

## **Article 140: Iraq's Constitution, Kirkuk and the Disputed Territories.**

©  
Brendan O'Leary  
(with David Bateman)

Brendan O'Leary is Lauder Professor of Political Science and David Bateman is a PhD candidate at the University of Pennsylvania

May 7, 2008

Address for correspondence: boleary@sas.upenn.edu

First draft.

*Paper for the Conference at Rayburn House, Washington D.C. May 9 2008. Not to be cited without the express permission of the authors. Spelling and style in American English. All opinions expressed here should be presumed to be the principal author's and not that of any government or political party.*

### **The legal status of Article 140.**

Under Iraq's constitution of 2005 the political status of the "governorate" (province) of Kirkuk, and other disputed territories, was scheduled to be formally resolved by the end of December 2007. The prospective referendum affecting the status of Kirkuk governorate was, by agreement, postponed for six months, until the summer of 2008. The Kurdistan Regional Government (KRG) and all Kurds within it ardently want to unify with the relevant disputed territories, either by referendum or agreement.<sup>1</sup> The constitutional obligation to fulfill Article 140 remains a constitutional imperative, and the KRG and the people of the Kurdistan Region are able to block any proposed amendment to Iraq's constitution, which would modify Article 140.

The relevant article is as follows:

*Article 140:*

*First: The executive authority shall undertake the necessary steps to complete the implementation of the requirements of all subparagraphs of Article 58 of the Transitional Administrative Law.*

*Second: The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this*

*Constitution, provided that it accomplishes completely (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007.<sup>ii</sup>*

The executive authority here is presumed to be the federal executive of Iraq, comprised of the Presidency Council, the Prime Minister and the Council of Ministers. The provision authorizes the executive to fulfill its obligations without requiring federal or regional legislation. I shall raise the question later of what happens if the federal executive fails to fulfill its time-tabled and substantive obligations. Article 58 of the Transitional Administrative Law (TAL) reads as follows:

*Article 58:*

*(A) The Iraqi Transitional Government, and especially the Iraqi Property Claims Commission and other relevant bodies, shall act expeditiously to take measures to remedy the injustices caused by the previous regime's practices in altering the demographic character of certain regions, including Kirkuk, by deporting and expelling individuals from their places of residence, forcing migration in and out of the region, settling individuals alien to the region, depriving the inhabitants of work, and correcting nationality<sup>iii</sup>. To remedy this injustice, the Iraqi Transitional Government shall take the following steps:*

- (1) With regard to residents who were deported, expelled, or who emigrated; it shall, in accordance with the statute of the Iraqi Property Claims Commission and other measures within the law, within a reasonable period of time, restore the residents to their homes and property, or, where this is unfeasible, shall provide just compensation.*
- (2) With regard to the individuals newly introduced to specific regions and territories, it shall act in accordance with Article 10 of the Iraqi Property Claims Commission statute to ensure that such individuals may be resettled, may receive compensation from the state, may receive new land from the state near their residence in the governorate from which they came, or may receive compensation for the cost of moving to such areas.*
- (3) With regard to persons deprived of employment or other means of support in order to force migration out of their regions and territories, it shall promote new employment opportunities in the regions and territories.*
- (4) With regard to nationality correction, it shall repeal all relevant decrees and shall permit affected persons the right to determine their own national identity and ethnic affiliation free from coercion and duress.*

*(B) The previous regime also manipulated and changed administrative boundaries for political ends. The Presidency Council of the Iraqi Transitional Government shall make recommendations to the National Assembly on remedying these unjust changes in the permanent constitution. In the event the Presidency Council is unable to agree unanimously on a set of recommendations, it shall unanimously appoint a neutral arbitrator to examine the issue and make recommendations. In the event the Presidency Council is unable to agree on an arbitrator, it shall request the Secretary General of the United Nations to appoint a distinguished international person to be the arbitrator.*

*(C) The permanent resolution of disputed territories, including Kirkuk, shall be deferred until after these measures are completed, a fair and transparent census has been conducted and the permanent constitution has been ratified. This resolution shall be consistent with the principle of justice, taking into account the will of the people of those territories.<sup>iv</sup>*

Article 58 of the TAL, in short, recognized profound demographic and boundary manipulations which transgressed human rights, political rights and the rights of nationalities and ethnic minorities. It proposed measures to rectify these injustices “expeditiously”. Articles 140 and 58 have to be read together, but, I suggest, that Article 140, as the lawfully ratified component of the permanent constitution, takes precedence if necessary.

Article 140 was necessary precisely because the CPA (May 2003-June 28 2004) and the Iraqi transitional government (June 28 2004-January 31 2005) failed to rectify the relevant injustices “expeditiously”. The makers of the constitution insisted on a deadline precisely to prevent the federal executive authority from delaying on its obligations, and that deadline is now the constitutionally authorized will of Iraq’s people.

We are presently awaiting proposals from the UN’s mediator precisely because of the failure of successive Iraqi federal governments to fulfill their obligations. The current involvement of the United Nations in mediating between the Kurdistan Regional Government, the federal government of Iraq and other parties, may be seen as flowing from a belated implementation of Article 58 (B) of the TAL. But before we consider what the UN may sensibly and reasonably recommend, let me address what happens if the federal government fails to fulfill its constitutional obligation by the summer of 2008 – the agreed extended deadline, or if the federal government fails to follow recommendations made by the United Nations which have the support of the Kurdistan Regional Government.

The most reasonable reading of Article 140 (2) is that the extension of authority to the federal government – handed on from the transitional government - is both time-limited and mandate-limited:

*Second: The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this*

*Constitution, provided that it accomplishes completely (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007.*

It is time-limited because its authority is presumed to continue only “provided that” it is fulfilling all of its obligations with the December 2007 deadline in mind; and it is mandate-limited because the federal executive is expressly required to rectify injustices according to the provisions in Article 58 of the TAL.

In the event of a failure to fulfill its constitutional obligations on the part of the federal executive I see no legal impediment to other executive authorities in Iraq acting to fulfill the provisions of 140, provided they respect the mandate to rectify the relevant injustices, and respect all other provisions of Iraq’s constitution. So, for example, the KRG and Kirkuk governorate council, would be entitled to organize a referendum to settle the territorial status of Kirkuk governorate. If they contemplate doing that, they would, of course, need to ensure all the requisite safeguards for non-Kurdish nationalities, and ensure that Kirkuk’s oil revenues were distributed according to the constitution, points that I will discuss shortly. Plainly it would be much for the best if the federal government were to act appropriately, to prevent the materialization of this prospect of other executive authorities being obliged to act from necessity to fulfill the constitution’s imperative instructions. It will be more likely to act appropriately if wisely advised to do so by the United Nations. I raise the issue to warn against the illusion that infinite delay is possible: Kurds have appropriate political means they can use in the event of a manifest failure to fulfill the letter or the spirit of Article 140.

