KIRKUK

Reaching a Comprehensive Settlement for a Disputed Province

May 12, 2011

CONTENTS

EXECUTIVE SUMMARY

KIRKUK, an ethnically divided province in Northern Iraq, is undergoing a crisis of stability due to its undefined political status. The lack of status has stalled political and economic progress, while ethnic divisions have led governance to be framed as a question of demographics. Leaders of the region's three major ethnic groups – Arabs, Kurds, and Turkomen - have chosen paralysis over compromise as they jockey for resources, physical security and cultural preservation. In anticipation of a future potential decisional referendum, the groups have fought to engineer demographics in their favor and continue to stall the resolution of land disputes, the completion of a census, the development of an electoral list and the provincial elections. Control of the territory of Kirkuk is further complicated by its wealth of resources- estimated by some to near 4 percent of the world's known oil and gas reserves. Resolution of Kirkuk's status demands a new urgency in the face of a planned withdrawal of American troops, who currently maintain security in the province through joint operations with the Iraqi Army and the Kurdish Peshmurga. Recent confrontations between the Army and Peshmurga portend the potential for violence upon departure of the US military- viewed by many as the only legitimate source of security. The status quo must change before this is allowed to happen.

Building on the recommendations of the US Department of State, the United Nations Assistance Mission for Iraq (UNAMI), and international experts, this paper recommends a confirmatory referendum on a politically negotiated settlement as the best option for resolving Kirkuk's status. It contends that the removal of demographics as the key determinant of provincial status will allow Kirkuk to join in Iraq's political and economic progress. The research indicates that "dual nexus" or joint administration between the KRG and central government in Baghdad is preferable to the creation of an autonomous region (conferring "special status").[1] As such, it provides a model for "dual nexus" administration and provincial power-sharing in Kirkuk and a roadmap for implementation. The proposed technocratic framework adheres to the Iraqi Constitution and allows both the Government of Iraq and the Kurdistan Regional Government to maintain roles in administering the province. Baghdad will remain sovereign; however Kirkuk's residents will be able to affiliate politically and culturally with the Kurdistan Regional Government.

This project does not propose policy. Rather, it proposes a detailed, technocratic way forward on joint administration that takes into account the Iraqi Constitution, the proposed KRG Constitution and appropriate legal authorities governing provincial governments in Iraq and a proposed sequencing of steps to remove the issue of Article 140 as the central irritant to Arab-Kurd relations in Kirkuk. It is intended to be a complement to efforts to resolve other disputed internal boundaries in Ninewa and Diyala and as a complement to plans currently being developed by USF-I to create a more stable security infrastructure for the region.

SUMMARY OF RECOMMENDATIONS

Birthright

Birthright is a legal status that grants residents of Kirkuk all of the rights available to residents of the Kurdistan Regional Government without limiting the rights and liberties guaranteed in the Iraqi Constitution. Specifically, Kirkuk's residents will be able to vote in KRG elections, serve in the Peshmurga and join the KRG civil service.

Division of Constitutional Powers

Under joint administration, Kirkuk will remain an unincorporated province but will have legally binding ties to both the Government of Iraq and the Kurdistan Regional Government. Constitutional powers will be divided into exclusive and shared administrative powers amongst the Government of Iraq, the Kurdistan Regional Government, and the Kirkuk Provincial Government.

Decentralization of Power

The issues of birthright, Kirkuk City police, agriculture, and budget will be devolved to the local level in the Kirkuk Provincial Government. Decentralization of power will be an important mechanism for de-politicizing governance, reducing ethno-regional inequalities and incentivizing accountability.

Power-sharing on the Kirkuk Provincial Council

Two possible pathways are proposed for reaching an ethnic distribution on the Kirkuk Provincial Council (KPC) that adheres to the 32-32-32-4 proportion previously agreed upon by local leaders: the first option is to gerrymander geographical voting districts within Kirkuk Province, while the second option is to require party lists to reflect this proportion for certification.

The High-Level Task Force

Historical experience indicates that international arbitration is critical to achieving a negotiated agreement. The High-Level Task Force (HLTF) under the guidance of a reinvigorated UNAMI is the most likely candidate to bring the parties to the table.

Sequencing

Implementation must begin with a political negotiation by the high-level task force. Once the question of demographics is removed from the equation, progress can be made on crafting an electoral list and holding the first provincial elections since 2005. The newly elected KPC will be ethnically-balanced according to an agreed upon formula and can call for and preside over a confirmatory referendum on joint administration.

1. BACKGROUND

EIGHT years after initial US engagement in Iraq, Kirkuk's undefined political status, a major irritant in the Arab-Kurd relationship, threatens to unravel the substantial progress that has been made in creating a stable, sovereign and sustainable Iraq. While many believe that the prevailing absence of violence means the status quo is sustainable indefinitely, the undefined status has created significant impediments to governance, economic development, and ethnic reconciliation.

Specifically:

- Kirkuk has not held provincial elections since January 2005, and there are no plans for elections anytime in the future.

- Kirkuk participates in national elections only by exception, not as a matter of course.

- The Kirkuk Provincial Council, the Kirkuk Police, and the most important provincial institutions are dominated by Kurds as a result of the Sunni boycott of the 2005 elections. A planned dollar-per-barrel revenue–sharing plan for oil that would be controlled by the Kurd-dominated KPC promises to intensify this disparity.

- The failure to hold provincial elections in 2009 means the Provincial Powers Act cannot be implemented in Kirkuk, preventing the Governor from exercising true powers as the Chief Executive of the Province. The Governor cannot appoint or remove key officials and has limited authority over the provincial budget.

