

# Governing (in) Kirkuk: resolving the status of a disputed territory in post-American Iraq

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Kirkuk has been among Iraq's most intractable problems. A diverse province and city with three main ethnic groups—Arabs, Kurds and Turkmen—all of whom have different tales of suffering and entitlements to tell, Kirkuk is also beset by problems well beyond the control of its citizens and their representatives. Controlling Kirkuk, which supposedly sits on approximately 10 per cent of Iraq's oil and gas reserves, or preventing someone else from doing so, has major resource implications. Control of Kirkuk is also symbolically important for all three of its main ethnic groups, but especially so for Kurds who have come to see Kirkuk as 'their Jerusalem'. Politically, the future of Kirkuk is, like that of the other internally disputed territories of Iraq, tied up with the full implementation of Iraq's 2005 constitution, which, in its article 140, stipulates normalization (i.e. reversal of Arabization), a census and a referendum 'in Kirkuk and other disputed territories to determine the will of their citizens' (concerning the status of these territories in other words, whether they are to become part of the Kurdistan Region). The future status of Kirkuk has thus become a major bone of contention between Kurds and Arabs in Iraq as a whole, and has become entangled in two other disputes, over a federal hydrocarbons law and over constitutional reform. Beyond Iraq, Kirkuk matters to Turkey,<sup>1</sup> which allegedly fears that a Kirkuk that is part of the Kurdistan Region would further encourage Kurdish separatism in Iraq and the region as a whole,<sup>2</sup> including Turkey. Being seen, rightly or wrongly, as having significant potential for igniting an all-out civil war between Arabs and Kurds, the future of Kirkuk also matters to the international coalition forces in Iraq, and especially to the US, which cannot afford for Kirkuk to derail its plans now that combat forces have been withdrawn.

<sup>1</sup> On the role of Turkey see, among others, Bülent Aras, 'Turkey, northern Iraq and Kirkuk', *Foreign Policy Bulletin* 5, 2007, pp. 6–9; Philip Giraldi, 'Turkey and the threat of Kurdish nationalism', *Mediterranean Quarterly* 19: 1, 2008, pp. 33–41; International Crisis Group, *Turkey and Iraqi Kurds: conflict or cooperation?*, Middle East report 81 (Brussels: ICG, 2008); Robert Olson, 'Relations among Turkey, Iraq, Kurdistan–Iraq, the wider Middle East, and Iran', *Mediterranean Quarterly* 17: 4, 2006, pp. 13–45; Robert Olson, 'Turkey's policies toward Kurdistan–Iraq and Iraq: nationalism, capitalism, and state formation', *Mediterranean Quarterly* 17: 1, 2006, pp. 48–72; Thanos Veremis, 'The transformation of Turkey's security considerations', *International Spectator: Italian Journal of International Affairs* 40: 2, 2005, pp. 75–84.

<sup>2</sup> See Ted Galen Carpenter, 'Middle East vortex: an unstable Iraq and its implications for the region', *Mediterranean Quarterly* 20: 4, 2009, pp. 22–31.

Local, national, regional and international factors and dynamics thus combine in a near-perfect storm of conflicting interests, mismatched capabilities and diverging agendas. In all this, the fate of local Kirkukis has become a peripheral distraction at best and an unwelcome inconvenience at worst. This is all the more unfortunate as local initiatives over the past three years have shown some promise in preventing Kirkuk from becoming engulfed in sectarian warfare. In December 2007 an agreement was reached between political representatives of Kirkuk on governance arrangements; they committed themselves further to genuine cooperation and power sharing in the Dead Sea Declaration of December 2008 and again in the Berlin Accords of April 2009, the latter including a specific agreement on the distribution of senior posts in the provincial administration as mandated under article 23 of the Elections Law of the Provincial, Districts, and Sub-Districts Councils (Law 36/2008, henceforth Provincial Elections Law). While these agreements remain essentially unimplemented, and while local governance arrangements are at best part of a broader solution of the problems of Kirkuk, they are nonetheless significant indicators that Kirkuk need not remain an intractable problem, let alone become the fatal wound to a democratic Iraq.

In this article I focus on the dynamics of the process of settling the status of Kirkuk, principally within the framework of the current Iraqi constitution of 2005 and the 2009 proposals of the United Nations Assistance Mission for Iraq (UNAMI), taking into consideration the broader local, national, regional and international context in which such a settlement has to be achieved. I proceed in four steps. Beginning with a conceptual clarification of the stakes involved in, and remedies associated with, territorial disputes, I give a broad overview of the three principal forms in which such disputes occur. I illustrate this with pertinent examples of past disputes and contextualize their settlement in the broader conflict resolution literature, thus setting out a conceptual and empirical basis for discussing the general dimensions of territorial dispute settlements and the factors that determine their precise nature in different cases. This is the background against which the following section contextualizes the situation in Kirkuk. On the basis of personal interaction with key interlocutors from all of Kirkuk's communities and key Iraqi and external players and analysts,<sup>3</sup> I examine the three (im-)balances of grievances, demands and power in Kirkuk, a grasp of which is essential for understanding the dynamic underlying any efforts to resolve the dispute in and over the province. Taking as a baseline the options currently available under the 2005 constitution of Iraq and the recommendations of the 2009 UNAMI report on disputed territories, I offer some observations on a possible compromise and the benefits it might offer to all the parties involved.

<sup>3</sup> The author served as an expert consultant at three rounds of negotiations on power-sharing arrangements in Kirkuk (in Jordan in May and December 2008, and in Berlin in April 2009) and thus experienced at first hand as part of a small mediation team—the Initiative on Conflict Prevention through Quiet Diplomacy—the dynamics of compromise and confrontation that led to the Dead Sea Declaration and Berlin Accords. In addition to these three meetings, he had the opportunity to discuss issues related to Kirkuk with observers, analysts, and UN and government officials in a variety of other locations, including The Hague (Feb. 2009), Colchester (Feb. 2009), Istanbul (April 2009), New York (April 2009), Exeter (May 2009) and London (June and July 2009).