Let me first focus attention on Kirkuk, because that is what most do, and because that is where most controversy resides. I shall then consider the other territories in dispute between the KRG and the rest of Iraq. I shall not consider the disputes between Arab-majority governorates in the South because I have not researched these disputes in any depth.

### **Fallacies and clichés about Kirkuk.**

Four thought-stopping clichés need to be critically evaluated before sensible analysis is possible of what is likely to happen in the year ahead, and of what should happen. Let us dignify these four inter-related clichés with names: (i) the oil-grab conspiracy theory; (ii) the axiom of the tinderbox, the powder-keg and flash-point; (iii) the thesis of the terrible Turk; and (iv) the crazy Kurd conjecture.

#### *(i) The oil grab conspiracy theory.*

A remarkable number of people who write about Kirkuk place the words “oil rich” before it, suggesting that is all one needs to know.<sup>v</sup> The city sits atop 6 percent of the world’s and 40 percent of Iraq’s proven oil reserves, according to Lawrence Kumins.<sup>vi</sup> So, is the controversy over Kirkuk’s status all about oil? Are we witnessing, as some suggest, an

oil-grab by Kurds to finance the establishment an independent sovereign state?<sup>vii</sup> Should we expect profound armed conflict over Kirkuk's territorial status because allegedly wise people argue that the deepest conflicts are over resources? The answer to all these questions is "No".

In fact, potential controversies over the Kirkuk oil-field and its revenues are formally resolved, as I shall explain. Moreover, the Kurds of Iraq are not intent on winning their independence, however much they want it, however deeply they dream of it, and however much they deserve it because of their maltreatment at the hands of successive Baghdad governments. They know, as do the leaders for whom they voted, that striking out for an independent Kurdistan would be most unwise, especially when the Kurdistan Region has the substance of full domestic independence within a federal Iraq which was co-designed by Kurds in the permanent constitution.

Saddam's manipulations of the boundaries and peoples of Kirkuk, his policies of expulsion, of Arabization, and of settler-infusion, and his betrayal of his commitments to Mustafa Barzani between 1970 and 1974, were shaped by his knowledge of Kirkuk's natural resources. These manipulations are insufficiently widely known, and I shall detail them in a moment. Equally little known is Saddam's deliberate decision not to use Kirkuk's oil resources to develop the immediate vicinity of the governorate. Saddam's theft of the black gold of Kirkuk intensified the rage of Kurds and of many Turkomen at the Ba'athist regime. Some Kurds and Turkomen were rendered homeless and all were robbed of access to their patrimony. They want to get back some of what was stolen from them, but that does not make them the moral equivalents of the Ba'athists.

Neither Kurds nor Turkomen are intent on an oil grab. In fact there have been just two successful oil grabs in the history of Kirkuk. The first was the British decision to keep Mosul vilayat after the defeat of the Ottomans, a decision partly motivated by oil prospects. The second was the policy of successive Arab governments in Baghdad, especially Saddam's, to confine the revenues of the Kirkuk oil-fields to the discretion of Iraq's central government. These oil grabs are, of course, recalled and contested by Kurds, and by others in Kirkuk.

Both the history and the present politics of Kirkuk's oil need to be accurately understood. But the key point at this juncture is that the Kurds are willing to play fair, unlike Saddam, or his predecessors – injustice in Iraq did not begin with the Baathists. Kurdistan's leaders propose to share – not to grab – the oil resources of Kirkuk. They have made this proposal a matter of Iraq's constitutional law. Under the relevant provisions of Iraq's Constitution, which Kurdistan's leaders helped negotiate, the revenues from Kirkuk's oil-field will be shared across Iraq as a whole, irrespective of the outcome of the referendum on Kirkuk's status. *Therefore, any change in Kirkuk's territorial status will not mean that the Kurdistan Region controls all of Kirkuk's oil revenues, as is frequently and falsely suggested.* The relevant article in Iraq's constitution draws a sharp distinction between oil and gas from currently exploited fields, and fields which are not yet exploited. It is a constitutional obligation that oil from currently exploited fields be distributed across Iraq as a whole.<sup>viii</sup> The Kirkuk oilfield has been exploited since at least 1932. It is therefore covered by the

relevant constitutional provision, and no elected leader of Kurdistan has said otherwise. This is a remarkable constitutional compromise. The negotiators of the constitution of Iraq deserve considerable credit for separating oil issues from those of regional boundaries.

Let me spell out the implications, which are rarely remarked upon. If Kirkuk governorate joins the Kurdistan Region then the revenue from its oil-fields must accrue to the whole of Iraq, to be allocated across regions and governorates on a per capita basis – including, of course, Kirkuk itself. The same formula applies if Kirkuk does not join the Kurdistan Region.

Moreover, the same formula applies if the Kurdistan Region was to secede from Iraq. In that eventuality Kurdistan would have no legal entitlement to take with it all of Kirkuk's oil revenues; or, differently put, any negotiated secession would have to respect the 2005 constitutional deal on oil and gas revenues. In short, provided the constitution is fully implemented, all Iraqis should benefit from Kirkuk's currently exploited oil and gas fields in future, and, just as important, the KRG has a strong interest in remaining within a federal Iraq to ensure the legality of its title to revenues from Kirkuk's oil field, and the legality of its future title to Kirkuk governorate.

Far from financing Kurdistan's independence a Kurdish grab of Kirkuk's oil field would weaken the status and standing of Kurdistan as the most lawfully governed part of Iraq, jeopardize its reasonable entitlements under Iraq's constitution, and wreck its independence plans because neighboring states which refused recognition would be able to block the export of its oil and gas. If I was asked - and I have not been asked - I would advise Kurds who want an independent Kurdistan to wait until Kirkuk's exploited oil fields are exhausted before launching any such political mobilization.

In fact, however, I have advised Kurds and Kurdistanis intent on making Iraq work as a federation, i.e. the Government of the Kurdistan Region, and its multi-party coalition. They know that the constitution of the federation provides a fair process for ensuring that Kirkuk and other disputed territories can join the Kurdistan Region, and a fair way of allocating the natural resources of Kirkuk. That is why they signed up to the constitution. What they seek is its faithful implementation.

## **(ii) The axiom of the tinderbox, the powderkeg and the flashpoint.**

Newspapers and broadcasting media frequently call the city of Kirkuk a "tinderbox", a "powder-keg" or a "flash-point."<sup>ix</sup> They speculate that local Sunni Arabs, Shia Arabs and local Turkomen, and the Turkish Army, will forcibly seek to prevent Kirkuk's unification with the Kurdistan Region – though they usually make no such predictions about the other disputed territories. They seem to anticipate a four-way fight between Kurds, Sunni Arabs, Shia Arabs and Turkomen – usually the Assyrian Christians are ignored as potentially militant fighters.