- Fear of a demographically-based solution has prevented progress on addressing the tens of thousands of land disputes in the province.

- Kirkuk's unclear future adversely affects its investment climate. Despite its energy wealth, Kirkuk has not been able to attract international investment comparable to Basra due to a lack of predictability for investors

Article 140 of the Iraqi Constitution outlined a series of steps to determine Kirkuk's status by December 31, 2007: normalization (the resolution of outstanding land disputes), census and a referendum. None of these steps has been completed. Kurds continue to insist on full implementation of Article 140 while Arabs and Turkomen maintain that Article 140 is expired and a new formula must be negotiated. Kurds believe Article 140 is an opportunity to unify Kurds under the constitutionally-recognized Kurdistan Regional Government and to take control of Kirkuk's sizeable energy reserves. Arabs and Turkomen fear losing their cultural identity in an entity controlled aggressively by the Kurdish Democratic Party (KDP) and Patriotic Union of Kurdistan (PUK).

As a result of the stalemate over Article 140, Arabs and Turkomen refuse to make progress on normalization, a census or an electoral list for fear of confirming a demographic make-up

1. BACKGROUND

of the province that might favor Kurds in a future decisional referendum. The Article 23 committee designed to propose recommendations on resolving this stalemate has stalled along largely predictable ethnic lines.

Article 140 represents both an obstacle and an opportunity. By preventing consensus among the major ethnic groups in the province, it has proven to be a major obstacle to ethnic reconciliation and governance. At the same time, a successful resolution to Kirkuk's status represents an opportunity to seam together the Kurdish and Arab portions of Iraq through a successful mechanism that would require a common vision for the province. In the past, postponing a process for determining Kirkuk's status seemed a reasonable policy as the GOI addressed more pressing concerns, particularly those related to security. With the withdrawal of US troops and with increasing tension between Kurds and Arabs in the region, this is no longer a prudent path. Kirkuk's sizeable resource wealth only promises to raise the stakes for both sides.

2. DRAWING FROM HISTORICAL CASES

THE challenge of governing a multi-ethnic region is not unique to Kirkuk. Review of historically successful power-sharing settlements offers important lessons for Kirkuk:

Successful power-sharing cases are defined, for the purpose of this project, as arrangements that established security, prevented state collapse and either terminated or prevented large-scale violence. In these cases, the absence of violence: first, permitted conditions for governance and ethnic reconciliation to emerge; second, allowed some form of functioning government and administration of public services to be secured in the long-term; and third, resulted in state institutions have not yet embodied systematic discrimination. Further, in all such cases, while tensions may exist among groups to varying degrees, reconciliation is ongoing and ethnic groups are able to peacefully co-exist in the same state.

This research project used the following case-studies for its research: the Netherlands[2], Belgium[3], and Switzerland, Northern Ireland, Bosnia and Herzegovina[4], Macedonia[5], South Tyrol[6] in Italy, and the Aland Islands[7] in Finland. Each was considered a successful power-sharing arrangement, and was studied in depth for nuances in its approach.

Across the case studies, successful power-sharing agreements include[8]:

- A power-sharing government
- Proportional representation,
- Segmented or decentralized authority
- Cultural preservation
- Veto rights
- International facilitation

The framework outlined in this proposal includes each of these features. For the purpose of this project, it should be emphasized that *in the modern era, no successful power-sharing settlement was reached without international facilitation.* Foreign aid, security guarantees, and binding arbitration decisions are tools that international players can wield to change local mindsets and to promote effective power-sharing. The historical record proves that a technocratic solution, facilitated by or through an international actor or framework is more likely to succeed than a policy of benign encouragement.[9]

It is therefore recommended that the international community take an active role in negotiating settlement in Kirkuk.

3. BIRTHRIGHT

JOINT administration will prevent Kirkuk from fully merging with the Kurdistan Regional Government. However, Kirkuk's residents will be granted the option of "birthright" affiliation to the KRG. The "birthright" concept will allow individuals living in Kirkuk to self-identify with the KRG, which would, in turn, allow these residents to enjoy the rights and benefits of Kirkuk joining the KRG without it actually doing so.

The concept of birthright derives from the idea that states are traditionally defined by two criteria: a fixed territory and a permanent population, the latter of which can be established without the former.[10] The institution of citizenship, a legal boundary delineating who is lawfully deemed to belong, defines the permanent population. Citizenship can have four different sets of meanings: (a) a "formal status of membership in a political community"; (b) the possession and enjoyment of fundamental rights in a society; (c) "a state of active engagement in the life of a polity"; and (d) "an experience of identity and solidarity that a person maintains in a collective or public sense."[11] All of these can be granted to an individual without the requirement of residing in a specified territory.

Under the Good Friday Accord, Northern Ireland abandoned its claim for territorial unity, leading it to remain under the control of the British government. As a means of reconciling this concession, the Irish citizenship law was modified, shifting from defining Ireland by its status as a territory to defining the nation by reference to its people. New provisions were designed to offer people born in Northern Ireland the reassurance that they could, if they so wished, be part of the Irish nation through the right to citizenship. As such, the Irish were able to assert a fundamental part of their sovereignty while relinquishing territory to the British.

The concept of birthright could be directly applied to Kirkuk through the creation of a form of "citizenship" to the Kurdistan Regional Government. It might be defined as follows: 'The birthright of all citizens of Kirkuk to identify themselves and be accepted as Kurdish and Iraqi, as they may so choose, and accordingly confirm that their right to hold both Kurdish and Iraqi heritage would be accepted by both Governments and would not be affected by any future change in the status of Kirkuk or the Kurdistan Regional Government.' Specifically, the entitlement to residency could be evidenced by the doing of 'any act which only a KRG resident is entitled to do', such as serving in the KRG civil service or the Pesh merga, receiving an education in Kurdish, buying property in the KRG, and having uninhibited access to move freely between Kirkuk and the KRG.