## **Disputed territories: conceptualizing stakes and remedies**

Territorial disputes occur principally in three different forms: between sovereign states; between the government of a sovereign state and a domestic challenger; and between established entities within a sovereign state. Territorial disputes between sovereign states normally involve a threat to the territorial integrity of one of the disputants: examples are Nazi German claims to the Sudetenland in interwar Czechoslovakia, Argentinian claims to the Falkland Islands and Spanish claims to Gibraltar. In the latter two cases, the state with sovereign title to the disputed territory has staunchly, and so far successfully, defended the status quo, including by military means, whereas in the former case an international arrangement—the so-called Munich Agreement—between the Great Powers of the day (Germany, Italy, France and the United Kingdom) annexed the disputed territory to the challenger state.<sup>4</sup>

The territorial integrity of a state may also be endangered by a domestic challenger, as is evident from cases in which territorially based self-determination movements demand independence: examples include past and present conflicts in Sri Lanka, Sudan, Quebec, Kosovo, and Abkhazia and South Ossetia. Here, too, outcomes have differed. Sri Lanka eventually defeated the Tamil Tigers militarily; in Sudan, North and South agreed on an interim solution providing autonomy to the South for a period of time after which a referendum on its future status would be conducted whose result both parties vowed to accept. In Quebec, a referendum on independence was narrowly defeated and the province continues to exist as a federal entity within Canada. Kosovo, after a period of almost ten years of international administration by the UN, gained independence and (especially western) recognition, while in Abkhazia and South Ossetia, military confrontation between Georgia and Russia created the conditions in which the two separatist entities were able to further consolidate their separate status and achieve a modicum of international recognition of their sovereignty.

However, often enough what is at stake is not outright independence, but rather an enhanced degree of self-governance that the self-determination movement seeks to exercise in the territory it considers its homeland. In such cases, territorial self-governance arrangements within the boundaries of an existing sovereign state are accepted as a compromise by the disputants, as for example in Crimea, Gagauzia or Aceh. Disputes between states and between states and domestic challengers can also overlap when territorially based self-determination movements seek not independent statehood but unification with what they consider their ancestral homeland or kin-state. In some cases, for example in the Åland Islands, South Tyrol, Northern Ireland and Republika Srpska, compromise solutions have been found, occasionally with heavy-handed international mediation, that maintain the territorial integrity of the challenged state while providing for a high degree of

<sup>4</sup> Subsequent to the Munich Agreement, the two Vienna Arbitration Awards of 1938 and 1940, respectively, compelled Slovakia and Romania to cede territories to Hungary which the latter had lost under the provisions of the Treaty of Trianon in 1920 and had sought to regain ever since. The awards were part of a joint German and Italian strategy to consolidate their alliance with Hungary.

territorial self-governance and privileged cross-border relations with the kin-state for the self-determination movement. In others, notably the Saarland in 1935 and 1956, the disputed territory was allowed to reunite with its kin-state.

Territorial disputes between entities within a sovereign state are relatively rare, but nonetheless of significant import. For illustrative purposes, consider the cases of Brčko in Bosnia and Herzegovina, and of Abyei in Sudan. The District of Brčko was disputed between the Federation of Bosnia and Herzegovina (the Bosniak–Croat entity of the Bosnian state) and Republika Srpska, both of which claimed the district as part of their territory. Eventually, international arbitration ruled that Brčko be held in condominium, thus ‘belonging’ simultaneously to the two entities (Republika Srpska and the Federation of Bosnia and Herzegovina), but be self-governing as a unitary territory in which neither entity exercises any authority. In the case of Abyei, North and South Sudan struggled for years to find a compromise over the boundaries of an area that holds some of Sudan’s most significant oil reserves. Eventually, both sides submitted their dispute to the Permanent Court of Arbitration in The Hague, which defined the area geographically in a ruling of July 2009. The thus demarcated territory of Abyei was subsequently given the right to hold a referendum in 2011 (alongside the referendum in the South) on whether it wishes to remain with the North or join the South, a potentially independent state. Until then, the territory is governed jointly by North and South, with a Southerner appointed as head of the interim administration in August 2008 and a Northerner as his deputy.

This last category is the one that best fits the situation in Kirkuk. Here we have an internal territorial dispute that, while clearly not secessionist in nature and therefore not threatening the territorial integrity of Iraq as such, nonetheless has a distinct external dimension to it inasmuch as its resolution (the settlement of Kirkuk’s future status) is perceived to have regional implications beyond Iraq. The empowering of the Kurdistan Region in Iraq that would accompany ‘winning’ the territorial dispute over Kirkuk, and the political and economic prize that this would deliver, is considered by some of Iraq’s neighbours, particularly Turkey, as a significant threat because of its alleged impact on the Kurdish question in the Middle East as a whole and on the relations between each of the states (Iran, Syria and Turkey) with relatively large Kurdish communities and the Kurds within its borders. The Kirkuk territorial dispute thus occurs on three levels and has two dimensions. It is a dispute among Kirkuk’s communities (principally Arabs, Kurds and Turkmen), a dispute between Baghdad and Erbil, and a dispute that draws in regional powers (principally Turkey). At stake are the territorial–political status of Kirkuk in Iraq and the internal governance arrangements in Kirkuk.

Kirkuk, in other words, falls into a category of territorial disputes that are essentially about territorial control which the disputants seek for themselves (Baghdad, Erbil, local Kirkuk communities) or seek to prevent others from obtaining (Turkey) for a variety of reasons ranging from strategic value (e.g. control of major transport and communication arteries, access to the open sea, military defensibility) and economic gain (e.g. the natural resources located in

the disputed territory, and the tax revenue, goods and services generated there) to political significance (e.g. the precedent of how dealing with one specific territorial dispute will affect the likelihood and outcome of others) and cultural importance (e.g. territory as an ancient homeland, mythical place of origin, site of events defining group identity, etc.). These things constitute, individually and collectively, what is at stake for the disputants. The higher the stakes, the more likely it is that disputants' positions will become firmly entrenched and the more difficult it will be to find mutually acceptable compromises—despite the fact that, conceptually, it is relatively easy to find remedies for territorial disputes.