More typically journalists portray the politics of the city as Kurds versus the rest (Kurds for unification with the Kurdistan Region; the rest for the territorial status quo or

for some special status for Kirkuk governorate). The Kurds and Turkomen have valid historical claims to the peopling of Kirkuk city and governorate, and correctly claim they were oppressed in the past. Some of the Turkomen want Kirkuk to be recognized as the capital of their special region.<sup>x</sup> Article 5 of the 1992 (draft) Kurdistan Region's Constitution named Kirkuk as its capital, and Kurdish leaders have referred to Kirkuk as the "Jerusalem of Kurdistan". Arabs also have a strong long-running desire to keep Kirkuk within Arab Iraq. The governorate was re-named under Saddam's decree as "Tamim", the Arabic for "nationalization."

In fact, however, it is unlikely that Sunni Arab insurgents, Shia Arabs or local Turkomen, or the Turkish Army will prevent the unification and consolidation of the Kurdistan Region. Instead, the stabilization of the Kurdistan Region, and northern Iraq, will be best consolidated by the democratic resolution of the status of Kirkuk, and the constitutional resolution of the other disputed territories, judgments that should be shared by sensible Arab Iraqi, Turkish, EU and US policy-makers, as I will try to suggest.

Underlying the metaphors of the tinderbox, the powderkeg or the flashpoint is a theory that ethnic, national and religious antagonisms in Kirkuk are so high that the slightest move to resolve the territorial status of the governorate will trigger an uncontrolled throat-slitting bloodbath. This theory should be taken seriously precisely because it is important to minimize further bloodshed in Iraq, and because there has been so much bloodshed in Iraq. But is it true?

In favor of the theory is that there have been clashes, riots, and inter-ethnic antagonisms in Kirkuk's past, notably during the early days of the Iraqi Republic. It is also common sense that Saddam's policies have left poisonous residues, and easy materials for unscrupulous demagogues.

We should take care, however, not to presume the worst, even though it is sensible to prepare to prevent the worst. What then can fairly be said about group-preferences and inter-group relations within Kirkuk?

Let us take the Kurds first. They profoundly care about Kirkuk and the other territories disputed between the KRG and Arab-majority governorates. They regard Kirkuk as part of their homeland. They regard it as part of Kurdistan, and Kurdish nationalists have done so for at least a century. Kirkuk and all the relevant disputed territories were included in the maps presented by Sharif Pasa to the Paris Peace Conference in 1919, and by representatives of the Iraqi Kurdish Rizari party to the United Nations in 1945 – in the first case the territorial claim preceded knowledge of the oil-fields of Kirkuk.<sup>xi</sup> They regard them as places with present and past Kurdish majorities – or with such majorities before Saddam's "Arabization" programs were implemented. Some outsiders, however, contest Kurdish claims to Kirkuk governorate and city, and so do some (but not all) non-Kurds, in Kirkuk city, some Sunni Arab politicians, and some Shia Arabs, and some Turkomen.

SEE MAPS 1 and 2.

What are the facts?<sup>xiii</sup> The last relatively reliable census in Iraq was held in 1957. Though the Baathists who governed Iraq in a one-party dictatorship between 1968 and 2003, subsequently tampered with the data, I have had translated and inspected the original census-returns in my University's library. In 1957 of the three largest communities in the governorate – Arabs, Kurds, and Turkomen – the Kurds constituted the plurality, approximately 48 percent of the governorate as a whole (49 percent if unknowns and foreign citizens are excluded), and probably more if Kurds are allocated an appropriately high share of the unknowns. Outside of Kirkuk city, Kurds were indisputably the majority community. By contrast, in the city – then home to less than a third of the governorate's population – Turkomen (37.6 percent) were the largest group, just outnumbering Kurds (33.3 percent), who in turn outnumbered Arabs (22.5 percent). The most objective summary is that in 1957 Kirkuk was a multi-ethnic city, within a larger and heavily Kurdish population in the rest of the governorate.

SEE FIGURES 1 and 2

What has happened since? We can make one reasonable social scientific assumption. Because Kurds were the poorest of the major groups in 1957 their higher population growth would have made them the largest community by the mid-1960s. But after 1968, under the Ba'athists, both the city and the governorate were subject to brutal demographic engineering. Saddam gerrymandered the boundaries of the governorate, to include Arab majority or mixed districts from other governorates, and to exclude Kurdish-majority ones.

SEE MAP SERIES 3-13

The map series in the slide-show makes clear the deliberate in Saddam's boundary manipulations. He reduced the size of Kirkuk governorate and its population (compared to what it would otherwise have been) to dilute its Kurdish majority status. And he added Arab majority districts and sub-districts or mixed districts to enhance this process.

Saddam followed up boundary manipulation with settler-infusion. He encouraged mostly poor Shia Arab settlers from the South with handsome bonuses. The Ba'athists deliberately presided over preferential hiring of non-Kurds in the oil-field and related industries. They "corrected", i.e. falsified, the nationalities of Kurds and Turkomen, making them into "Arabs", though without treating them as such. They organized the expulsion of Kurds (and Turkomen), the falsification of citizenship records, and the confiscation of properties. Amid a growing population they are variously reported to have expelled between 100,000 and 250,000 Kurds, and thousands of Turkomen. Given high birth-rates the expulsions cut the very high Kurdish majority that would otherwise have materialized.

Saddam's plans were far from completed before the first Gulf War because, until his fall, he continued to induce Arab settlers to settle and to expel and "denationalize" Kurds, Turkomen, and Christian Assyrians.

What are now the demographic facts on the ground? We cannot rely on debatable projections from the 1957 census, or Saddam's manipulations, or his unreliable censuses. But two sets of elections and one referendum took place in Kirkuk governorate in 2005. The Kurdistan lists, which included Turkomen and Assyrians, won a decisive majority in each election, including on the second occasion, when there was a high turnout and no Sunni Arab boycott. In the October 2005 referendum, the governorate's electorate endorsed Iraq's constitution by a clear majority, 63 percent voting "yes", and 37 percent voting "no" on a 79 percent turnout. The Independent Electoral Commission and the United Nations Electoral Assistance Unit validated the results. In voting "yes" local voters were endorsing the mandatory referendum to enable the governorate to join Kurdistan after "normalization".

SEE FIGURES 3, 4 and 5

These three separate votes in 2005 confirm that Kurds or at least pro-Kurdistan voters are the majority group in the governorate as designed by Saddam— and the largest group in the city, which now has more people than the surrounding rural areas. The return of a significant number, though not all, of Kurdish expellees in 2003, and the flight of some Arab settlers after the US-led military victory, has over-turned Saddam's work, especially as the electoral commission gave expelled persons from Kirkuk the right to vote in their governorate of origin.