This paper recommends the use of this concept, however it does not put forward a specific recommendation on whether birthright would apply to all citizens of Kirkuk, or solely to the Kurds. Rather, it recommends that the KRG decide who will be eligible for this right, and construct a system on the provincial level for its implementation, possibly through the use of renewed residency cards.

4. CONSTITUTIONAL POWERS

WHILE this proposal creates a jointly administered province unique in its governance structure, no new constitutional powers are necessary for such governance. Under joint administration, also known as dual-nexus, Kirkuk will remain an unincorporated province but will have *legally-binding ties* to both the Government of Iraq and the Kurdistan Regional Government. The Government of Iraq (GOI), the Kurdistan Regional Government (KRG), and the Kirkuk Provincial Government (KPG) have exclusive and shared administrative powers. Dividing powers among these bodies safeguards existing GOI constitutional authorities while granting the KRG and KPG the power to legislate over Kirkuk issues directly related to them.

Powers amongst GOI, KRG, and KPG are divided into four categories:

1) Exclusive powers to KPG
2) Exclusive powers that GOI and KRG each have over KPG
3) Powers that GOI and KRG share over KPG
4) Powers shared between GOI and KPG, and powers shared between KRG and KPG

1) Exclusive powers to KPG

Under joint administration, the Kirkuk Provincial Government would exert the powers available to all Iraq's provinces under the Provincial Powers Act of 2008.[12] With a new provincial election, the Provincial Powers Act can take affect in Kirkuk and provide the province with authority to conduct and command its local affairs. Specifically, the KPG will have the power to legislate provincial election laws, manage provincial budgeting, and administer the provincial civil service.

The KPG will exercise exclusive control over an ethnically mixed and balanced police force. While security in the province currently requires coordination between the Iraqi Army, the Peshmurga, and the Iraqi Police, negotiations should include a timeline and method for transitioning to police primacy permitted in the Iraqi Constitution[13]. Such plans are currently being developed by USF-I.[14]

2) Exclusive powers that GOI and KRG each have over KPG

The federal government in Baghdad will maintain all authorities vested in a sovereign government. In accordance with Article 110 of the Iraqi Constitution that specifies national, sovereign powers, the GOI has exclusive powers over the KPG in relation to: foreign policy; international treaties and agreements; international economic and trade policy; national security policy; establishment and running of the armed forces; fiscal and customs policy; currency issuance; inter-regional and inter-provincial commerce; national budget; monetary policy; establishing a central bank; regulating standards, weights, and measures; citizenship, nationalization, and residency; broadcast frequency and mail policy; general and investment budget bill; external water resource policies; and general population statistics and census. The GOI will maintain these powers.

4. CONSTITUTIONAL POWERS

The GOI has leading power over oil and gas management in the province of Kirkuk.[15] However, under dual-nexus, the KPG will manage all funds distributed through any revenue-sharing plan between the GOI and KPG. Additionally, the KRG will continue to negotiate its share of national revenue from the central government in accordance with current practice. A national hydrocarbon law, currently under negotiation in the Council of Representatives, will supersede the current division of powers and the codifications recommended here.

KRG will have exclusive power to determine which of Kirkuk's residents will qualify for Kurdish birthright affiliation, including the right to vote in KRG elections, purchase property in the KRG, and join the KRG civil service and the Peshmurga.

3) Powers that GOI and KRG share over KPG

GOI and KRG currently jointly administer police and internal security forces over KPG and will continue to do so until the implementation of an appropriate transition plan to police primacy according to efforts currently undertaken by USF-I.

Under Article 114 of the Iraqi Constitution, GOI and KRG will jointly administer the province of Kirkuk's main sources of energy and its distribution, development and general planning policies, domestic water policy, and public education.

4) Powers shared between GOI and KPG, and powers shared between KRG and KPG

Kirkuk will continue to maintain representatives in the Council of Representative and all associated federal bodies and committees. The GOI and KPG will coordinate the management of customs, and environmental and health policy.

Representatives from Kirkuk will be elected from Kirkuk to represent that province in the KRG legislature.

5. PROVINCIAL GOVERNANCE AND POWER SHARING

THE Kirkuk Provincial Council (KPC) will serve as the platform for an effective power-sharing settlement and basis for implementation of jointly administered powers. This proposal recommends reconstituting the current KPC through provincial elections to create an ethnic proportion of 32-32-32-4 percent representation (32 percent for each of the three major ethnic groups and 4 percent for other minorities). This proportion is the only currently accepted proportion among the three major ethnic groups and is the basis of all inter-ethnic agreements from the Dead Sea Agreement in 2006 to the 13-point agreement of December 2008 that ended the boycott of the KPC by Arabs and Turkomen. This paper recommends implementing this proportional representation until a referendum can be held. Afterward, the proportions can be changed or eliminated by the KPC as described below.

The current KPC, formed in 2005, is heavily dominated by the Kurdish Brotherhood List, partially due to the Kurds' demographic weight in the province but largely as the result of the Sunni Arab boycott of the 2005 elections. Consequently, the vast majority of the 41 members of the Kirkuk Provincial Council are either Kurds or Kurdish aligned. This has created a serious imbalance of power that has resulted in Kurdish domination of virtually all levers of powers in the province. The dollar-per-barrel revenue-sharing agreement with the federal government will only intensify the disparity between Kurds and non-Kurds. Additionally, the high Arab turnout during the 2010 national elections gave Arab residents of Kirkuk cause to protest their lack of equitable representation at the provincial level. The current wave of democratic movements in the region has only intensified demands for greater transparency and more democratic mechanisms in governance. For now, the KPC is unable to reach agreement on any major issue, impeding its ability to serve the city and the province.

