cites. We will look at several examples of this.

⁴³ In addition to the KRG Law, the following texts were consulted for this section: Rex Zedalis, *The Legal Dimensions of Oil and Gas in Iraq: Current Reality and Future Prospects*, Cambridge University Press, 2009, and Rex Zedalis, *Oil and Gas in the Disputed Kurdish Territories: Jurisprudence, Regional Minorities, and Natural Resources in a Federal System*, Routledge, 2012.

⁴⁴ Masoud Barzani and Jalal Talabani "Letter to U.S. President George W. Bush, June 1, 2004," <http://www.american.edu/cgp/upload/Barzani-Talabani-Letter-to-President-Bush.pdf>.

Oil and Gas Law of the Kurdistan Region – Iraq (2007)
Chapter Seven: Cooperation with the Federal Government

Article 18:

The Regional Government, consistent with the conditions stated in Article 19 of this Law, shall:

First: agree with the Federal Government in the joint management of oil and gas extracted from Current Fields in the Region;

Second: cooperate with the Federal Government in formulating strategic policies to develop the Petroleum resources of the Region in a balanced manner compared with the other Petroleum activities throughout the country, and in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of market principles and encouraging investment, consistent with the provisions of Article 112 of the Federal Constitution;

Third: cooperate with an intergovernmental federal oil and gas council (“the Federal Oil and Gas Council”), the composition of which is to be agreed with the Regional Government, to establish the standards, model contracts, and commercial terms for negotiations and contract award procedures in Iraq;

You will recall that Article 112 of the Federal Constitution applies to oil and gas extracted from “present” fields. It requires the federal government to act in cooperation with the regional governments in all operations regarding those fields. The first clause of Art. 18, of the KRG Oil and Gas Law (KRG Law) accepts this formulation with regard to “current” fields. The KRG Law defines “current fields” as any field that “has been in Commercial Production prior to 15 August 2005.” Accepting this date would mean that almost no “current fields” were in the KRG, since most Kurdish fields post-date that cut-off, and thus, are not subject to the heightened government involvement.

More controversially, the KRG Law requires the *joint* management of current fields with the federal government. The relationship between the regional and federal government in Art. 112 of the Constitution is not as clear. As you recall from Section III, the Constitution simply says that management of oil and gas will take place “with the producing governorates and regional governments,” but does not use the word “joint,” like the KRG Law does. The use of “joint” in the KRG Law implies the two parties are equal in the management of resources.

The presence of the “joint management” clause underscores the KRG’s commitment to working with the federal government to manage oil and gas, however, as long as that management is joint.

An alternative interpretation could have expressed the full autonomy of the KRG’s oil operations without any obligation to work with the federal government.

Oil and Gas Law of the Kurdistan Region – Iraq (2007)
Chapter Seven: Cooperation with the Federal Government

Article 19:
The basis of cooperation and permissions referred to in Article 18 of this Law shall have the following conditions:
[...]
Fourth: the Federal Government must not practice any new Petroleum Operations in the disputed territories without the approval of the Regional Government until such time as the referendum required by Article 140 of the Federal Constitution is conducted; and

Fifth: any activities in the disputed territories related to Petroleum Operations carried out in contradiction to Paragraph Fourth of this Article shall be dealt with according to the provisions of this Law and Article 112(2) of the Federal Constitution once the decision is made to rejoin these territories to the Region under the provisions of Article 140 of the Federal Constitution.

Article 19 of the KRG Law is the first explicit mention of “disputed territories” in the law. Disputed territories include the area in and around Kirkuk over which both the KRG and the federal government lay claims. Article 140 of the Federal Constitution requires a census and referendum to determine the status of Kirkuk on or before December 31, 2007. This date has been pushed back multiple times and Kirkuk remains a disputed territory. Article 19 tries to address the status of Kirkuk’s oil fields in absence of that referendum. Once again, the unsettled federal interpretation gives the KRG an opportunity to define the Constitutional provisions in a way favorable to their position.

By requiring the approval of the KRG to “practice any new Petroleum Operations” in the disputed territories, the KRG Law is asserting KRG dominance over the territory. Unlike with current fields, the KRG does not only have to be consulted, it must grant approval. But can a regional government seek approval from a federal government for operations that are seemingly constitutional? To answer this, we must first revisit the Article 13 Supremacy Clause:

The Constitution of Iraq
The Supremacy Clause

Article 13:
First: This Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception.

Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.

Does Article 19 of the KRG Law violate Article 13 of the Iraqi Constitution? One view is that it does violate the Supremacy Clause because while oil and gas is not in the exclusive realm of the federal government (listed under Art. 110 of the Federal Constitution) it is a hybrid power that is more of a federal power than not. Evidence for this is found in Art. 112 which, according to this view, clearly indicates a larger role for the federal government and the only enumerated role for the KRG is to work with and be consulted by the federal government.