Given this history there is considerable plausibility to the idea that relations between the communities in the city could be violently explosive. Yet we also know that even a very bad history in a very bad neighborhood does not guarantee a very bad future. Two questions decisively matter in deeply divided places. One is whether there can be a fair process to resolve major disagreements. A fair process is not only fair, but provides cushions and assurances for those who lose out. The second is whether there is effective control over security in the divided place. Without effective security then it is easy for deep divisions to be trip-wired by small or large events into intense inter-group violence. With effective security even deep animosities can be regulated, even if not completely suppressed.

Bearing in mind these facts, after 2003 the KRG's parties sought a peaceful and democratic way of reversing Saddam's ethnic engineering, before the conduct of a referendum, i.e. "normalization". This expression means restoring the pre-1968 boundaries of the governorate, fully facilitating the right of return of expelled people and their descendants (including mostly Kurds and Turkomen), and encouraging Saddam's imposed settlers to leave with financial compensation packages. If they stay then they, and their descendants, should not be allowed to vote in the referendum – though, of course, they should retain all their other rights as Iraqi citizens. Granting them the right to vote in the referendum would precisely be to reward Saddam's discriminatory, racist and gerrymandering manipulations. "Normalization" is mandated by the constitution and agreed, in principle, by the Shia dominated Iraqi federal government.<sup>xiii</sup>

“Normalization” thus understood in my view is fair. Any other policy rewards Saddam’s regime, which grossly violated the human rights of the peoples expelled from Kirkuk governorate, and their national rights. Any other policy means sanctifying ethnic expulsion, coerced assimilation and demographic engineering – all within living memory. Normalization preceding a referendum is fair: it establishes the appropriate unit for the referendum, and the appropriate rules for establishing who has the right to vote. Under such provisions no one would be deprived of Iraqi citizenship but Saddam would not dictate the electoral register or boundaries of Kirkuk from his grave.

Moreover these rules are not lacking in administrative feasibility, always an important consideration in the conduct of a referendum. The electoral registers of 2005, updated, and with appropriate inclusions and exclusions, can form the basis for constructing a fair register, provided there is agreement on the unit for the referendum. What will therefore matter for political stability is whether “normalization” is properly and transparently managed, and whether the likely losers of the referendum – those who favor Kirkuk remaining outside of the KRG – can be given sufficient assurances that they will be able to live decently and securely within the KRG.

Incorporating Kirkuk governorate and city in an autonomous Kurdistan has been a consistent objective of Kurdish parties. They argue that the governorate is part of the geography of Kurdistan. Any traveler from Hêwler (Erbil) to Kirkuk observes no visible geographic demarcation between Kirkuk and the existing Kurdistan Region. The area is part of the plains beneath the Zagros Mountains. Kurds maintain the surrounding region, if not all of the city, has been part of Kurdish-speaking civilization for at least two centuries, and though the governorate has numerous significant minorities, that should not affect its status as part of Kurdistan. Kurds correctly insist that were it not for Saddam’s manipulations, no one would dispute that they constitute the majority group in both the region and the city. They point out that Saddam’s expulsions and “Arabization” should not be rewarded or treated as irreversible; and that reversing injustices should not be treated as equivalent to the original crimes.

How do the non-Kurds of Kirkuk governorate feel about likely unification with the KRG? They differ; some are ardently opposed, others are fearful, others are persuadable. The non-Kurds are not Kurdish politically, and do not favor an independent Kurdistan. But they are not uniformly hostile to Kurds, there are some inter-marriages with Kurds, and some non-Kurds sensibly believe that their security and prosperity will be better within the KRG, the one stable and safe part of Iraq. Most, when pressed, recognize that the Kurds have suffered injustices. The city’s professional Assyrians, mostly Christians affiliated with the Catholic Church, usually believe they will be better off under the KRG, which has treated its Christian minorities well, despite what you might read in the web-sites of the Assyrian diaspora in the US.

In the highly segregated city, Arab and Turkomen districts are materially much better off to the naked eye, with the former being newer and more desirable. The Baathists manipulated planning regulations to prevent both Kurds and Turkomen from maintaining their properties, which means that many are now beyond repair. Large parts of the city will

need to be re-built, which leads some to favor a resolution in favor of unification with Kurdistan, where the three major cities of Dahok, Erbil and Sulaimania are thriving in the renewal of construction booms.

In Kirkuk governorate council the Kurdistan list, 26 out of 41 members, includes non-Kurds. The Kurds made efforts to reach a power-sharing accommodation with the non-Kurdistan lists, but were initially rebuffed, and both Arabs and Turkomen protested at the behavior of the Kurds leading many analysts to predict worse to come.

When I visited Kirkuk in 2004 and again in 2005 some Arab politicians in Kirkuk told me that the Peshmerga were organizing the expulsion of Arabs, but this was denied by Kurdish spokesmen, and was not then supported by Assyrian and Turkomen politicians whom I met, and I found no credible evidence, other than a rumor mill. There was, however, a noticeable difference in viewpoints between the Sunni and Shi'a Arab politicians, and in how Kurds saw them. The former, "old city" Arabs, not among the recent settlers, were keener on constructive cross-community relations, and Kurds were wont to say that they had no issues with them – at least before Saddam's time.

Turkomen politicians privately conceded they were no longer the largest group in the city, though they invariably argued that Turkomen founded the city. The Turkomen Front, sponsored by the government of Turkey, fared much less well in elections in 2005 than they, Turkish commentators or the Government of Turkey expected. So Turkey has lost a lot of its credibility in wanting to use the the Turkomen's votes as leverage. Sunni Turkomen politicians find it visibly difficult to explain why Turkey did nothing for them during the high-tide of Saddam's Arabization. The Turkomen Shi'a, by contrast, have sought alliances with Shi'a Arab politicians, and some of them reject the idea that they are a national diaspora of the Turks. Erfan Kirkuly, the Secretary-General of the Iraqi Turkomen People's Party and the Assistant Governor on the City Council in 2004, told me: "We are a national community, but we did not come from Turkey; we do not want to be used as political pawns [by Ankara]; we can sort out our own matters; we should compete not on the basis of ethnicity, but on the question, 'Who serves Kirkuk best?'" Like all non-Arabs whom I met, Kirkuly remarked that Kirkuk was the richest city in the world, if valued by the resources underneath it, but had the worst services of any major city in Iraq.

Calling Kirkuk a tinderbox, or a powderkeg or a flashpoint is perhaps exaggerated. It implies that slightest provocation will lead to protracted and deeply vicious violence of the kind that has occurred in other mixed Iraqi cities. It is true that the place is multi-ethnic; it is true that it is multi-religious (containing Sunni and Shia Muslims, and Christians); it is true that each of the major groups (Kurds, Arabs, and Turkomen) and the smallest (the Assyrians) claim to be the original inhabitants. And it is true that Saddam's manipulations led all communities, and all their politicians, to have emotional and material stakes in Kirkuk's territorial status, and that at interfaces in the segregated city ugly episodes have occurred, and that jihadists have made suicide attacks. It would be obviously wrong to imply that Kirkuk is about to become a place where the brotherhood and sisterhood of humanity are celebrated.