Holding provincial elections, however, has been difficult. Non-Kurds in the province have resisted a census and the formation of an electoral list for provincial elections for fear of legitimizing the anomalous demographic changes that have occurred since 2003. Legitimizing claims to voting rights could tip the demographic balance in advance of a possible decisional referendum on status. Therefore, the only possible way forward is to predetermine the ethnic balance of the KPC in advance of any provincial election to achieve the 32/4 distribution of seats on the KPC.

Achieving the 32-32-32-4 Proportion

Applying the 32/4 proportion is a controversial proposal that will be difficult to achieve. It will deny the will of the majority, create representational imbalances, and could allow an "electoral census," less accurate than an actual census. Despite this, no other formula has been acceptable to a greater number of leaders, parties, and ethnic groups in Kirkuk, and members of all major ethnic groups have affirmed this formula since 2005. The formula has the advantage of providing all groups an equal starting point in advance of a power-sharing settlement. The possible options for achieving this proportion include

5. PROVINCIAL GOVERNANCE AND POWER SHARING

geographical representation, an open list, or closed list formula

Geographical Representation

This option entails drawing electoral districts in province and the city. Each district would be drawn to provide a reasonable expectation that a particular ethnic group would be able to elect a representative from that district (gerrymandering).

There are some advantages to this option:

- It would not permanently entrench ethnic quotas. As demographics within a district change, so would district representation. Additionally, a new, balanced KPC with provincial powers could change electoral districts to be more representative.
- Representatives would be held more closely accountable to their constituents than to their parties.
- Representatives for the districts would not be required to affiliate with ethnically-based political parties. Representatives could be prominent local figures.
- While fraud would still be a potential problem, it would no longer constitute a driver of tension between communities since it would most likely be Kurd-on-Kurd, Arab-on-Arab or Turkomen-on-Turkomen fraud.

The disadvantages, however, are also large:

- In the absence of a real census, it is unclear

how electoral districts would be created to assure a reasonable probability of achieving the optimum proportion on the KPC.
- Some districts would be larger, giving them less per capita representation than others. This could become a source of tension.
- An electoral system of geographical representation has no historical precedent in modern Iraq, and the implementation of such a system would likely require an extensive voter education campaign.

It appears, however, that some local politicians have already proposed this as a potential way forward.

Open List

This option requires each electoral list to include the 32/4 quota. This option would treat Kirkuk as a single electoral district, which would require no new legislation. The quota requirement also has a precedent: the constitution requires each list to include 25 percent women.[16]

The advantages are clear:

- No substantial changes to current election laws or practices would have to be implemented.
- No new legal challenges are represented by this option, since the quota system for women is already an accepted legal practice.
- It would encourage the development of multi-ethnic and local parties as major

5. PROVINCIAL GOVERNANCE AND POWER SHARING

polarizing, ethnically-based parties struggle to attract members of other ethnicities.

There are disadvantages as well:

- This may not guarantee the optimum distribution of KPC seats. Kurdish and Arab parties already include minorities on their lists but do not necessarily provide them seats or substantive roles.
- There is nothing to prevent the use of influence by major ethnically-aligned parties, particularly the PUK and KDP, to create ethnically-diverse lists that would nonetheless adhere to the Kurdish agenda.

Closed List

The closed list option is identical to the open list option, except that it does not allow voters to directly elect their representatives. Closed lists are no longer used in Iraqi elections and therefore are not likely to be a suitable option for Kirkuk.

The KPG Executive

The other major branch of the Kirkuk Provincial Government is the executive branch. The current KPG executive is comprised of a Governor and a Deputy Governor. The Governor is currently a Kurd and the Deputy Governor an Arab. The Governor currently has limited authority over the civil service, budget, and police, and has the right to veto legislation in strictly proscribed cases.

We propose that the Office of the Governor add an additional Deputy Governor (a Turkoman), and that both Deputy Governors have the right to veto legislation. This will provide minority groups veto rights through their representatives, in the likely case that the demographic balance of the KPC will tip in favor of Kurds in the future.

6. DECENTRALIZATION OF POWER

WITHIN the reformed Kirkuk Provincial Government, decentralization of power to the local level will be an important mechanism for de-politicizing governance, reducing ethno-regional inequalities, allowing masses of one ethnic group to run their daily lives, and lessening the potentially incendiary effects of integrating groups paralyzed by severe mistrust and hostility.

As lower-level authorities in the KPG are currently demanding greater control, top-level authorities in the Government of Iraq are likely to support devolving certain powers because they will be able to deflect the blame of potential failed governance onto others while still maintaining their positions. In turn, local politicians would be held more accountable to the public.

Decentralization will affect four administrative powers:

1) Birthright: Provincial Level
2) Demilitarized zone of Kirkuk City: Joint Authority
3) Agriculture: Joint Authority
4) Budgetary Powers: Sub-district Authority

1) Birthright: Provincial Level

Currently, residency cards are controlled through the Ministry of the Interior and must be signed off by District Governor. For movement within the province, it has to be signed by the Governor level. This is problematic and time consuming.

Under this plan, residency cards would have dual-use for birthright purposes. They would be controlled solely on the provincial level in Kirkuk Province, for birthright.

Implementation risks these cards being manipulated for ethnicity purposes.