A different view is that Art. 121 (First) of the Iraqi Constitution allows the KRG to exercise all powers not exclusively granted to the federal government. Since Article 112 grants limited authority to the federal government to work “with” the regional governorates, the Constitution could not have imagined the power to be in the exclusive realm of the federal government, or else it would have enumerated that in Article 110 when listing other exclusive powers.

As of 2013, the central government has just begun finalizing a deal to bring in the British Petroleum Company (BP) to develop the Kirkuk Oil Field in the disputed region. After months of negotiations, the deal was sent to the Iraqi Cabinet in January of 2013 for approval. BP is downplaying the deal saying it is still in the early stages and that any development would be small and short-term, but even these preliminary steps have caused tension with the KRG. In response, the KRG has sent a deployment of Peshmerga to match the increased Iraqi troop presence.⁴⁵ The KRG has publicly condemned the central government’s actions. A spokesman said that the central government “reveals details of an illegal and unconstitutional plan to allegedly allow BP to enhance the recovery of some of the depleted fields in Kirkuk...without consulting and obtaining approval of the other parties to the dispute.”⁴⁶

Discussion Questions

1. After reading the KRG Law and the Supremacy Clause, do you believe the KRG Law is constitutional?
2. Does Baghdad need to seek KRG approval before operating in the disputed Kirkuk Region?

⁴⁵Jen Alic, “Iraq Oil Tensions Rise as BP Enters Kirkuk Fray,” *The Christian Science Monitor*, January 24, 2013, <http://www.csmonitor.com/Environment/Energy-Voices/2013/0124/Iraq-oil-tensions-rise-as-BP-enters-Kirkuk-fray>.

⁴⁶*Hürriyet Daily News*, “Iraq’s Kurdish gov’t defies BP over Kirkuk,” January 19, 2013, <http://www.hurriyetaidailynews.com/iraqs-kurdish-govt-defies-bp-over-kirkuk.aspx?pageID=238&nID=39415&NewsCatID=348>.

3. If you worked for the KRG, how would you respond to the BP oil deal in Kirkuk? How would you justify your response?

V. PRODUCTION CONTRACTING

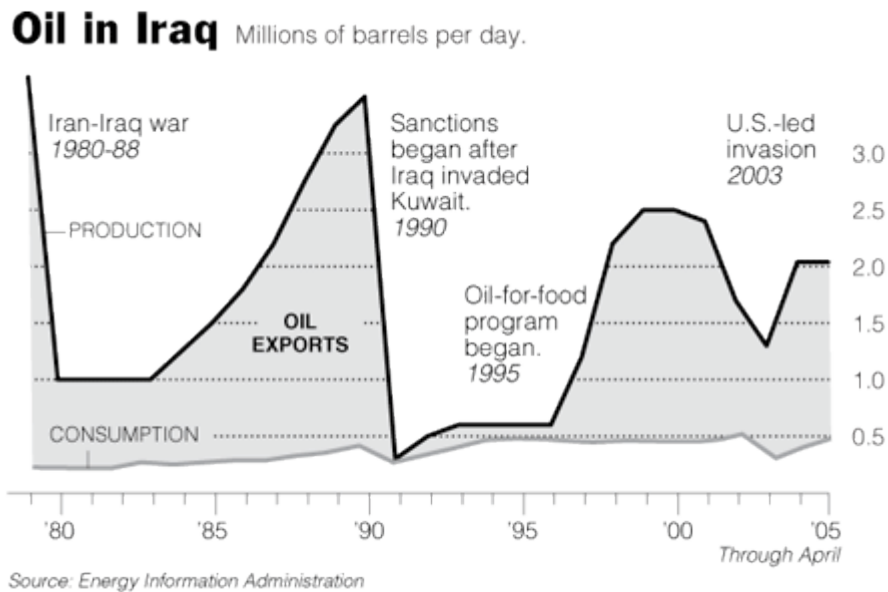
A. Background

The two main sources of revenue from the oil and gas sector are taxes and the revenue-sharing terms of contracts that IOCs reach with the government. There are multiple ways that a country can choose to structure contracts with oil and gas companies – most fit into four categories: concessions, risk sharing contracts, production sharing contracts, and technical service contracts. Iraq and its regions have focused on production sharing contracts and technical service contracts, so we will focus on those two here as well. Note that a more general discussion of contract law and commercial law is covered in a separate section on Commercial Law.

It is important to learn about these contracts because their terms are the rules that govern the company's conduct. While every company must abide by the Iraqi Constitution and any relevant statute, they must also follow the terms of their contracts. For example, if a company agrees in their contract to donate a certain amount of their proceeds to an environmental sustainability fund, they must do so.