Yet one can argue that the city has been comparatively quiescent in relation to most commentators' expectations since 2003. That is because the Kurdistan security blanket now, most of the time, extends to much of governorate – after the Americans reversed their initial decision to ask the Peshmerga to withdraw, a policy they were apparently pursuing out of deference to the powers that be in Ankara. Security has arguably been weakened by the redeployment of Peshmerga brigades to assist the surge in Baghdad, but now seems to be improving again.

Al Qaeda in Iraq has been unable to provoke sustained national or sectarian violence in Kirkuk – though that is not for want of trying. Realistic assessments of the security situation by the Iraqi federal government and the American military suggest that Kirkuk's security has been best managed by Peshmerga units operating under the uniforms of Iraqi federal forces. The city has been relatively quiescent because most Kurds, in general, have patiently awaited justice rather than taking the law into their own hands. Kurdistan's security blanket has prevented jihadists from establishing effective bases, and from a policing perspective there are good reasons to believe that the Peshmerga will manage the incorporation of Kirkuk governorate with relative ease. Such spontaneous and voluntary returns of Kurdish expellees as there have been so far have been relatively orderly – even if they have led to grim squatters' dwellings. What will matter therefore in preventing fuse-lightings, in preventing the metaphors of the tinderbox, powder-keg and flashpoint from being confirmed as accurate, is whether the KRG can provide credible and sufficient assurances to the minorities that will be joining the Kurdistan Region.

The KRG is the safest place in Iraq. It is the place in Iraq to where internally displaced people flee. That is significant testament, albeit a forced one. The Kurdistan Region is now unified. It is spending its money on economic development and professional security. The two major parties of Kurdistan, the KDP and the PUK, have operated an effective deal in which the PUK leads for Kurdistan in Baghdad while the KDP leads within Kurdistan. Both of Kurdistan's major parties know that after unification with Kirkuk governorate it is vital to have sustained power-sharing and proportional representation arrangements in Kirkuk city, and a representative police service. They have already made good faith efforts with partial success in these directions. They have members from all minorities on their federal Iraqi lists. They know that proportional representation has worked well within the KRG to give the major and minor parties a stake in the political system, and they are willing to extend these arrangements to the new minorities. Within the KRG inclusive policies have operated for all national, ethnic, linguistic and religious minorities – permitting a tolerant climate very different to the rest of Iraq. Of course, it will be a challenge when minorities expand in numbers but at least the administrative experience is present.

There is also no question that large-scale reconstruction will be the first priority of the KRG after an affirmative referendum on accession, and that this will offer positive improvements in economic opportunities for all communities. Rebuilding will, with luck and good management, be more important than replacing people in future. The KRG realizes that the natural resources of Kirkuk, for the first time, must be used to benefit all the local populations, and used to create a decent material infrastructure. The

unhappiness of the city at present flows from its unresolved status – in which it neither receives full support from either the KRG or the federal government. Fair employment in the oil industry is a sine qua non of social peace. Prime Minister Nechirvan Barzani knows the KRG will be judged by how it treats the minority nationalities and religious communities of Kirkuk, and is ready for the challenge – promising that Kurdistan’s regional constitution will be exemplary in its protections for minorities.<sup>xiv</sup>

The Property Claims Commission must work – and return properties or compensate those who lost out. It will only work well with sufficient dedicated professionals and resources. There must be sufficient and transparent funding for the settlers who were induced to come – who benefit twice, from Saddam and from the new Iraq – but the price of peace is worth it. Reports from Kirkuk suggest that thousands have signed up to relocate.<sup>xv</sup> It should be a clear rule of electoral administration that anyone who is on the register and who exercises his or her right to vote will be excluded from any compensation to relocate.

The KRG is keen to demonstrate to Turkey that the unification of the Kurdistan Region poses no threats to Turkomen, or to Turkey. That is where national and international mediation should focus. The KRG is working to make Iraq’s constitution work; it seeks the recognition of its constitutionally authorized autonomy, not secession. It is hopeful though not certain that the recently elected Government of Turkey, which is prioritizing its economic development, will not wish to encourage military adventurism over Kirkuk, and that both the European Union and the US will encourage Turkey to respect Iraq’s constitution, at least in these crucial respects.

In the controversies ahead – over the time-table, the electoral register, the voting, and the resolution of the other disputed territories, as proposed by the United Nations or others – bear this analysis in mind. Instability is more likely to arise from the failure to implement Article 140, rather than from its implementation.<sup>xvi</sup> Article 140 is the one flatly time-tabled obligation in the constitution, and it has not been met. Failure to implement the article will render both the KDP and the PUK vulnerable to their Kurdish nationalist critics, and encourage Kurds who would be otherwise lawful to take matters into their own hands.

I want to suggest, however, that the unification of Kirkuk with the rest of Kurdistan can occur, and with much less international and domestic resistance than is presently predicted, especially if some appropriate precautions are taken by the KRG and by its American allies.

The process of unification will extend the zone of peace and stability within Iraq, provided the KRG lives up to its promises to its prospective new influx of minorities. A fourth large urban center will add to the Region’s infrastructural construction boom, and increase its proportionate entitlement to Iraq’s shared oil revenues. The Kurds will only have themselves to blame if they mishandle the minorities of Kirkuk within an expanded KRG. Their leaders have no intention of allowing that to happen.

Look at matters in another light. The minorities of Kirkuk governorate are divided. The Sunni Arabs of Kirkuk cannot hope to govern Kirkuk, or to bring Kirkuk into a Sunni Arab region. *Mutatis mutandis* the same is true of Shia Arabs. The Arab vote in future will be split, both along sectarian lines and among numerous parties and lists. Many Shia Arabs are taking the funding on offer and leaving the region – amid much local rumor and gossip about corruption. The Turkomen are divided between Sunni and Shia, and have shown that they are a small minority within Iraq, and no longer even the second largest ethnicity in the governorate. They do not aspire to being delivered by a Turkish conquest, and when they are sensible know that no better event could be designed to endanger their lives. The Kurds are reaching out to local Sunni Arabs, and to Arabs in general: the elected Arabs have recently gone back onto the council in an accommodationist deal brokered by a leading Kurdish politician. The elected Arabs agreed to end their boycott in return for a power-sharing compromise: the post of deputy governor, and an agreement to split civil posts equally, 32% to each of the three major groups, with 4% reserved to the other minorities – though Turkomen continue to boycott the council.<sup>xvii</sup> In short, it is possible to see the outlines of a local power-sharing settlement with numerous minorities who are not cohesively opposed to the KRG's territorial ambitions. Kirkuk's minorities should bargain now for appropriate guarantees and rights within the Kurdistan Region – which has not yet issued its definitive draft constitution. And the KRG must rise transparently to the challenge.