2) Demilitarized Zone of Kirkuk City: Joint Authority

Kirkuk City would become a demilitarized zone controlled by shared security forces, controlled at the provincial level by a jointly administered mechanism — likely the Iraqi Ground Forces Commander (Minister of Peshmurga/Peshmurga Land Command) and the Ministry of the Interior (or other). Kirkuk would not be an entirely demilitarized province, but would benefit from improved combined security forces.

3) Agriculture: Joint Authority

Joint authority management would be given for important issues such as watershed management. The local level can take on some authorities as well, such as canal clearance.

4) Budgetary Powers: Sub-district Authority

Sub-districts demand better control over how their budget is made. Currently, they can send a "wish list" to Kirkuk, but have no official input. Devolving budgetary powers would improve politicians' accountability and it is unlikely corruption would worsen.

7. PROVINCIAL ELECTIONS

PROVINCIAL elections would serve as the first step in implementation of a joint administration. Without elections, the disparities resulting from the 2005 Sunni boycott cannot be rectified, the Provincial Powers Act cannot be enacted, and a balanced, legitimate legislative organ on the provincial level capable of beginning a dialogue on Kirkuk's long-term status cannot be achieved.

Addressing the current electoral legal framework will likely be the most difficult issue as it will involve compromises on a national level between the KRG, the GOI and major political parties, and any legislation must come from the Council of Representatives (COR). However, current laws should be amended or adapted to overcome the following obstacles:

- *Article 23 Committee*
  This body was formed to resolve Article 140 issues: normalization, census and referendum. This committee has made no progress and has broken down along predictable ethnic lines. Under the current political and legal framework, provincial elections cannot be held until this body concludes its work. While this committee will continue to be crucial to resolving land disputes and preparing for a census, it should conclude its work after provincial elections, not before, and may be crucial to the implementation of a future compromise solution between the parties in Kirkuk.

- *Power to call a Referendum*
  A newly elected KPC, with the realization of the Provincial Powers Act, could legally call for a referendum. This possibility has been a major stumbling block in gaining agreement among the three major ethnic groups for holding new provincial elections. This power must be removed if any powersharing agreement is to be reached and all parties in Kirkuk must be committed to a referendum on a politically negotiated solution.

- *Caveat of 2010 Election Law*
  The caveat to the 2010 election law, that the electoral list used for any provincial election in Kirkuk will be for the provincial election only and not for any future referendum, should be applied to provincial elections in Kirkuk.

While issue of the electoral list that is to be used for any provincial election in Kirkuk will be highly contentious, the caveat to the 2010 election law is particularly significant in that it allowed for the citizens of Kirkuk to participate fully and successfully in the national elections. The electoral list used for the 2010 national elections may be used for provincial elections in Kirkuk with the addition of all eligible voters who have turned 18 years old since the 2010 election. Such a process would mean that the 2010 electoral list would not need to go through the politically –charged process of re-vetted the Kirkuk electoral list for provincial elections.

The 2010 national elections also highlighted that, under Iraqi electoral law, the campaign period before any elections may be brief. For

7. PROVINCIAL ELECTIONS

example, the campaign period before the 2010 election was 22 days. The campaign period before provincial elections in Kirkuk could also be brief.

There are two options for a provincial elections timetable. Both take into consideration the issues of electoral law, an electoral list, and a campaign period:

150 Day Timetable

This option was formulated to take advantage of the US military presence to provide security assistance in the lead up to and during provincial elections. This assistance was crucial in holding successful elections in March 2010. However, this timetable is extremely aggressive and may not be actionable due to political realities in Iraq and the United States.

- Adoption of an Election Law: June 1-August 31, 2011 (Ramadan: August 1-31)
- Electoral List Review: September 1-October 1, 2011
- Campaign Period: October 2-25, 2011
- Provincial Election: October 26-28, 2011

Indefinite Timetable

This option would have provincial election in Kirkuk coincide with the next round of provincial elections in Iraq. Provincial elections took place throughout Iraq in 2009, however no elections were held in Kirkuk and the date for the next nation-wide round of

provincial elections has yet to be set. Under this scenario, there would be no security assistance from the US military during provincial elections.

8. REFERENDUM AND SEQUENCING

A confirmatory referendum on a politically negotiated settlement is the best option for resolving Kirkuk's status while circumventing demographic questions. Once the leadership of the relevant parties commits to a long-term vision for the province, the currently poisonous topics of census, property disputes and electoral lists would no longer have an impact on the future status of the province.

The first step toward progress is agreement among key leaders on a dual-nexus framework for joint administration and a power-sharing system for the provincial government. The proposed sequence follows these steps:

1) An informal or preliminary agreement that the future of Kirkuk will depend on joint-administration and power-sharing (a direction, not a solution)
2) Provincial elections according to the agreed-upon power-sharing formula
3) Final negotiations and confirmatory referendum on the agreed-upon dual-nexus framework

1) Negotiations

Negotiations can be spearheaded by local parties, the US Government, or an international body. As noted above, a purely domestic process is not likely to be successful. While the US will likely play an important role in the facilitation of a power-sharing agreement, the UNAMI-led High Level Task Force is currently best suited to provide a framework for negotiations as it currently has a mandate to do so. After languishing for

several years, the HLTF has recently shown an inclination to tackle the problem.

2) Provincial Elections

Provincial elections should occur as quickly as possible following a preliminary agreement on joint administration and provincial powersharing. Some experts believe that provincial elections cannot wait for negotiations to conclude. The Kirkuk-PRT experience has indicated that no agreement on provincial elections can be made without reference to the question of Article 140. Therefore, a general agreement on the type of referendum (confirmatory), and the potential results of the referendum (joint administration not annexation into the KRG) are necessary precursors to breaking the current political logjam in the province. Additionally, a KPC with a fresh mandate and equitable representation would be crucial in negotiating the details of a power-sharing settlement and calling for a confirmatory vote.