Before delving into the details and differences among these types of contracts, it's worth asking: why are these contracts necessary at all? Why shouldn't Iraq develop its own oil resources and preserve all of the profits for its own citizens? As was discussed in Section II, Iraq's oil resources were nationalized in 1961 and 1972 and Article 111 of the 2005 Constitution states, "Oil and gas are owned by all the people of Iraq . . ."

Figure 3 - Oil Production in Iraq 1980 to



2005

The New York Times

In the wake of the Iran-Iraq War, the imposition of international sanctions, and the 2003 military intervention, Iraq’s oil and gas infrastructure was badly damaged and production had declined to below 1.5 million barrels per day by 2004. As a result, revenues for the Iraqi government from oil and gas (the most vital source of financing as described in Section I) had declined precipitously and the country’s leaders made the decision to seek partners to help rebuild the country’s infrastructure and boost production. Demonstrating how much repair was needed to maintain the infrastructure, the World Bank estimated that \$1 billion per year in investment would be needed just to maintain current production levels.⁴⁷ Part of the need for this level of investment stems from attacks on the country’s oil and gas infrastructure in the years following the 2003 military action -- between April 2003 and October 2005, there were 282 documented attacks against oil infrastructure. One report estimating future production of crude oil in Iraq stated that “Iraq will need cumulative energy investment of over \$530 billion” to reach production of more than 8 million bpd by 2035, more than \$25 billion per year on average during the current decade, which is a significant increase from the estimated \$9 billion invested in the country’s energy sector in 2011. According to the same report, delays in capital spending could cost \$3 trillion in lost national wealth and increase international oil prices by more than \$15 per barrel.⁴⁸

⁴⁷ John O’Hanlon, “State Company for Oil Projects (Iraq),” *Business Excellence*, Oct. 31, 2012. Available at: <http://www.bus-ex.com/article/state-company-oil-projects-iraq>

⁴⁸ “Iraq Energy Outlook: Executive Summary,” *International Energy Agency*, 2012. Available at: <http://www.iea.org/publications/freepublications/publication/weoiraqexcerptsummaryWEB-1.pdf>

B. The Fundamentals of Iraq's Technical Service Contracts

The basic concept of a Technical Service Contract, otherwise known as a "TSC," is to award contracts to bidders willing to accept the lowest rate of payment per barrel of oil produced from the government.⁴⁹ Oil companies evaluate the rate of payment per barrel compared to the amount of money it must invest and the costs of operating a facility. In other words, the company will look at how much it must invest in order to start producing oil and how much they might hope to make from the sale of that oil. The agreements often last for 20 years and are extendable for up to 25 years.⁵⁰

In addition to the per-barrel rate, the key features of a TSC signed with Iraq's Ministry of Oil are as follows:

- (1) A signature bonus paid by the contractor that is usually paid back by the government. Essentially this is a zero-cost loan to the government. The bonus for the BP-Rumaila contract was \$500 million and was recoverable by BP.⁵¹ The bonus for Halfaya and West Qurna-Phase 2 were reported to be \$150 million and were not recoverable.⁵² Current contracts are not believed to include bonuses.⁵³
- (2) A work schedule requiring the contractor to perform certain tasks and make certain investments within a specific time period. For example, the Rumaila contract required BP and CNPC to invest \$300,000,000 to implement its work requirements.
- (3) Contractors must receive approval for large subcontracting awards and for their development plans.
- (4) Contractors are reimbursed for part of the cost of their investments.
- (5) Contractors are required to pay taxes of 35% on revenues earned from the contract.
- (6) Contractors are required to pay certain amounts for training and scholarships.

⁴⁹ For a full version of the model Iraq contract, please visit: <http://www.fuelonthefire.com/uploads/files/PFTSC-23-Apr-09.pdf>

⁵⁰ Id.

⁵¹ Kevin Baxter, "BP & CNPC Pay \$500m Signature Bonus for Rumaila," *ArabianOilandGas.com*, Jan. 17, 2010. Available at: <http://www.arabianoilandgas.com/article-6804-bp-cnpc-pay-500m-signature-bonus-for-rumaila/>

⁵² For a list of all reported bonuses, visit: <http://openoil.net/wp/wp-content/uploads/2012/02/spreadsheet-of-iraq-signature-bonuses-v2.2.pdf>

⁵³ Kamil al-Mehaidi, "KRG and Ministry of Oil Contracts: A Comparison," *Middle East Economic Survey*, September 2012. Available at: http://www.mees.com/system/assets/000/001/903/original_Geopolitical_Risk_Aug-Sep_2012-2.pdf