### **(iii) The Terrible Turk thesis**

Another standard cliché predicts a Turkish invasion to prevent Kirkuk's accession to the KRG. In another variant Turkey will only be prevented from invading because the US fear of the terrible Turk will lead the US to squeeze the KRG into canceling the Kirkuk referendum.

Now admittedly, and regrettably, there is some evidence for the terrible Turk thesis. Not so long ago Turkish special operatives were caught red-handed by American troops on their way to assassinate the Kurdish governor of Kirkuk. The Government of Turkey occupies Iraqi land, and it has authorized military incursions to pursue pockets of the PKK in the Kandil mountains, and the US, to its present shame, has facilitated the Turkish military with its intelligence facilities, even though the US Government is responsible for protecting Iraq's airspace from interventions by outside powers.

Nevertheless we should be hard-headed in appraising the terrible Turk thesis. Do Turkish military activities against the PKK within Iraq's territory have any necessary consequence for what will happen in Kirkuk? (This question deliberately by-passes the issue of whether the attacks are justified or not – I think they are not justified; and whether they are effective or not – I think they are ineffective, and have led to the deaths of innocent Kurdish civilians).

Any Turkish invasion to block the outcome of a democratic referendum to determine internal boundaries within a neighboring state will terminate Turkey's prospects of joining the EU, and might lead a future US administration to contemplate its expulsion from NATO

– any such action would violate NATO’s charter. In 2002 Condoleeza Rice was of the remarkable opinion that it would be helpful to have a Turkish army in Iraq because it would be composed of Muslim soldiers. She is getting a sharp lesson in the merits of that ill-informed theory at present. In the eventuality of a Turkish invasion many European member-states will put it to the US that they can have an alliance with the Canadian and European democracies or with Turkey but not with both. (It has to be recalled that East Europeans now count as EU member-states and many do not have fond recollections of the Ottoman empire). One can invade and occupy other people’s countries when one is a member-state of the EU; but candidate members of the EU are allowed no such privileges. One can invade and occupy other people’s countries if one is the US, but to invade and occupy Iraq at the expense of the US’s sole reliable regional ally is a much riskier proposition. Moreover, as a matter of practical military fact any Turkish invasion would add no less than 100,000 combat-trained Peshmerga to those prepared to fight the Turkish military through guerrilla warfare, and it would lead to the withdrawal of all Peshmerga currently on loan to the Iraqi federal government and the US military. No one should doubt President Barzani’s determination to protect Kurdistan militarily if needs be. This scenario foretells disaster, including for the Turkish power elite.

In short, the scenario of a Turkish invasion would wholly de-stabilize Turkey’s democratic and economic prospects, shatter the credibility of its military and political class, smash its relations with Washington and Brussels, and leave it in a much worse mess than it helped to create in Cyprus. A Turkish invasion only makes any geo-strategic sense if the Turkish political elite are utterly convinced that the Kurds are intent on using the Kirkuk oil-field to finance the formation of an independent state, *and* if they believe that the formation of such a state would be an existential threat to their own state. The first belief is false, as I have said, though others need to disseminate its falsehood. The second belief is equally misplaced – what Turkey needs is another secular democratic entity on its borders, interdependent with it in trade and foreign investment. These elementary considerations are worth spelling out to Turkish diplomats, generals and politicians who are prepared to report the truth to the powers that be in Ankara -whether the democratic state or the undemocratic “deep state”.

The Government of Turkey would be better advised to show scrupulous respect for Iraq’s constitution, which confines the status of Kurdistan to that of a regional government, and which locks in a reasonable deal over the revenues from Kirkuk’s oil fields, which should benefit the Turkomen, and will provide a boost to the economy of southeastern Turkey. It is wholly appropriate for the Government of Turkey to express reasonable concerns for the Turkomen, but not to violate Iraq’s constitution or the Kurdistan Region’s lawful rights. Governments are not always rational, and rational choice scarcely provides an unanswerable account of why governments intervene in potentially losable wars. But the Turkish state and parliament avoided participation in the US removal of Saddam in 2003 for wise though contingent reasons. For similar reasons I think it will likely avoid an invasion and occupation of Kirkuk, though it needs to be steered there by US and EU diplomacy. It will be vital to keep the Turkish political class on a rational path by ensuring that the referendum is fairly organized, by transparently displaying that the KRG is not using the accession process for an immediate step toward independence, and that fair

commitments are made to protect the interests of the Turkomen – more generous ones than Turkey has so far made toward its own Kurds.

#### **(iv) The Crazy Kurd Conjecture**

Let me now deal with statements that I have heard in diplomatic circles that may not be directly attributed. Some believe and others surmise that Kurds are embarked upon a carefully organized plan to achieve both expansion and independence – using their allegedly naïve US ally to achieve this goal. Sometime this evaluation comes with knowing admiration for the alleged cunning of the Kurds.

No one should doubt the skill with which Presidents Barzani and Talabani and their colleagues have managed the constitutional and democratic exit from the legacies of Saddam's regime, or how they have subsequently navigated the bloody waters of Arab Iraq's civil war. But I am certain they are not planning Kurdistan's independence. They are not crazy. They do not wish to precipitate either a Turkish or an Iranian invasion; they minimally need their political alliance with the major Shia parties of the South to make Iraq work; they need an accommodation with reasonable Sunni Arabs to balance against Shia Arab dominance; they and their parties do not benefit from a bloody Iraq which deters investors and economic development; and they have in Iraq's constitution what they and their friends and relatives have fought for over several generations. Why would they risk so much, achieved against such odds, for a bloody romantic gesture?

The so-called cunning Kurdish strategy to achieve independence does not exist, except in the minds of conspiracy theorists – who are almost as numerous as the oil barrels of the Middle East. That does not mean, however, that Kurds will not fight to protect their homeland, or their constitutional rights, but it does mean they will not kick-start the new Iraq by breaking their constitutional commitments. Nor does it mean that I am saying there will never be an independent Kurdistan; but I am saying that it is neither being planned nor immediately likely.

This analysis suggests that the accession – not the annexation – of Kirkuk to the Kurdistan Region is a constitutional imperative, a democratic way of resolving a bitter dispute, and an administratively feasible enterprise, which neither need precipitate a new round of blood-shedding, nor generate new injustices. Rather what is required internationally, within Kurdistan and Iraq, is determined planning to make the referendum process fair, and credible commitments by the KRG to protect the likely losers in the referendum – namely the minority nationalities of Kirkuk. There is no reason why the city should not be separated for political management from the governorate, have its governmental form entrenched in Kurdistan's regional constitution, made tri-lingual or quadra-lingual, given an entrenched and proportional representation electoral law, and entrenched quotas in key administrative positions. All this is not beyond the wit of man; is partly under way; and provides an agenda that the US Government and its allies can assist.