The most prominent way in which the existing literature on conflict resolution engages with territorial disputes is through the framework of territorial self-governance (TSG), which can be defined as the legally entrenched power of territorially delimited entities within the internationally recognized boundaries of existing states to exercise public policy functions independently of other sources of authority in this state, but subject to its overall legal order.<sup>5</sup> Conceptually, this definition of TSG applies its meaning as a tool of statecraft to the specific context of conflict resolution in divided societies and encompasses five distinct governance arrangements—confederation, federation, autonomy, devolution and decentralization. One of the shortcomings of current theoretical engagements with TSG as a mechanism for conflict resolution in divided societies is a focus on just the territorial dimension of conflict settlement. Only rarely do scholars look beyond the territorial dimension and towards a more complete package of institutions within which TSG is but one, albeit a central, element. Caroline Hartzell and Matthew Hoddie, for example, argue that conflict settlements (after civil war) are the more stable the more they institutionalize power sharing across four dimensions—political, economic, military and territorial.<sup>6</sup> Ulrich Schneckener reaches similar conclusions in a study that is focused on European consociational democracies.<sup>7</sup> Arend Lijphart established such specific conceptual and empirical links between consociation and federation as long as three decades ago, noting two crucial principles, namely that 'the component units [must] enjoy a secure autonomy in organizing their internal affairs ... [and] that they *all* participate in decision-making at the central level of government'.<sup>8</sup> John McGarry and Brendan O'Leary also note that 'some successful cases of territorial pluralism suggest that, at least with sizable nationalities, autonomy should be accompanied by consociational power

<sup>5</sup> The definition of self-governance has been adapted from S. Wolff and M. Weller, 'Self-determination and autonomy: a conceptual introduction', in M. Weller and S. Wolff, eds, *Autonomy, self-governance and conflict resolution: innovative approaches to institutional design in divided societies* (London: Routledge, 2005), pp. 1–25. The same definition is used in Z. Csergo and S. Wolff, 'Regions of nationalism in Europe', paper presented to American Political Science Association meeting, Toronto, 2009, <http://ssrn.com/abstract=1449082>, accessed 10 Feb. 2010.

<sup>6</sup> C. Hartzell and M. Hoddie, 'Institutionalizing peace: powersharing and post-civil war conflict management', *American Journal of Political Science* 47: 2, 2003, pp. 318–32; C. Hartzell and M. Hoddie, *Crafting peace: powersharing institutions and the negotiated settlement of civil wars* (University Park, PA: Pennsylvania State University Press, 2007).

<sup>7</sup> U. Schneckener, 'Making powersharing work: lessons from successes and failures in ethnic conflict regulation', *Journal of Peace Research* 39: 2, pp. 203–28.

<sup>8</sup> A. Lijphart, 'Consociation and federation: conceptual and empirical links', *Canadian Journal of Political Science* 12: 3, 1979, pp. 499–515 at p. 506.

sharing within central or federal institutions. Such arrangements prevent majoritarianism by the dominant nationality, and make it more likely that minorities have a stake in the state.<sup>9</sup> This is in line with conclusions reached by Marc Weller and Stefan Wolff, who argue that ‘autonomy can only serve in the stabilization of states facing self-determination conflicts if it is part of a well-balanced approach that draws on elements of consociational techniques, moderated by integrative policies, and tempered by a wider regional outlook’.<sup>10</sup>

This phenomenon of TSG arrangements occurring in combination with other conflict resolution mechanisms has been identified by several authors over the past few years.<sup>11</sup> Analytically, it is possible to explain both why such multidimensional institutional arrangements emerge and why they might have a greater chance of success than purely territorially based solutions. Empirically, there is some evidence of their sustainability, as well as a relatively large number of more recent cases in which such arrangements have been the outcome of negotiated settlements, even though they are too recent for their longer-term success to be assessed.

Leaving aside the rather more trivial condition that TSG is of real benefit only to minorities that live in territorially concentrated communities,<sup>12</sup> two characteristics are particularly important in determining the likelihood of a combination of TSG arrangements with power-sharing institutions at the local and/or central levels of government: the degree of ethnic heterogeneity in the territorial entities to which powers and competences of self-governance are to be assigned; and their significance relative to the rest of the state. Thus, it can be expected that the settlement for a territorial entity characterized by ethnic (or another identity-based form of) heterogeneity would include local power-sharing institutions, whereas a more homogeneous one might not—compare Brussels to the Flemish region, the Federation of Bosnia and Herzegovina to Republika Srpska, or Northern Ireland to the Åland Islands. The institution of local power-sharing mechanisms (i.e. within the self-governing entity) also addresses one frequent criticism and

<sup>9</sup> J. McGarry and B. O’Leary, ‘Territorial approaches to ethnic conflict settlement’, in K. Cordell and S. Wolff, eds, *The Routledge handbook of ethnic conflict* (London: Routledge, 2010, pp. 249–65).

<sup>10</sup> M. Weller and S. Wolff, ‘Recent trends in autonomy and state construction’, in Weller and Wolff, *Autonomy, self-governance and conflict resolution*, pp. 262–70 at p. 269.