Example Terms (West Qurna 1 -- ExxonMobil and Shell, November 2009)⁵⁴

- (1) \$25 billion capital expenditure required
- (2) \$25 billion operating costs over the TSC duration period of 20 years
- (3) \$1.90 remuneration fee per barrel produced above current levels

Like the KRG agreements discussed below, the Iraqi contracts also have provisions for termination of contract, environmental protection, preference for local hiring and training, and the formation of joint management committees to make decisions related to production. Also like the KRG contracts, the state retains a partial interest in the contract, generating revenue like a part owner but not being required to remit the revenues. This is typically in the amount of a 20-25% stake.⁵⁵

C. Iraq Oil Ministry Bidding Process

In order to better understand the process for obtaining an oil concession, we will briefly examine the bidding process. Since 2008, Iraq has offered four rounds of bidding for contracts to develop oil and gas fields. All four contracting rounds have offered technical service contracts (TSCs) to interested oil and gas companies. Upon the announcement of the first round of bidding in 2008, Oil Minister Shahrastani said, “It is a unique event and a significant feature in the new Iraq that we declare the first bidding course for developing the Iraq oil fields publicly and fully in a transparent way.” Shahrastani said the fee-based contracts would not give the winning companies a share in the revenue from oil sales “because this wealth belongs to Iraq only and thus we will not allow anyone to share the Iraqis’ oil.”⁵⁶

In the first round of bidding in 2008, Iraq’s Oil Ministry announced the opportunity for IOCs to bid to develop six oil fields (al-Rumeila, al-Zubair, al-Qurna West, Bazirqan, Abu Gharab and Fakah) and two natural gas fields (Akas and Mansouriya). According to Minister Shahrastani, the purpose of this round of contracting was to increase production quickly at a low cost, noting that “the[se] fields have already been explored and are producing oil and gas, but the equipment is old and outdated.”⁵⁷ The first round of bidding was broadcast live on television. Thirty-five companies were pre-approved to participate and thirty-one placed bids.

⁵⁴ More available at: <http://www.2b1stconsulting.com/technical-service-contracts/>

⁵⁵ For a draft copy of the Basrah gas deal, please visit: <http://www.iraqoilreport.com/energy/natural-gas/exclusive-the-shell-gas-deal-contract-6267/>; see also Iraq’s model TSC contract.

⁵⁶ “Iraq Sparks Scramble for Lucrative Oil Contracts,” *CNN.com*, Jun. 30, 2008. Available at: <http://edition.cnn.com/2008/BUSINESS/06/30/iraq.oil/>

⁵⁷ “Iraq’s Oil Fields Open to Bidders,” *CNN Money*, Jun. 30, 2008. Available at: http://money.cnn.com/2008/06/30/news/international/iraq_bids/index.htm

The terms of these deals were in the form of 20-year technical service agreements. The companies would be paid a flat fee to invest technology, but would also be paid a fee for each extra barrel of oil produced. The winning companies were also to pay a hefty signing bonus in the form of multi-million dollar loans. The Oil Ministry claimed that Iraq would earn \$1.7 trillion over 20-years from the contracts, while the companies would only be paid \$16 billion. Iraq would also get up to \$2.6 billion in loans from the signing bonuses.

Ultimately, the first round ended with only one license awarded – to the consortium of British Petroleum (BP) and China’s CNPC, which won a bid for the 17 billion barrel Rumaila Field. BP and CNPC had set a remuneration fee of \$3.99/barrel, which was well above the \$2/barrel fee set by the Ministry. The consortium, along with a rival bid by ExxonMobil and Petronas, were given the option to renegotiate the remuneration fee down to the level set by the Ministry. ExxonMobil and Petronas chose not to offer a lower bid, but the BP/CNPC consortium did and won the contract.

Figure 4 - Fields offered in the First Petroleum Licensing Round Iraq

Field	Hydrocarbon Type	Reserves (Billion Barrels)
Kirkuk	Oil	8.7
West Qurna	Oil	8.6
Zubair	Oil	4.5
Bai Hassan	Oil	2.4
Missan	Oil	2.6
Rumaila	Oil	18
Mansuriya	Gas	3.6
Akkas	Gas	4

Iraq would go on to hold three more rounds of bidding over the next several years. The second round of bidding was held in December 2009, using a similar process and offering similar terms as the first round. This time, 40 companies were pre-approved and the Ministry offered contracts to develop ten oil fields. Iraq held its third bidding round in October 2010 for three gas fields: Akkas, Mansuriya, and Siba. The Akkas and Mansuriya fields had been included in the first round of licensing, but Mansuriya received no bids and Akkas received only one bid that failed.