## **The other disputed territories**

Let me now turn more briefly to the other “disputed territories”. Let us observe that most maps used in the European and American media usually fail to draw the existing March 19 2003 border of the existing KRG accurately. They usually fail to indicate that parts of Nineva, Kirkuk and Diyala governorates are already within the KRG’s jurisdiction; and that, at least nominally, not all of Dohuk and Sulaimainia governorates are within the existing KRG. These are two very practical reasons why the status of the disputed territories needs to be resolved. The boundaries of the KRG and the existing governorates do not coincide.

The maps presented in western media reports usually fail to specify that the March 19 2003 border of the KRG was established unilaterally by Saddam, not by the KRG; and that it does not follow the lines of the 1970 Agreement between the Iraqi Government and the KDP – when Mulla Mustafa Barzani negotiated on behalf of Kurdistan. The existing boundary is best understood as a brutal war-outcome, and of a Machiavellian maneuver by Saddam. It is in no sense the product of local wishes, or democratic and constitutional resolutions. That is why it is admirable that the disputed territories should have their status resolved under Iraq’s constitution by the democratic elected Regional Government in negotiations with the democratically elected Federal Government of Iraq.

Look now at this map from *The Economist*. It distinguishes between land mainly under KRG control, and “dream” claims (though we are not told on what basis the dreams were recorded). Dream claims is the correct wording for some of the domain near and south of Baghdad, which I have never heard advocated by any living Kurdish politician.

### SHOW *ECONOMIST* MAP

The map from *The Economist* does not indicate either old or new governorate boundaries or districts, or sub-districts, which will be the most likely units in the necessary negotiations. By contrast, the *National Geographic* has some useful displays, though they do not name all the key cities and towns at stake. The first map, however, shows the status quo fairly well.

### THE *NATIONAL GEOGRAPHIC* MAPS

The second roughly plots current versus projected KRG territory after presumptively successful negotiations. Almost all of the affected areas have Kurdish super-majorities, and where they do not some of the dilution of Kurdish demographic strength is the outcome of recent movements of internally displaced peoples. No sensible person contests the presence of strong Kurdish majorities in places such as Akre, Sheikhan, Zimmar, Sinjar, Makhmur, Aski Khalak, or Knanaquin. Almost all of the affected areas either have strong links to the major Kurdish parties or have benefited from emergency support from the KRG, but plainly all the affected citizens would benefit from the regularization of their relationship to the KRG.

Let me suggest reasonable principles which might guide the UN mediator in the resolution of the territorial disputes between the KRG and the rest of Iraq:

First, the governorates of Dohuk, Sulaimania and Erbil should be wholly incorporated within the KRG (modified where necessary to their pre-Baathist boundaries).

Second, all of Kirkuk governorate should be subject to normalization based on the 1968 boundary, ie. Chamchamal, Kifra, Kalar, and Tozkhurnato should return to Kirkuk. Consideration should be given to the right of district or sub-district opt-out after the referendum – I have found little Kurdish resistance to the idea that al-Hawija or al-Zab should be allowed to leave Kirkuk governorate, and should any of the Kurdish majority districts or sub-districts wish subsequently to join Sulaimania or Erbil that should be a matter for internal resolution within the Kurdistan Region.

Third, the allocation of the districts of Akre, Sheikhan, Sinjar, Tel Afar & Qarquosh should be informed by UN evaluation of local preferences. Where there are significant doubts about local preferences then there can be a local plebiscite. These districts or sub-districts should be covered under the provisions for the relevant minority rights in the KRG constitution. It seems to me very likely that Tal-Afar will want to opt out of the KRG, and it will be wise on the part of the KRG to let that happen.

Fourth, the same policies should apply for the districts or sub-districts of Zammar, Bashiqua, Aski Kalak, Khanaqin and Mandali.

Lastly, if the KRG pursues the claims made by some Kurds on Badra, and the sub-district of Jassan, which I doubt, then they should be subject a principle of democratic reciprocity --- if there are to be votes to determine territorial status here then Kurds should, in return, accept opt outs of districts or sub-districts of Kirkuk governorate that are adjacent to the rest of Iraq. But I would simply counsel to leave these cases be.

If the resolution of the disputed territories outside of Kirkuk, as well as of Kirkuk itself, are jointly suitably sensitively handled then we will see a significant expansion of the territory of the Kurdistan Regional Government, though not such a significant rise in its population share, because many of the wide expanses of territory are sparsely populated.

What would be the consequence of an expanded Kurdistan Region within Iraq - I emphasize within Iraq? It will, firstly, give added impetus to those inclined to form regions elsewhere in Iraq, as they may lawfully do under the constitution. The KRG is a success story, and on the analysis presented here its success story will expand across a wider swathe of Iraq, and show that minorities within regions can be securely, democratically and decently protected. Second, it will resolve the decades old Kurdish-Arab national question in Iraq by demarcating the borders of the Kurdistan Region in a manner commensurate with local democratic preferences, and historical and geographical realities. That in turn will make the KRG a satisfied party within Iraq, and therefore able to make the rest of the federation work better with the KRG's full commitment because the requisite obligations

toward it will have been met. It will enable the KRG to work as a full partner with Arab dominated Iraq, either in an asymmetric federation in which it is treated distinctively, or as one large region amid other larger regions – which offer the prospects if not the assurance of both self-government and shared government for all of Iraq's major communities.

These are not fantastic vistas. What is fantastic is to imagine that one can stabilize Iraq by postponing much longer the resolution of Kirkuk and the disputed territories.

## THE AUTHORS

*Brendan O'Leary is Lauder Professor of Political Science and Director of the Penn Program in Ethnic Conflict at the University of Pennsylvania. He has been an international constitutional advisor to the Kurdistan Regional Government and has advised the KRG on the protection of national, linguistic, ethnic and religious minorities. He writes here in a solely personal capacity.*

*David Bateman is a Sawyer-Mellon doctoral fellow and PhD student at the University of Pennsylvania, specializing in comparative and ethnic politics, and a member of the Penn Program in Ethnic Conflict. He designed the maps.*

---

## ENDNOTES

We would like to express profound thanks to Stephan Stohler and Joanne McEvoy of the Penn Program in Ethnic Conflict, Sherko Kirmanj of the University of South Australia, and Shwan Howar of the Washington Kurdish Institute, especially for their assistance to David Bateman in cartographic design. They are not responsible for the views expressed here.

<sup>i</sup> “Iraqi Kurds agree to postpone key vote on oil city” (7/12/2007 16:05 ARBIL, Iraq, Dec 17 AFP). The AFP reported that the KRG “has agreed to delay by six months the referendum on the future of the oil-rich city of Kirkuk,” Nechirvan Barzani ... told AFP that his government favored postponing the vote... Barzani said the vote had been delayed “for technical reasons”. He added that the six-month extension should be used for a UN-supervised mechanism to sort out the issue of ... The Kurdish parliament, which heard UN special envoy Staffan de Mistura support a six-month postponement, should soon ratify such a delay, MPs said.