<sup>11</sup> See C. Kettley, J. Sullivan and J. Fyfe, ‘Self-determination disputes and complex powersharing arrangements: a background paper for debate’, Centre of International Studies, Cambridge, 2001, <http://www.intstudies.cam.ac.uk/centre/cps/download/background1.pdf>, accessed 4 March 2009; M. Weller, ‘Settling self-determination conflicts: an introduction’, in M. Weller and B. Metzger, eds, *Settling self-determination disputes: complex powersharing in theory and practice* (Leiden: Nijhoff, 2008), pp. xii–xvii; S. Wolff, ‘Complex power-sharing and the centrality of territorial self-governance in contemporary conflict settlements’, *Ethnopolitics* 8:1, 2009, pp. 27–45; S. Wolff, ‘Peace by design? Towards complex powersharing’, in R. Taylor, ed., *Consociational theory: McGarry and O’Leary and the Northern Ireland conflict* (London: Routledge, 2009), pp. 110–21. These authors refer to the phenomenon, albeit in somewhat different ways, as ‘complex powersharing’. Brendan O’Leary uses the term ‘complex consociation’. See B. O’Leary, ‘Debating consociational politics: normative and explanatory arguments’, in S. Noel, ed., *From powersharing to democracy* (Montreal and Kingston: McGill-Queen’s University Press, 2005). Caroline Hartzell and Matthew Hoddie conceptualize it as ‘highly institutionalized negotiated settlement’: see Hartzell and Hoddie, *Crafting peace*.

<sup>12</sup> See e.g. D. Brancati, *Peace by design: managing intrastate conflict through decentralization* (Oxford: Oxford University Press, 2009); J. McGarry, B. O’Leary and R. Simeon, ‘Integration or accommodation? The enduring debate in conflict regulation’, in S. Choudhry, ed., *Constitutional design for divided societies: integration or accommodation?* (Oxford: Oxford University Press, 2008), pp. 41–88; D. Treisman, *The architecture of government: rethinking political decentralization* (Cambridge: Cambridge University Press, 2007); Wolff, ‘Peace by design?’.

potential flaw of TSG arrangements—that they empower a local majority to the disadvantage of one or more local minorities, either creating new conflict within the entity or, if the local minority is a state-wide dominant group, destabilizing the TSG arrangement as the central government (out of concern for its ethnic or religious kin) might want to abrogate or delimit the powers of the TSG entity, seeing them as being abused to discriminate against other population groups.<sup>13</sup>

As far as power-sharing at the level of the central government is concerned, the most likely structural predictor here is the significance of the self-governing territory (or territories) relative to the rest of the state. Such significance can arise from geographical and population size, natural resource availability, strategic location and/or cultural importance. Power-sharing institutions at the centre, then, are a reflection of the bargaining position that a given self-determination movement has—the greater that is, the more it can assert its position at the centre. Yet elements of a carefully designed set of power-sharing institutions at the centre can also address a frequently mentioned reservation about TSG arrangements, namely that they empower self-determination movements while weakening the central government: in other words, that they create an asymmetric power relationship that privileges separatists. This is because power-sharing institutions, for their own success, also need to involve agreed dispute resolution mechanisms, which in turn can contribute to regulating ongoing bargaining processes between central government and the self-governing entity in ways that maintain a political process of dispute management (rather than resurgence of violence) and enable state- and TSG-preserving outcomes (rather than state breakups or abrogation of TSG arrangements).<sup>14</sup> Consociational power sharing in the Belgian federation, combined with the so-called ‘alarm-bell mechanism’, is one example of this. Belgium is also an instructive illustration of the notion of ‘significance’. The country has three linguistic groups—French-speakers, Dutch-speakers and German-speakers—but only the former two are large enough to warrant inclusion in central power-sharing arrangements. In the UK, none of the four devolution settlements (London, Northern Ireland, Scotland and Wales) provides for central-level power sharing, given the predominance of England within the UK. On the other hand, the comprehensive peace agreement for Sudan and Iraq’s 2005 constitution both provide consociational institutions to include, respectively, the SPLA/M and the Kurds into decision-making at the centre, and both offer dispute resolution mechanisms, including judicial arbitration and joint committees and implementation bodies.<sup>15</sup>

<sup>13</sup> This problem can be, and frequently is, also addressed through strong state-wide human and minority rights legislation and institutions empowered to enforce it.

<sup>14</sup> Yash Ghai observes correctly that ‘autonomy arrangements ... also contribute to constitutionalism. The guarantees for autonomy and the modalities for their enforcement emphasize the rule of law and the role of independent institutions. The operation of the arrangements, particularly those governing the relationship between the centre and the region, being dependent on discussions, mutual respect and compromise, frequently serve to strengthen these qualities.’ See Y. Ghai, ‘Territorial options’, in J. Darby and R. McGinty, eds, *Contemporary peacemaking: conflict, violence, and peace processes* (Basingstoke: Palgrave Macmillan, 2003), pp. 184–93 at pp. 187–8.

<sup>15</sup> The (sad) caveat here is, of course, that the formal existence of institutions does not automatically translate into their proper functioning.

Applying such a conflict resolution perspective to Kirkuk enables a focus on the political–institutional relationship between Kirkuk on the one hand and Baghdad and Erbil on the other. Such a relationship is determined through governance arrangements and secured in domestic and, occasionally, international law. In this context, governance arrangements have two dimensions: where which powers are exercised (i.e. determining the levels of governance and the relationship and distribution of powers between them) and who makes what decisions and how (the institutions and mechanisms of governance). Framed in the kind of conflict resolution perspective elaborated above, resolving the kind of territorial dispute that confronts the parties in Kirkuk is about determining the form of *territorial construction of the overall state*, with options for self-governance ranging from confederation to federation, federacy, devolution and decentralization; and it is further about deciding the *distribution of powers* between the centre and the disputed territory as a self-governing entity, within the framework defined by the way in which the overall state is territorially constructed, according to principles of subsidiarity, proportionality, economic efficiency and administrative capacity. Resolving such territorial disputes also concerns the establishment of *power-sharing arrangements* both within the disputed territory (in this case, between the communities in Kirkuk) and possibly at the centre or, if applicable, the next level of governance (Baghdad or Kurdistan Region). Finally, to achieve effective and efficient government and a functioning, predictable and stable political process it is essential that the overall set of institutional arrangements agreed by the immediate disputants also incorporates a range of *mechanisms for policy coordination and future dispute resolution*. These four dimensions of such territorial dispute settlements need to be properly entrenched in domestic (constitutional) law, and possibly, albeit not necessarily in the case of Kirkuk, in international law.