The contracts awarded in the third licensing round eliminated signature bonuses, a significant departure from the first two rounds. Additionally, the required annual commitment to the Training, Technology and Scholarship Fund, by which contractors facilitate on-the-job training in petroleum operations for Iraqi nationals and promote research in oil and gas technology, was reduced from \$5 million to \$1 million.

Unlike the first two rounds, the third round was dominated by regional companies with major international oil companies absent. Major oil companies may have been repelled by tough payment terms and an uncertain security situation in Iraq. Another suggested reason for the absence of some majors was their relative lack of exposure in Iraq and their reluctance to overstretch their involvement under current circumstances.

Iraq's fourth round of bidding was held in May 2012 and offered twelve areas for development. Unlike the previous rounds, which focused largely on expanding existing production, the blocks offered in the fourth round were unexplored and newly discovered areas. The fourth bid round included 47 IOCs. Importantly, the fourth round was the first bidding process where companies that had signed deals with the KRG were excluded. For example, Hess and ExxonMobil were excluded from this round because they had signed contracts with the KRG.⁵⁸

The contract models used for the fourth auction round featured several changes compared to earlier rounds. The remuneration fee was calculated in a way that reduced the amount paid to contractors by the amount they paid to subcontractors. In other words, if total production is 1 million barrels and the contractor has spent the value of 300,000 barrels on a subcontractor, the contractor will receive payment only for the remaining production, or 700,000 barrels.⁵⁹

Another change from previous rounds was the criteria on which bids were judged. Previous rounds took into account not only the remuneration fee each bidder would charge, but also the amount of oil they agreed to produce. In the fourth round, with many of the bidding areas yet to be explored and with actual production therefore less certain, the remuneration fee was the only criterion.⁶⁰

Many in the industry saw the fourth bidding round as a failure, having failed to attract the expected interest. Following the bidding round the government implied that it would consider making changes to its contracts to allow investors to more easily recoup their investments.⁶¹ Deputy Prime Minister Sharistani said that the fourth round terms were too harsh.

"The fourth bid round was not successful, as we hoped, and the reason was because the contracts ... were very tough and did not give a possibility for the company to accept the high risk of work. We are studying a new model of contract for other oil fields because the first oil fields (that were auctioned) were discovered and well-known. There is a study

⁵⁸ "Update 2- Exxon Dropped from Iraq Bidders over Kurdish Deal," *Reuters*, Apr. 19, 2012. Available at: <http://www.reuters.com/article/2012/04/19/iraq-auction-exxon-idUSL6E8FJ3VB20120419>

⁵⁹ "Iraq Reworks Fees to Bolster 4th Energy Auction," *Reuters*, Sep. 13, 2011. Available at: <http://www.reuters.com/article/2011/09/13/iraq-oil-auction-idUSL5E7KC2T920110913>

⁶⁰ *Id.*

⁶¹ John Lee, "Iraq to Make Gas Exploration Deals More Attractive," *Iraq-Business News*, Sep. 6, 2012. Available at: <http://www.iraq-businessnews.com/2012/09/06/iraq-to-make-gas-exploration-deals-more-attractive/>

in the ministry of oil to improve the model of contract to make it more attractive for oil companies."⁶²

As of this writing in late 2013, the Ministry is planning to hold a fifth round of bidding focusing on gas fields only.

D. KRG Bidding Process/Production Sharing Agreements

Unlike the contracts signed with the federal Oil Ministry, the deals signed by the KRG are production sharing agreements (PSAs). Interestingly, the draft hydrocarbons law that has been debated since 2007 would promote these types of contracts in addition to the technical services contracts that have been signed during the four rounds of bidding with the federal government described above. According to the KRG Government website, the region has signed 48 oil and gas contracts.⁶³

The most important distinction between the KRG PSAs and the Ministry of Oil's TSCs is what happens if oil prices rise. Unlike TSCs, which provide a per-barrel payment regardless of international oil prices, PSAs allow IOCs to retain a share of the oil and gas they produce, after they pay royalties, taxes, and a share of the profits to the government, which allows for increased amounts of profits for IOCs as oil prices rise.

The way the typical KRG oil and gas contract works is as follows:⁶⁴

- (1) The contractor pays a 10% royalty to the KRG for all oil produced;
- (2) The contractor pays a signing bonus to the KRG. For instance, the Taza PSA required the payment of \$80,000,000 in bonuses to the Capacity Building Account under Clause 31 of the contract and up to \$37,500,000 in bonuses for reaching certain production goals.
- (3) The contractor pays a rental rate of \$10 per square kilometer per year during the exploration phase and \$100 per square kilometer during the development phase;

⁶² Patrick Osgood, "Iraq to Revamp Gas Contracts for Fifth Round," *ArabianOilandGas.com*, Sep. 2, 2012. Available at: <http://www.arabianoilandgas.com/article-10583-iraq-to-revamp-gas-contracts-for-fifth-round/#.URgxqPK3OSo>