<sup>ii</sup> The first translation of the constitution, by the Associated Press, rendered Article 140 in slightly clearer English, though it refers to a census rather than a referendum, viz. “1st - The executive authority will take the necessary steps to complete implementation of the requirements of Article (58) of the Transitional Administration Law for the Iraqi State, with all its clauses. 2nd - The responsibilities placed on the executive authority provided for in Article (58) of the Transitional Administration Law for the Iraqi State are extended to and will continue for the executive authority until the completion of (normalization, census, ending with a census in Kirkuk and other disputed areas to determine the will of the people) in a period no longer than 12/31/2007.”

<sup>iii</sup> The phrase ‘correcting nationality’ refers to the Ba’athist practice of forcibly obligating Kurds and Turkomen to define themselves as Arabs, a policy of coercive assimilation, which was illegal under Iraqi law, and which violated the International Covenant of Civil and Political Rights (1966) of which Iraq was a signatory.

<sup>iv</sup> *Law of Administration for the State of Iraq for the Transitional Period (Transitional Law 040308)*, re-printed as Appendix 2 from the CPA web-site in *The Future of Kurdistan in Iraq*, (eds.) Brendan O’Leary, John McGarry and Khaled Salih (Philadelphia: University of Pennsylvania Press), pp. 315-40.

<sup>v</sup> An English language Google.com search in December 2007 specifying “Kirkuk”+“oil-rich” returned 190,000 entries. The article cited in note 1 uses “oil city”, another popular phrasing. In *Saddam’s Word: Political Discourse in Iraq* (Oxford: Oxford University Press, 1998), Ofra Bengio argues that one of the reasons the agreement between Barzani and Saddam broke down in 1974 “was that the Kurds wanted oil-rich Kirkuk included in their region”, p. 118.

<sup>vi</sup> “Iraq Oil: Reserves, Production and Potential Revenues”, CRS Report for Congress, April 2005.

<sup>vii</sup> Quil Lawrence reports, his *Invisible Nation: How the Kurds’ Quest for Statehood is Shaping Iraq and the Middle East* (New York: Walker & Company, 2008) that Turkish officials fear that the Kirkuk oil-fields will be used to finance the formation of an independent Kurdistan air-force, which would then be used to establish a Greater Kurdistan, incorporating large swathes of what is presently south-east Turkey. These are interesting “projections” on the part of the Turkish officials, presently using their air-force to invade another sovereign member of the United Nations.

<sup>viii</sup> For a detailed account of the relevant provisions see Brendan O’Leary, “Federalizing Natural Resources in Iraq’s Constitution”, in David Malone, Ben Roswell, and Markus E. Bouillon (eds.) *Iraq: Preventing a New Generation of Conflict* (Boulder, Co: Lynne Rienner), pp. 189-202. The accuracy of these constructions was agreed by Professor Nik Haysom of the United Nations who attended the conference which produced the volume just cited.

<sup>ix</sup> In December 2007 an English language Google.com search specifying “Kirkuk”+“tinderbox” returned 559 entries, “Kirkuk”+“powderkeg” returned over 900 entries, while 57, 200 entries were returned for “Kirkuk”+“flashpoint”. Peter Galbraith in *The End of Iraq*, calls Kirkuk a “ticking ethnic time bomb”.

<sup>x</sup> Sadettin Ergec, the leader of the Iraqi Turkomen Front, claims he want to save Kirkuk as the Turkomen’s capital, and earn it special status.

<sup>xi</sup> Reproductions of the maps are from those designed for and published in Brendan O’Leary, Ian S. Lustick and Thomas Callaghy (eds.) *Right-Sizing the State: The Politics of Moving Borders* (Oxford: Oxford University Press, 2001), pp. 256-8.

<sup>xii</sup> A reasonable account of the history of Kirkuk before and during the Mandate period can be found in Cecil Edmonds, *Kurds, Turks and Arabs: Politics, Travel and Research in North-Eastern Iraq, 1919-1925* (London, Oxford

---

University Press, 1957). See also Ahmed, Kamal Mudhir *Kirkuk and its Dependencies: Judgment of History and Conscience. A Documentary Study of the Kurdish Issue in Iraq*. (Sulaimania, Roon Printing House, printed at the expense of the Kurdistan Regional Government, 2004), and Nouri Talabani, *Arabization of the Kirkuk Region* (London: Khak Press and Media Center, 1999).

<sup>xiii</sup> About 25,000 to 30,000 Kurdish families have returned since 2003, according to the KRG's Office for Settlement and Compensation, which coordinates the return of Kurds. But only some Arab settlers have moved, and just 2,000 disputes have been formally settled (<http://www.aina.org/news/20071205111320.htm>). While the first wave of Kurdish families have been able to return to homes, those who followed endured suffering; some were forced into abandoned army barracks. There are uncorroborated accounts of Kurds forcing Kirkuki Kurds to return, thus instigating accusations that they are illegally trying to compel the referendum outcome while the people suffer.

(<http://www.nytimes.com/2007/12/09/world/middleeast/09kirkuk.html>). In April 2007, Turkish intelligence sources claimed that Kurdistan President Barzani had "offered bribes to various Iraqi officials" involved in the Commission ([http://www.hurriyet.com.tr/english/6312972\\_p.asp](http://www.hurriyet.com.tr/english/6312972_p.asp)). The validity of this account has no credibility given the track-record of accuracy by Turkish intelligence sources, but the stance of the Turks is telling: it is to be trusted about as much as their accounts of the genocide of the Armenians.

<sup>xiv</sup> See, 'A Vision for the Future: Professor Brendan O'Leary interviews Prime Minister Nechirvan Barzani' in *The Kurdistan Region: Invest in The Future* (Washington D.C. and London: Newsdesk Publications, 2008), (ed.) Brendan O'Leary, especially pp. 48-9.

<sup>xv</sup> According to one source to date, about 1,000 Arab families have received compensation, and less than 3,500 more have signed up to leave, but it is well to recall that these are large families (<http://ap.google.com/article/ALeqM5i8uepxMjqNMWzj2xVH1uAeKERjEQD8SVNJTOO>)

<sup>xvi</sup> One source suggests that President "Mas'ud Barzani... has warned that "if Article 140 is not implemented, then there will be a real civil war", cited in Sumedha Senanayake, "Iraq: Kirkuk Referendum Likely to Be Delayed", September 12 2007, Radio

Free Europe, Radio Free Liberty, <http://www.rferl.org/featuresarticle/2007/09/77A2D8AB-39B5-43DC9A49-672B349D17B3.html>

<sup>xvii</sup> <http://afp.google.com/article/ALeqM5i3hvorMuUqgdPDZQauhZxGLCYyja>