If it is possible to make any general empirical observation about the outcomes of territorial dispute settlement processes—that is, the nature of the political–institutional relationship achieved along these four dimensions and the nature of its legal entrenchment—it is that they are, unsurprisingly, highly context-dependent. What the disputants have at stake is informed by their grievances and in turn shapes their demands. The ability to realize these demands is a function of the balance of power between the disputants, which is determined partly by the extent to which they are backed by third parties and partly by their ability to present a united front. Balance of power, however, is also a matter of structural factors, such as demography (e.g. how numerically large a particular group is and how concentrated its members are) and geography (e.g. how clearly defined and unfragmented the disputed territory is). Structural factors, in turn, also shape disputants' preferences, expressed in their demands. For example, a large, compact group will not only seek as much control as possible over the disputed territory, it will also demand a share of power at the centre as it will have a significant stake in the political process of the whole state (as do, for example, Serbs in Bosnia and Herzegovina or Kurds in Iraq). A smaller group that does not constitute a majority even in the disputed territory will want to ensure it has a say at the local level and

can retain a maximum amount of control over its own affairs through forms of corporate (or cultural) autonomy and power sharing in order to make territorial self-governance meaningful rather than its becoming another instance of majority control (e.g. Nationalists and Republicans in Northern Ireland).

It is important to bear in mind that the process of settlement itself—its format, structure and participants—also co-determines its outcome. Face-to-face negotiations create a different dynamic from shuttle diplomacy; well-resourced, outcome-driven international mediation biased against secession enables and constrains parties to a conflict in different ways from talks between such parties facilitated by under-resourced yet impartial NGOs; negotiations which involve only one principal negotiator on each side offer different opportunities for settlement from negotiations in which one or both parties are highly fragmented and consist of essentially self-interested individuals with little or no commonality of purpose. Agreements put to a popular vote either within specific constituencies (e.g. a political party congress) or in the disputed territory as a whole (e.g. a referendum) add a further dimension to the settlement process that more often than not puts a constraint on what the parties feel they are able to agree upon at the negotiating table.

### **Grievances, demands and power in Kirkuk: three (im-)balances**

The population of Kirkuk is composed of three major ethnic groups—Arabs, Kurds and Turkmen.<sup>16</sup> The relative size of these population groups at present can only be estimated, as no reliable census has been conducted since 1957. The UN currently estimates the total population of the Kirkuk province at just over 900,000 people.<sup>17</sup> Of these, just over half are estimated to be Kurdish, while Arabs and Turkmen constitute roughly 35 per cent and 12 per cent of the population respectively; other communities contribute around 1 per cent.<sup>18</sup>

Part of the problem in Kirkuk today is that over time its population has significantly shifted as a result of Saddam Hussein's Arabization campaign, which involved the 'redistricting' of Kirkuk (i.e. the detachment of several districts from Kirkuk governorate), the expulsion of Kurds and (albeit to a lesser extent) Turkmen, and the settlement of Arabs, primarily Shi'is from the south of Iraq. These historic injustices have been legally recognized since the fall of Saddam. Initially, article 58 of the Transitional Administrative Law (TAL) of 2004 provided

<sup>16</sup> The most comprehensive treatment of Kirkuk in the current literature is Liam Anderson and Gareth Stansfield, *Crisis in Kirkuk: the ethnopolitics of conflict and compromise* (Philadelphia, PA: University of Pennsylvania Press, 2009). Kirkuk is also covered extensively in Brendan O'Leary, *How to get out of Iraq with integrity* (Philadelphia, PA: University of Pennsylvania Press, 2009). For various other discussions of Kirkuk see, among others, Denise Natali, 'The Kirkuk conundrum', *Ethnopolitics* 7: 4, 2008, pp. 433–43; Aram Rafaat, 'Kirkuk: the central issue of Kurdish politics and Iraq's knotty problem', *Journal of Muslim Minority Affairs* 28: 2, 2008, pp. 251–66; David Romano, 'The future of Kirkuk', *Ethnopolitics* 6: 2, 2007, pp. 265–83.

<sup>17</sup> Inter-agency Information and Analysis Unit, Kirkuk Governorate Profile, <http://www.iauiraq.org/reports/GP-Kirkuk.pdf>, accessed 19 March 2010.

<sup>18</sup> Election results from the 2010 parliamentary elections confirm this partially, inasmuch as Kurdish parties obtained just over half of all votes cast.

that the 'Iraqi Transitional Government ... shall act expeditiously to take measures to remedy the injustice 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' and mandated both the return of those previously displaced and the resettlement (out of Kirkuk) of those transplanted there under the Saddam regime. Article 58 also provided for a referendum on the final status of Kirkuk, albeit only after past wrongs had been addressed, a census conducted and a permanent constitution passed into law. The 2005 constitution reaffirmed the provisions of article 58 of the TAL and set a deadline for the conclusion of this process at 31 December 2007. This gave rise to further problems. Return migration of Kurds is seen by Arabs and Turkmen in Kirkuk as an attempt by Kurdish elites in Erbil to influence the outcome of a future referendum, while Kurds view especially Arab hostility to the return process as simply a continuation of Arabization policies. While Kurdish return migration is not universally popular among all Kirkuk Kurds either, with some of them fearing a deterioration of interethnic relations, Kurds in Kirkuk and the Kurdistan Region are more or less unanimous in their condemnation of the delay in the referendum process provided for under article 140 of the Iraqi constitution.

All three communities in Kirkuk thus have very different narratives of past and present suffering and injustices—narratives, moreover, in which the other communities are more often than not perpetrators rather than fellow victims. Grievances based in past victimization, the experience of consequential deprivation, and the expectation of continuing and potentially intensifying discrimination have informed each community's agenda of demands regarding the status of Kirkuk in Iraq and governance arrangements in the province.