⁶³ Kamil al-Mehaidi, "KRG and Ministry of Oil Contracts: A Comparison," *Middle East Economic Survey*, September 2012. Available at: http://www.mees.com/system/assets/000/001/903/original_Geopolitical_Risk_Aug-Sep_2012-2.pdf

⁶⁴ The entire KRG model contract can be found here: http://www.krg.org/uploads/documents/KRG_Model_PSC_20071112_2008_07_17_h15m59s45.pdf

(4) The contractor is obligated to invest specific resources in a specified schedule, such as spending \$10,000,000 carrying out geological and seismic testing and drilling exploratory wells.

(5) The contractor is obligated to develop appraisal and development plans in concert with the KRG.

(6) The government reserves the right to restrict production at facilities in concert with national production rate policies.

(7) Contractors are required to give preference to local personnel and subcontractors in hiring

(8) Contractors are required to provide funding to the KRG for capacity building of the Ministry and for local training.

(9) Contractors are required to pay certain amounts of money to an Environment Fund.

(10) Of the 90% remaining oil produced (after the 10% royalty), the contractor is permitted to recover the costs of the investments made in development, up to 40% of the remaining oil and gas, once being commercially produced. All other oil marketed is considered profit oil.

(11) Of the oil profits, the contract establishes a profit factor that governs the percentage of revenue that is to be kept by the contractor. The more profitable the endeavor, the lower the share of profits that can be retained by the contractor. This ranges from 15-30% for oil and 20-40% for gas.

(12) Income generated by the contractor through the contract is subject to 15% tax.

Like contracts with the federal Oil Ministry, contracts with the KRG allow the government to participate in up to 25% of the venture. The basic exploration term is for five years, but can be extended up to seven years. Once a commercial development is found, the contract's terms last for 20 years but can be extended up to 25 years. This duration is relatively similar to the terms of the federal Oil Ministry contracts. The contracts also contain provisions on employee safety and health, environmental protections, insurance requirements, confidentiality agreements, decommissioning planning and clean-up requirements, and contingencies for changes in ownership.

Many have criticized the KRG contract formation process as opaque, secretive, and not open to public competition. According to Peter Wells, "The KRG's PSCs have been awarded by opaque,

secret negotiations.”⁶⁵ In the past two years, the KRG has made its production sharing contracts available to the public.⁶⁶ Before this point, the KRG contracting process did not feature public bidding and contracts were not announced to the public. Others disagree with this criticism and say:

“What the KRG has done is not less transparent than other countries. The KRG contracts are normal. The oil companies that have signed oil contracts with the KRG have been legally and carefully advised about the requirements.”

According to the federal government, the KRG contracts are illegal and unconstitutional (an issue we will explore in detail in Section IV). This claim is aggressively disputed by the KRG.

E. Comparisons Between KRG and Iraq Oil Ministry Contracts

Several studies have assessed whether the terms of the KRG PSAs or the Oil Ministry TSCs provide more favorable terms to IOCs. Fadhil Mahdi and Peter Wells, using a series of economic assumptions, believe that the KRG PSAs offer far more attractive terms to IOCs than the TSCs offered by Baghdad. Mahdi concludes that the rate of return for IOCs in the KRG average 31 percent, while IOCs operating through TSCs signed with Baghdad earn a return of 19 percent. Madhi also concludes that earlier KRG contracts offered even more lucrative terms, perhaps offering returns around 35 percent. In addition, she notes that KRG contracts offer potential windfalls to IOCs if oil prices rise.

According to Peter Wells, the TSCs at a base level of \$60 per barrel oil prices delivers “\$8 billion more in revenue to the state than the KRG PSAs. At oil prices of \$100/barrel this . . . difference rises to \$14 billion. Unlike the KRG PSA, the TSC . . . effectively caps the contractor’s revenue, rate of return and net present value at higher oil prices.”⁶⁷ He also notes that the TSC encourages IOCs to make timely and cost-effective investments in order to obtain the highest possible per-barrel rate, resulting in lower costs for the government to reimburse.

However, Mahdi also reports that the royalty provisions in the KRG contracts provide improved profitability for the state and reduces profitability for the IOCs.

⁶⁵ Peter Wells, “Iraq’s Technical Service Contracts – A Good Deal for Iraq?” *Middle East Economic Survey*, Nov. 23, 2009. Available at: <http://www.iraqoilforum.com/wp-content/uploads/2009/12/Iraqs-Technical-Service-Contracts.pdf>.