3) Referendum

A referendum should be held after a new KPC has been elected and allowed to function for some time. Observers are near unanimous in their opinion that the people of Kirkuk will live well together once they are allowed to govern themselves. The successful election and maintenance of a provincial government will ease tensions in the run up to referendum. Additionally, the party leadership will be the primary determinants of the success or failure of a referendum. Historical precedent,

8. REFERENDUM AND SEQUENCING

particularly the case of Northern Ireland, indicates that supportive parties will underwrite a voter education campaign and provide the legitimacy necessary for post-referendum success. With this in mind, negotiations should include all critical local players and attempt to sway potential spoilers.

9. CONCLUSION

THIS proposal recommends a course of action in line with US policy goals to finally and permanently put to rest the question of Article 140 and the status of Kirkuk. Rather than dividing the country along ethnic lines, the joint administration of Kirkuk will seam together the Kurdish and Arab parts of Iraq through a common set of governing principles, legally-binding ties between the KRG, GOI and KPG, and a common vision for Kirkuk forged through strategic compromises that would benefit all parties.

ABOUT THE AUTHORS

TEAM LEADER:

Gabriel Escobar (EscobarG@state.gov)
Gabriel Escobar, a Political Officer in the US Department of State's Foreign Service, is the 2010-2011 Kathryn and Shelby Davis Fellow at Columbia University's School of International and Public Affairs (SIPA). In his 17-year career, he has served in ten countries on three continents under conditions ranging from developed democracies to active combat zones. Before coming to SIPA, Gabriel was the Team Leader of the US State Department's Provincial and Diplomatic Reconstruction Team in Kirkuk Province, Iraq. In Kirkuk, he was the senior US civilian official for the province and led an international team of experts working in partnership with the Provincial Government to create opportunities to resolve outstanding political and constitutional issues, support the development of the economy across all sectors, and improve domestic governance capacity. In this role, Gabriel had an important role in creating the foundation for planning a long-term, stand-alone civilian presence in Kirkuk after the withdrawal of US forces from Iraq. During his first assignment in Iraq from 2004-2005, Gabriel was among the first group of Americans who volunteered to open the US Embassy in Baghdad after the fall of the Saddam Hussein regime. He served as the Executive Director for Ambassador John D. Negroponte. A career diplomat, Gabriel has also served in Buenos Aires, Argentina, Rome, Italy, Moscow, Russia, Prague, Czech Republic, and served several consecutive tours in Serbia and will be the incoming Minister for Political-Economic Affairs at the US Embassy in Portugal this fall 2011. He speaks Spanish, Russian, Italian, Serbian and Czech.

Gabriel has been awarded the State Department's Superior Honor Award four times and the Meritorious Honor Award once.

CONSULTANTS:

Nellie Abernathy
Nellie Abernathy received her Master of International Affairs in International Economic Policy from SIPA in 2011 and her BA in History of Nation-State Formation from Brown University in 2004.

Nellie is a joint recipient of SIPA's 2011 Dr. Susan Aurelia Gitelson Award for Human Values in International Affairs.

Ehab Al Kuttub
Ehab Al Kuttub is a citizen of Iraq and trained as an Engineer. He received his Master of International Affairs from SIPA in 2011 where he concentrated in Human Rights and specialized in the Middle East. Ehab interned at the United Nation High Commission for Refugees in the summer of 2010. Ehab has also worked as the Iraq Human Rights Pro Bono Project Coordinator at the law

ABOUT THE AUTHORS

firm of Proskauer Rose LLP. He worked previously in the field of International Development with USAID / Iraq and International Relief and Development organization.

Ehab is a joint recipient of SIPA's 2011 Dr. Susan Aurelia Gitelson Award for Human Values in International Affairs.

Sarah Bilson
Sarah Bilson received her Master of International Affairs from SIPA in 2011 where she focused on International Security Policy and Middle East studies. She grew up in Chicago and Melbourne, Australia. Sarah has spent the last two summers in Lebanon, the first as a researcher with the International Foundation for Electoral Systems during the 2009 Parliamentary Elections, and most recently as a reporting officer for the United Nations in the Palestinian refugee camps in Lebanon. Prior to SIPA, Sarah interned at the US Department of State in the Bureau of International Security and Non-Proliferation, as well as worked for the International Rescue Committee in California, settling newly arrived families and teaching English to children and adults. Next year, she will move to Washington DC to begin working for the Department of Energy on nuclear non-proliferation policy. Sarah holds a BA in Political Science/International Relations from the University of California, San Diego, and has also studied at the Institut d'Etudes Politiques (Exchange Student Diploma with French mention) and the School for International Training in Dakar, Senegal. Sarah is fluent in French, and conversational in Arabic and Italian.

Sarah is a joint recipient of SIPA's 2011 Dr. Susan Aurelia Gitelson Award for Human Values in International Affairs.

Michael Harker
Michael Harker received a Master of International Affairs in International Security Policy and the Middle East from SIPA in 2011 and a BA in Communications from the University of California, Los Angeles in 2004. As the recipient of the 2010 David L. Boren National Security Fellowship, Michael lived in Syria, studying Modern Standard Arabic and the Syrian media. He has also lived in Egypt, traveled extensively in the Middle East, and speaks Arabic with advanced proficiency. In May 2011, Michael will begin Junior Officer training in the US Foreign Service, serving as a Public Diplomacy Officer.