To Arabs, the idea of Kirkuk joining the Kurdistan Region is complete anathema and synonymous with future discrimination and marginalization. Even a Kirkuk that remains outside the Kurdistan Region but becomes a region itself is viewed with suspicion across the Arab spectrum, as the very substantive powers of self-governance that regions enjoy under the 2005 constitution, combined with the fact of a Kurdish majority population in Kirkuk, do not bode well from an Arab perspective. Hence, Arabs strongly advocate a Kirkuk governorate with only the limited powers foreseen under the Law of Governorates not Incorporated into a Region (Law 21/2008, henceforth Provincial Powers Law) and internal power-sharing arrangements that ensure the distribution of seats in the (provincial) assembly and of senior posts in the administration on an equal basis between Arabs, Kurds and Turkmen. While Arabs, in terms of their share in Kirkuk's population, do not gain anything material themselves, they can ensure that Kurds are limited in their control of Kirkuk's institutions.

A majority of Kurds, on the other hand, consider Kirkuk to be an inalienable part of the historical and geographical Kurdish region and point to article 140 of the 2005 constitution which prescribes a referendum on the future status of the province. Denying Kirkuk a referendum is seen not only as unjust but also

as a betrayal of a compromise accepted by the Kurds. It is not difficult to see how, from a Kurdish perspective, Baghdad's procrastination on the referendum date and modalities bodes ill for the future. Having said that, local Kurds in Kirkuk (as opposed to the Kurdistan Region) are by no means unanimous in their advocacy of a particular status. Representatives of all Kurdish factions accept the need for meaningful power-sharing arrangements to be put in place in Kirkuk, and are generally prepared to make fairly substantial concessions to Arabs and Turkmen along those lines. As far as Kirkuk's future status is concerned, Kurdish views are more diverse. While local officials of the Kurdistan Democratic Party (KDP) and Patriotic Union of Kurdistan (PUK) preserve, at least on the face of it, unanimity on the question of a referendum and the desirability of Kirkuk joining the Kurdistan Region, Kurds not tied into the party hierarchies or in fact unaffiliated with either the PUK or the KDP have shown greater flexibility. While they, too, oppose the continuation of the status quo, they are less wedded to the idea of Kirkuk becoming part of the Kurdistan Region, tending to advocate a Kirkuk region with close links to, but not controlled by, either Baghdad or Erbil.

The positions of the different Kurdish factions are further shaped by two other considerations that they have to make. Adding Kirkuk to the Kurdistan Region will inevitably affect the balance of power between the two main Kurdish parties, the PUK and KDP. While the KDP at the moment is the stronger of the two within the Kurdistan Region, adding the strongly pro-PUK province of Kirkuk to the electoral equation in regional elections is likely to shift this balance in favour of the PUK. A further factor that potentially militates against an uncompromising stance on 'recovering' Kirkuk on the part of the Kurds is the strategic partnership that has grown up between Erbil and Ankara. Not only is Turkey one of the main foreign investors in the Kurdistan Region, it is potentially also an important transit route for its considerable oil and gas reserves, providing access to international markets that is not controlled by, or dependent upon, Baghdad. The question for the Kurds, therefore, is whether Kirkuk is more important to them than their relationship with Turkey, especially as there is also strong resistance to the idea of incorporating Kirkuk into the Kurdistan Region both in Baghdad (raising the need for potentially costly concessions on other fronts) and locally in Kirkuk (raising the possibility of future instability and insecurity in an enlarged Kurdistan Region).

The least numerous of Kirkuk's three main communities are the Turkmen, who can point to many instances in their distant and more recent past when they have suffered at the hands of both Arabs and Kurds. Hence Turkmen are wary of domination from either Baghdad or Erbil and have to date advocated a strong Kirkuk region in which they are protected through power-sharing arrangements against discrimination and political exclusion. All three of the major communities accept the need for special measures to protect the smaller minorities in Kirkuk and include them in the political process of the province.

Leaving these potentially explosive local dynamics to one side, Kirkuk has also become a symbol of the contentious nature of the broader Iraqi political process

and a key site in a protracted bargaining process between Arabs and Kurds. The main dimensions of this process are constitutional reform, the governance of Iraq's oil and gas reserves, and the resolution of territorial disputes. Kirkuk, in a sense, marks the essence of these unresolved problems: a disputed territory of enormous symbolic significance to Arabs, Kurds and Turkmen alike, it is also presumed to contain about 10 per cent of Iraq's hydrocarbon reserves, and the determination of its political status within Iraq and its internal governance arrangements goes to the heart of the 2005 constitution and some of the reforms to it that have been proposed. Kirkuk has thus become a highly significant pawn, and prize, in the wider confrontation between Arabs and Kurds in Iraq. This has led to a marginalization of all local communities in Kirkuk, and to their instrumentalization by the power brokers in Baghdad and Erbil. What is more, the international community has largely come to accept this structure, and has endorsed, even facilitated, a process in which the future status of, and governance arrangements in, Kirkuk are negotiated between Baghdad and Erbil. Local input from Kirkuk into this process is at best marginal.

This centralization of the Kirkuk settlement process has in turn led local communities increasingly to rely, and become dependent, upon their patrons outside Kirkuk. Thus Arabs have aligned themselves with Baghdad, Kurds must seek support in Erbil, and Turkmen depend highly on help from Ankara. As local communities rely on external sponsors, the latter, in turn, have invested much of their own political capital in particular 'solutions' of the Kirkuk dispute. This makes local bargaining over power-sharing arrangements more complex and increases the opportunity for spoilers to derail, or at least delay, meaningful local compromise. On the Kurdish side, the picture is further complicated by the rivalry between the KDP and PUK and by the emergence of a third major Kurdish political party, Gorran, which, while it failed to obtain any seats in Kirkuk in the 2010 parliamentary elections, split the Kurdish vote enough to reduce the overall number of seats won by Kurds. On the other hand, the strong support that the predominantly secular Shi'i alliance *Iraqiya* received in the 2010 polls indicates a potential convergence of Arab and Turkmen interests, as well as a hardening of their opposition to a referendum and the subsequent likely incorporation of Kirkuk into the Kurdistan Region. With Baghdad and Ankara equally opposed to such an outcome, and Washington more concerned with rapid exit and a modicum of at least short-term stability afterwards,<sup>19</sup> the balance of power over Kirkuk is now strongly stacked against Kurdish aspirations.<sup>20</sup>

<sup>19</sup> Brendan O'Leary has emphasized the need for a responsible American exit that ensures a sustainably stable Iraq after August 2011: see e.g. Brendan O'Leary, 'Departing responsibly', *Dissent* 56: 2, 2009, pp. 30–35, <http://www.dissentmagazine.org/article/?article=1406>, accessed 19 March 2010.