⁶⁶ All publicly available KRG contracts can be found at: <http://krg.org/p/p.aspx?l=12&r=296&p=1>

⁶⁷ Peter Wells, “Iraq’s Technical Service Contracts – A Good Deal for Iraq?” *Middle East Economic Survey*, Nov. 23, 2009. Available at: <http://www.iraqoilforum.com/wp-content/uploads/2009/12/Iraqs-Technical-Service-Contracts.pdf>.

Discussion Questions

1) The fourth round of bidding for Iraq oil contracts did not attract much attention. Do you think this was caused by the fact that the same TSC terms offered in earlier rounds for existing fields were extended for more risky development activities?

2) Why do you think the CEO of French IOC Total recently said that KRG terms were better than those offered by the Oil Ministry? Do you think the admission of the Oil Ministry that it would be revising terms for the fifth round of bidding indicates that the terms were not profitable enough?⁶⁸

Go online and compare the availability of contracts signed by the Iraq Oil Ministry and KRG. Which ones are easier to locate? Are there good reasons to post these contracts online? Are there good reasons to keep the exact terms a secret?

VI. PIPELINES

Pipelines are one of the most efficient ways to move oil from one point to another within a country and to export oil from inside a country to one of the major shipping lanes in the Mediterranean or the Gulf. There is relatively little law – constitutional or statutory – that governs the use of pipelines in Iraq. Like many aspects of oil and gas law, the current status remains in flux. This section will take you through some of the law that does exist, examine the proposed Federal Oil and Gas Law that has not passed, and provide a framework for discussing what federal law governing oil pipelines might look like.

A. Pipelines in the KRG Oil and Gas Law

Pipelines are barely mentioned in the KRG Oil and Gas Law. They come up in just one section – Article 8 – which deals with the role of the KRG Ministry of Natural Resources in overseeing infrastructural developments. Read the section below:

Oil and Gas Law of the Kurdistan Region – Iraq (2007)

Article 8:

The Ministry shall:

First: oversee and regulate all infrastructure used directly or indirectly for Petroleum

⁶⁸ Tara Patel, “Total Chief Says Kurdish Oil Contracts ‘Better’ Than Iraq,” *Bloomberg News*, Feb. 10, 2012. Available at: <http://www.bloomberg.com/news/2012-02-10/total-chief-says-kurdish-oil-contracts-better-than-iraq-1-.html>

Operations, including Assets for production, refining, transportation including pipelines, valve stations, pump stations, compressor stations and associated installations, and distribution, including all centres and buildings, to optimise Petroleum exploration and production;

[...]

Third: provide the necessary assistance to the Federal Government and all other producing regions and governorates for use of the infrastructure according to this Law for the benefit of all the people of Iraq, consistent with the federal policy of Iraq as agreed upon between the Federal Government and the Regional Government; and

Fourth: make any pipeline network with spare capacity available to any Persons lawfully conducting petroleum activities in Iraq, and access to such capacity shall be agreed by the Minister on terms to be defined by contract.

Discussion Questions

- 1) What role, exactly, in managing oil pipelines is enumerated for the KRG in this statute?
- 2) Does the statute above give the KRG the ability to build oil pipelines or just oversee them?
3. What if the KRG did build an oil pipeline to Turkey, does the central government have any claim to management of the pipeline? Take a look at Art. 8. Third. What role does the statute envision for the federal government in any new Kurdish pipeline?

The right of the KRG to build pipelines out of Iraq and thus to export its own oil independent of the federal government is one of the central political conflicts of Iraq today. At the time of writing, the debate is still unsettled.

A Tale of Two Pipelines^{69, 70, 71, 72}

In 1970, the government of Iraq commissioned a pipeline to be built from Kirkuk, through Mosul and into Turkey. The Kirkuk-Ceyhan Oil Pipeline is 600 miles long and is Iraq's largest crude oil export line. It was this line that kept oil flowing out of Iraq during the Iran-Iraq War. Over the

⁶⁹ Sam Bollier, "All is Not Well in Northern Iraq's Oilfields," *Al Jazeera*, January 21, 2013, <http://www.aljazeera.com/indepth/features/2013/01/201312171046175913.html>

⁷⁰ Abdel Hamid Zebari, "Iraqi Kurds Press Ahead with Pipeline Plans," *Al-Monitor Iraq Pulse*, January 14, 2013, <http://www.al-monitor.com/pulse/originals/2013/01/kurdish-autonomy-oil.html>

⁷¹ Enis Berberoğlu, "Despite U.S. Opposition, Oil Trade with Iraq is Legal, PM Erdoğan Says," *Hürriyet*, February 8, 2013, <http://www.hurriyetdailynews.com/despite-us-opposition-oil-trade-with-iraq-is-legal-pm-erdogan-says.aspx?pageID=238&nID=40716&NewsCatID=338>

⁷² "Iraq's Northern Kurdish Region Stops Oil Exports," *Al Arabiya News*, December 25, 2012, <http://english.alarabiya.net/articles/2012/12/25/257057.html>.

course of 2012, the KRG halted and restarted exports of Kurdish oil through the nationally owned pipeline several times in response to disputes with the central government over payment.