Michael is a joint recipient of SIPA's 2011 Dr. Susan Aurelia Gitelson Award for Human Values in International Affairs.

Thong Nguyen
Thong Nguyen holds a Masters in International Affairs from SIPA and a BA in Philosophy and

ABOUT THE AUTHORS

Government from the University of Texas at Austin. He is the son of Vietnamese immigrants and was raised in Texas. He has taught English in Japan, taught in American public schools, reported news on a social networking site, and advocated development issues on behalf of the United States at the United Nations. He is pursuing a future career in public service.

Thong is a joint recipient of SIPA's 2011 Dr. Susan Aurelia Gitelson Award for Human Values in International Affairs.

Marin O'Brien
Marin O'Brien received a Master of International Affairs in 2011 at SIPA where she focused on International Security Policy and International Conflict Resolution within the Middle East and Central America, respectively. While at SIPA, she interned at the United Nations Development Program in the Bureau for Crisis Prevention and Recovery. Marin worked in the fields of international policy, international development, and conflict transformation before coming to SIPA, and her international experience includes time in Lebanon, Guatemala, and Cuba.

Marin is a joint recipient of SIPA's 2011 Dr. Susan Aurelia Gitelson Award for Human Values in International Affairs.

Theodore Senasu
Theodore Senasu is currently a Master of International Affairs Candidate at SIPA concentrating in International Security Policy and specializing in International Conflict Resolution. He received his J.D. from the University of Wisconsin Law School in 2008 and a BS in Foreign Service from Georgetown University's School of Foreign Service. Theodore previously interned at the United Nations Secretariat in the Office of the Ombudsman and Mediation Services. He has also previously interned for the US Attorney's Office for the Western District of Wisconsin and for the State Department at the US Embassy in Bangkok, Thailand, and has worked as a paralegal at the law firm of White & Case LLP. Theodore is conversational in Thai.

Theodore is a joint recipient of SIPA's 2011 Dr. Susan Aurelia Gitelson Award for Human Values in International Affairs.

ACKNOWLEDGEMENTS

We gratefully acknowledge the following people for their contributions to this project:

ENDNOTES

1. Michael Knights with Ahmed Ali, "Kirkuk in Transition: Confidence Building in Northern Iraq," (Policy Focus #102, The Washington Institute for Near East Policy, April 2010), 20.

2. Darko Angelov, "Problems of Consociationalism from the Netherlands to Macedonia," accessible at: http://www.balkanalysis.com/blog/2004/02/17/problems-of-consociationalism-from-the-netherlands-to-macedonia. Published Feb 17 2004.

3. Sherrill Stroschein, "What Belgium Can Teach Bosnia: The Uses of Autonomy in 'Divided House' States," *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 3/2003.

4. *After Dayton: Lessons of the Bosnian Peace Process* edited by Ruth Wedgewood (Council on Foreign Relations Symposium, December, 1999).

5. Shane Kelleher, "Minority Veto Rights in Power Sharing Systems: Lessons from Macedonia, Northern Ireland and Belgium," *Adalah's Newsletter* vol. 13, May 2005.

6. Stefan Wolff, " Complex Power Sharing as Conflict Resolution: South Tyrol in Comparative Perspective," in *Tolerance through Law: Self-governance and Group Rights in South Tyrol* edited by Jens Woelk, Francesco Palermo, and Joseph Marko. Leiden: Martinus Nijhoff, 2008).

7. Farimah Daftary, "Insular Autonomy: A Framework for Conflict Resolution? Corsica and the Aland Islands," in *Managing and Settling Ethnic Conflicts* edited by Ulrich Schneckner and Stefan Wolff. London: C. Hurst, 2003.

8. Ulrich Schneckener, "Making Power-sharing Work: Lessons from Successes and Failures in Ethnic Conflict Regulation." *Journal of Peace Research* 39.2 (2002): 203-28. Print.

9. Stefan Wolff, "Managing and Settling Ethnic Conflicts," in *Managing and Settling Ethnic Conflicts* edited by Ulrich Schneckner and Stefan Wolff. London: C. Hurst, 2003.

10. Brian Ó Caoindealbháin, "Citizenship And Borders: Irish Nationality Law And Northern Ireland," (Working Paper no. 68, Institute for British-Irish Studies, Institute for British-Irish Studies, Geary Institute for the Social Sciences, University College Dublin 2006), 1.

11. Ibid, 2.

12. Ch. 1, §1, Art. 7. Law of Administration for the State of Iraq for the Transitional Period.

ENDNOTES

13. Iraqi Constitution, §5, Ch. 2, Art. 122.

14. Emma Sky, "Preventing Arab-Kurd Conflict in Iraq after the Withdrawal of U.S. Forces," *United States Institute of Peace* Peace Brief 86 (March 22, 2011), 4.

15. Iraqi Constitution, § 4, Art. 112.

16. Iraqi Constitution, § 3, Art. 49.

REFERNCES

Adeney, Katharine, "Between Federalism and Separatism: India and Pakistan," in *Managing and Settling Ethnic Conflicts* edited by Ulrich Schneckner and Stefan Wolff. London: C. Hurst, 2003.

After Dayton: Lessons of the Bosnian Peace Process edited by Ruth Wedgewood (Council on Foreign Relations Symposium, December, 1999).

Angelov, Darko, "Problems of Consociationalism from the Netherlands to Macedonia," accessible at: http://www.balkanalysis.com/blog/2004/02/17/problems-of-consociationalism-from-the-netherlands-to-macedonia/ Published Feb 17 2004.