<sup>20</sup> The Kurdish position in Iraq as a whole has been further weakened by the decreasing share of seats that Kurds have gained over three electoral cycles (Jan. and Dec. 2005, March 2010): from a total of 77 seats in January 2005 (with 75 seats going to the main PUK–KDP alliance list and 2 to a rival party) to 58 seats in December 2005 (with 53 seats going to the main PUK–KDP alliance list and 5 to a rival party) and 57 seats in a significantly enlarged parliament in March 2010 (with 43 seats going to the main PUK–KDP alliance list, and 8, 4 and 2 to other Kurdish parties). Kurdish political power in Baghdad has thus been weakened both in terms of the number and proportion of seats commanded in the Council of Representatives and in terms of intra-Kurdish party political divisions.

## **Options for governing (in) Kirkuk**

Clearly, the environment in which the territorial dispute over Kirkuk has evolved since 2003 is not one that is particularly conducive to speedy, consensual settlement. Yet the challenge that Kirkuk poses is also one that threatens stability in Iraq and potentially in the wider region. Hence none of the parties can really afford to leave the dispute to fester, with positions becoming ever more entrenched and radicalized. At the same time, a framework for settling the dispute over Kirkuk exists in the 2005 constitution of Iraq—a framework that extends beyond the referendum prescribed in article 140 and is informed by the UNAMI proposals of April 2009 on disputed territories. In the following two sections I discuss these aspects of the framework in turn, before offering some observations on possible compromises that take account of constitutional opportunities and constraints, as well as of the dynamics generated by competing narratives of grievances and demands and shifting balances of power.

### *The options under the current constitution*

Under the current constitution of Iraq there are three options for the status of Kirkuk—as a governorate under the control of the central government; as a free-standing region or part of a region with another one or more governorates; and as part of the Kurdistan Region. Each of these options has a number of implications, especially in terms of governance arrangements in Kirkuk itself, including the powers any provincial council and executive would be able to exercise. These in turn will determine the nature of, and need for, any local power-sharing arrangements.

As a governorate, the status of Kirkuk would be defined by the Iraqi constitution, and specifically the Provincial Powers Law (Law 21/2008). Under this option, the legislative body of Kirkuk—the Provincial Council—would have powers to elect and remove the head and deputy head of the council, to develop policies and set strategic priorities, to issue laws, instructions and by-laws, to prepare and approve a budget, to monitor the provincial executive, to elect and remove the governor and his or her two deputies, to approve nominations for senior positions and remove senior managers of the provincial administration, to approve local security plans, to approve administrative boundary changes within the province, to select the symbols for the governorate, and to collect taxes, duties and fees. The governor and his or her executive team would have the power to draft a general budget, to execute decisions by the provincial council, to execute federal policy, to oversee and inspect public facilities (except courts, military units, universities, colleges and institutes), to establish universities, colleges and institutes in coordination with the relevant ministry of the federal government and subject to approval by the Provincial Council, to appoint, reward, promote, discipline and remove civil servants of the governorate (subject to council approval), to direct local security services and request their reinforcement, and to direct the work of up to five assistants and seven advisers.<sup>21</sup>

<sup>21</sup> At present, and until provincial elections are held in Kirkuk pursuant to the Local Elections Law (esp. art.

As an autonomous region pursuant to the Iraqi constitution (article 119), Kirkuk would enjoy significantly more legislative and executive powers than as a governorate. These would include any powers except those that are designated exclusive federal competences in the constitution (foreign policy; national security policy; fiscal and customs policy; regulation of standards, weights and measures; citizenship, residency and asylum; regulation of broadcast frequencies and mail; general and investment budget; policies relating to external water resources; and population statistics and the census). In relation to the few concurrent federal–regional competences that the constitution lists (customs, electric energy sources and distribution, environment, general development and planning, public health, education and internal water resources), regional law takes precedence over federal law in case of any dispute between the region and the centre. While I am assuming here that Kirkuk would be a single-governorate region, constitutionally it is also possible for Kirkuk to form a region with any other (not even necessarily neighbouring) governorate, pursuant to article 119 and the Law on the Executive Procedures Regarding the Formation of Regions (Law 13/2008). This does not affect the powers that would be exercised by a region constituted from the merger of existing governorates or by a governorate joining an existing region; it does, however, change the dynamics of how these powers would be jointly exercised, as we shall see in relation to the third option below.

This third option derives specifically from article 140 of the Iraqi constitution and offers an opportunity to the people of Kirkuk to join the Kurdistan Region. Technically, this outcome is also possible pursuant to article 119 and Law 13/2008. Nonetheless, article 140 has a number of specific implications that set it apart from a similar outcome under the procedure possible pursuant to article 119 and Law 13/2008. First, article 140 is a constitutional provision, forcing, if implemented, a decision on the status of Kirkuk, while the article 119–Law 13/2008 procedure is triggered only under very specific conditions. In other words, except for the provisions of article 140, the constitution does not make any arrangements for a governorate to join an existing region. The constitution does, however, explicitly recognize the existence of the Kurdistan Region, though it does not specifically define its borders. This means that an enlarged Kurdistan Region, pursuant either to article 140 or to article 119 and Law 13/2008, would enjoy the same constitutional protections as the existing one.