By 2014 or 2015, Kurdistan hopes to have its own pipeline carrying Kurdish oil from the KRG to Turkey, independent of the national pipeline. Plans for this pipeline have raised important political questions about the relationship between the central government and the regional governorates.

As one KRG spokesperson said: “Constructing an oil pipeline starting from the Kurdistan region carries great significance for Iraq as a whole. Oil revenues will ultimately go to the treasury of the Iraqi government and then be distributed to all Iraqis... With the construction of this pipeline, the KRG will be able to settle the claims of foreign companies operating in the region without being subject to problems and to the central government’s erratic decisions.”

A spokesman for the Iraqi Ministry of Oil stated: Exporting oil without Baghdad’s permission is “not legal and not constitutional. The ministry considers any oil exported without the knowledge of the government and the ministry of oil to be smuggled.”

Turkish Prime Minister, Recep Erdogan, has supported the Kurdish right to sell oil: “We believe this is included in the [Iraqi] constitution. Because northern Iraq has an authorization of right on an 18 percent structure it might use this authorization with any country. And we are its neighbor. It has such a need. As their neighbor, we are helping them in meeting this need. In return we buy petrol or such things.”

A Turkish businessman disagreed with his government: “If there is instability in a region, you cannot construct a pipeline ... [and] even if you build it, it won't operate.” The United States is also skeptical. A U.S. State Department official stated: “We don’t support oil exports from any part of Iraq without the appropriate approval of the Iraqi government.”

Discussion Questions

The above section provided five different views on the KRG’s proposed oil pipeline – the KRG, the central government, the receiving government (Turkey), a businessman, and a western country (the U.S.).

- 1) How would you characterize each of their views?
- 2) What do you think is motivating each party to feel the way that it does?
- 3) Which view do you agree with the most? Why?

B. Pipelines under the 2007 Draft Federal Oil and Gas Law

Under the 2007 Draft Federal Oil and Gas Law, the main pipelines are the property of the federal government. Despite that, the Iraq National Oil Company (INOC) is obligated to transport, without discrimination and according to reasonable commercial terms, the petroleum of third parties, provided it has the available capacity and there are no insurmountable technical problems to prevent utilization of the pipeline. Disputes arising over the transport of petroleum through a main pipeline or a field pipeline for oil or natural gas will be sent to the Oil Ministry for resolution.

The Ministry in coordination with the INOC and in consultation with operators shall ensure that the main pipeline network is optimally designed, operated, and maintained so as to serve the overall requirements for petroleum transportation in the state of Iraq. Recall that Article 25 of the Federal Constitution also requires Iraq to manage the economy “in accordance with modern economic principles...and the encouragement and development of the private sector.” Article 21, A, mirrors this clause of the Constitution:

Iraq Federal Oil and Gas Law (2007 Draft)

Art. 21

A – [...] The Ministry in co-ordination with INOC and in consultation with Operators shall ensure that the Main Pipeline network is optimally designed, operated and maintained so as to serve the overall requirement for Petroleum transportation in the Republic of Iraq.

While most of the changes under the Federal Law are minor and would not change the overall pipeline scheme in the country, one clause may be interpreted to grant exclusive authority to build international pipelines to the Ministry of Oil:

Iraq Federal Oil and Gas Law (2007 Draft)

Art. 21

E – The co-ordination of tasks related to the transport of Crude Oil through new Pipelines outside the Iraqi territories is the responsibility of the Ministry. The follow up operations subsequent to the approval of the necessary bilateral agreements shall be the responsibility of INOC in accordance with the said bilateral agreements and any specific instructions from the Ministry.

Discussion Questions

1) Does Art. 21, E, grant exclusive rights to the Ministry of Oil to build new international oil pipelines? What does the act mean by “the co-ordination of tasks related to the transport of Crude Oil?” Does that include the development of new pipelines?

2) The second part of this article applies to bilateral agreements between the central government of Iraq and another nation. Do agreements between the KRG and another nation count as bilateral agreements that are the responsibility of the INOC?

VII. CONCLUSION

In this chapter we have examined the complicated legal framework governing the oil and gas industry in Iraq. Although the Iraqi Constitution and the KRG Oil & Gas Law explicitly talk about how to manage the country's oil and gas resources, the failure of Parliament to pass a federal oil and gas law leaves much to be determined by politics. As the KRG and the Central Government continue to debate these issues in the news, we encourage you to apply what you have learned in this chapter to the ongoing debate.