Baker, III, James and Hamilton, Lee, Co-Chairs, Eagleberger, Lawrence S., Jordan, Jr., Vernon E., Meese III, Edwin, O'Connor, Sandra Day, Panetta, Leon E., Perry, William J., Robb, Charles S., and Simpson, Alan K., *The Iraq Study Group Report: A Way Forward- A New Approach.* New York: Vintage, 2006.

Baier-Allen, Susanne, "The Failure of Power-sharing in Cyprus: Causes and Consequences" in *Managing and Settling Ethnic Conflicts* edited by Ulrich Schneckner and Stefan Wolff. London: C. Hurst, 2003.

Brown, Nathan J. *Transitional Administrative Law: Commentary and Analysis.* 7/8 March 2004. Accessible at: http://home.gwu.edu/~nbrown/interimiraqiconstitution.html.

Caplan, Richard, "International Intervention and Its Aftermath: Kosovo and East Timor," in *Managing and Settling Ethnic Conflicts* edited by Ulrich Schneckner and Stefan Wolff. London: C. Hurst, 2003.

Daftary, Farimah, "Insular Autonomy: A Framework for Conflict Resolution? Corsica and the Aland Islands," in *Managing and Settling Ethnic Conflicts* edited by Ulrich Schneckner and Stefan Wolff. London: C. Hurst, 2003.

Davis, Aaron C., "In Kirkuk, Iraq, a test of U.S. peacekeepers' lasting impact," *Washington Post* (February 9, 2011), A08.

Djapo, Mirsad, "Brcko – A Rare Bosnian Success Story," Aljazeera.net. November 17, 2005.

Draft Constitution of the Kurdistan Region- Iraq.

REFERNCES

Election Law (2009) (Iraq).

Iraqi Constitution.

Joireman, Sandra F., "Secession and Its Aftermath: Eritrea," in *Managing and Settling Ethnic Conflicts* edited by Ulrich Schneckner and Stefan Wolff. London: C. Hurst, 2003.

Kelleher, Shane, "Minority Veto Rights in Power Sharing Systems: Lessons from Macedonia, Northern Ireland and Belgium," *Adalah's Newsletter* vol. 13, May 2005.

Knights, Michael with Ali, Ahmed, "Kirkuk in Transition: Confidence Building in Northern Iraq," (Policy Focus #102, The Washington Institute for Near East Policy, April 2010).

Landler, Mark, "Rare Bosnia Success Story, Thanks to U.S. Viceroy" *New York Times* June 17, 2003.

Law of Administration for the State of Iraq for the Transitional Period.

Lawrence, Quil, *Invisible Nation: How the Kurds's Quest for Statehood is Shaping Iraq and the Middle* East. New York: Walker & Company, 2008.

Mallat, Chibli, *Iraq: Guide to Law and Policy. New York*: Wolters Kluwer, 2009.

McMahon, Patrice C. and Western, Jon, "The Death of Dayton: How to Stop Bosnia from Falling Apart," *Foreign Affairs* vol. 88, number 5 Sept/Oct 2009.

Ó Caoindealbháin, Brian, "Citizenship And Borders: Irish Nationality Law And Northern Ireland," (Working Paper no. 68, Institute for British-Irish Studies, Geary Institute for the Social Sciences, University College Dublin, 2006).

O'Hanlon, Michael, "A Ways to go to Iraq" *Washington Times*, March 8, 2011.

Pollack, Kenneth M., Alkadiri, Raad, Carpenter, J. Scott, Kagan, Frederick W., and Kane, Sean, with contributions from Hiltermann, Joost. "Unfinished Business: An American Strategy for Iraq Moving Forward," (Analysis Paper, Number 22, Saban Center for Middle East Policy, The Brookings Institution, December 2010).

"Referendum on the Future of "Kirkuk and other Disputed Territories" (Non-Paper, United Nations Assistance Mission in Iraq/Electoral Team, March 5, 2007).

REFERNCES

Ruggie, John Gerald, "Territoriality and Beyond: Problematizing Modernity in International Relations," *International Organization*, vol. 47, no. 1. (Winter, 1993), pp 139-174.

Scneckner, Ulrich, "Making Power-Sharing Work: Lessons from Successes and Failures in Ethnic Conflict Regulation," *Journal of Peace Research*, vol. 39, no. 2 (March 2002), pp. 203-228.

_____."Models of Ethnic Conflict Regulation: The Politics of Recognition," in *Managing and Settling Ethnic Conflicts* edited by Ulrich Schneckner and Stefan Wolff. London: C. Hurst, 2003.

Sky, Emma, "Preventing Arab-Kurd Conflict in Iraq after the Withdrawal of U.S. Forces," (*United States Institute of Peace* Peace Brief 86 March 22, 2011).

"Special Focus- Disputed Internal Boundaries," (IOM Iraq Displacement Reports, International Organization for Migration, November 2010).

Stroschein, Sherrill, "What Belgium Can Teach Bosnia: The Uses of Autonomy in 'Divided House' States," *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 3/2003.

U.S. Agency for International Development, *Law of Governorates not Incorporated into a Region: An Annotated Text* (U.S. Agency for International Development, June 2008)

Wolff, Stefan, " Complex Power Sharing as Conflict Resolution: South Tyrol in Comparative Perspective," in *Tolerance through Law: Self-governance and Group Rights in South Tyrol* edited by Jens Woelk, Francesco Palermo, and Joseph Marko. Leiden: Martinus Nijhoff, 2008).

_____, "Managing and Settling Ethnic Conflicts," in *Managing and Settling Ethnic Conflicts* edited by Ulrich Schneckner and Stefan Wolff. London: C. Hurst, 2003.