The main difference between the latter two options is the status of Kirkuk as an entity: under option 2, and assuming a single-governorate region, Kirkuk as a whole becomes a region with all the privileges entrenched in the constitution; whereas under option 3 Kirkuk remains a governorate, with its status and powers determined by the constitution of the Kurdistan Region. In contrast, under option 2 Kirkuk can adopt its own regional constitution ‘that defines the structure of powers of the region, its authorities, and the mechanisms for exercising such

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23), the Provincial Powers Law (Law 21/2008) does not apply, but Kirkuk is governed under the provisions of Order Number 71 of the Coalition Provisional Authority on Local Governmental Powers (CPA 71/2004) with regard to local legislative and executive powers.

authorities' (article 120, constitution of Iraq), thus conferring upon the people of Kirkuk a significant level of control over their own affairs, limited only by the constraints of the constitution of Iraq.

### *The UNAMI report on disputed territories*

The UNAMI report on disputed territories was released to KRG and Iraqi central government officials in April 2009 and did not receive a particularly enthusiastic welcome from either side, to say the least. Officials from Kirkuk, one of the areas at the heart of the internal territorial disputes besetting Iraq, were given a briefing, but not the report itself, by UNAMI officials a week later in Berlin, where they had gathered to discuss local power-sharing arrangements and the implementation of the Dead Sea Declaration of December 2008. The way in which UNAMI approached the possible resolution of the Kirkuk dispute indicates that it perceives this as being achievable principally as a bargain between Baghdad and Erbil—a view in line with the International Crisis Group's suggestion of a 'grand bargain' that foresees a mutual give-and-take between the central government and the KRG on disputed territories, the hydrocarbons law and constitutional reform, among other matters. Crucially, the key issue for UNAMI in the recommendations on Kirkuk appears to have been maintaining its own perceived impartiality—by producing a report that would be equally rejected by both sides.<sup>22</sup>

According to UNAMI, there are four possible options for resolving the dispute over Kirkuk.<sup>23</sup>

The first option is a clarification of article 140 of the Iraqi constitution of 2005. This would effectively mean resolving key questions related to a referendum, such as eligibility and voter registration, the boundaries of the 'referendum area', and the referendum question. Even if the parties (Erbil and Baghdad) could agree on the modalities of a referendum, this would not, in fact, itself offer any solution. Kirkuk could join the KRG or not: if the referendum went the way of the Kurds, arrangements would need to be determined for the status of Kirkuk within the KRG, and if the referendum went the other way, Kirkukis would need to decide whether to remain a province or become a region. This uncertainty is more or less acknowledged in the UNAMI report with reference to a necessary 'transition period'.

The second option identified in the UNAMI report is to accept the recommendations of the Constitutional Review Committee and fix Kirkuk's status as a governorate. This is also quite problematic. First of all, it would require a constitutional amendment along the lines of Baghdad's status, explicitly prohibiting Kirkuk from joining, or becoming, a region. As this would require agreement between the KRG and Baghdad it is highly unlikely, not least because it is difficult to see what Baghdad would be able or willing to offer the Kurds in exchange

<sup>22</sup> Author's conversation with ICG official, Istanbul, 3 April 2009.

<sup>23</sup> Apparently, there was also consideration of a fifth option—dividing Kirkuk—but this was dropped from the final version of the UNAMI report in favour of placing emphasis on keeping Kirkuk province as a single entity.

for such a major concession on their part. Yet again, even if such a deal were possible, the marginalization of Kirkuk itself is worrying, flying in the face of the very idea of building a democratic Iraq. Having their status fixed in this way is unlikely to be supported by a majority of Kirkukis: Arabs might agree, given the right amount of pressure and bribes from Baghdad, but Kurds and Turkmen are unlikely to do so.

The third option offered in the UNAMI report is 'dual nexus', that is, a sharing of jurisdiction over Kirkuk between the KRG and the central government. Under this option, Kirkuk could have the status of either a governorate or a region, but it would not be part of the Kurdistan Region. The powers to be exercised respectively by the KRG and the central government would need to be negotiated between them. While on the surface offering a reasonable compromise, it, too, faces several serious obstacles in terms of striking the necessary bargain between Baghdad and Erbil. Moreover, comparative international experience does not suggest that such arrangements have a track record of actually working particularly well: the difficulties of administering the Brussels Capital Region of Belgium are an illustrative example. The only way in which such condominium arrangements might work would be if the entity were self-governing and the two condominium powers exercised no direct powers at all, as in Andorra (a quasi-sovereign condominium) and Brčko (an 'internal' condominium in Bosnia and Herzegovina). The New Hebrides model is also somewhat instructive, even though it too was a result of a territorial dispute between two sovereign (colonial) powers, France and the UK. Here, the two powers jointly administered issues pertaining to the native population, but held separate jurisdiction over their own citizens. Needless to say, the arrangements were in the end not sustainable.

The fourth option is special status, which offers a variation on options 2 and 3 in that Kirkuk would have certain powers devolved from the central government and have the status of either a governorate or a region, but with less direct influence from Baghdad and Erbil. This might also involve a referendum as outlined under option 1. While the UNAMI report gives relatively little detail on what such a special status could involve, it is in my view the only viable option, at least in the medium term, for resolving the status of Kirkuk without destabilizing Iraq.

## **A possible compromise and way forward**

As noted in the introduction, resolving a territorial dispute is about determining a political–institutional relationship by establishing legally entrenched governance arrangements. The four sets of institutional arrangements that need to be agreed pertain to territorial state construction; power sharing (including within the disputed territory); the distribution of powers between the centre and the disputed territory; and mechanisms of policy coordination and dispute resolution. Thus any compromise solution for Kirkuk would need to be negotiated within a broader context that is defined by two sets of parameters: the constitution of Iraq (notwithstanding the possibility of negotiated changes to the constitution as part

of the settlement process); and the balances of grievances, demands and powers shaping the dispute over Kirkuk inside and outside Iraq.

In this context, the special status option has some potential currency if one assumes that there is little life left in the article 140 process, at least as it currently stands. Special status could then be conceived of also as interim status,<sup>24</sup> an idea floated by the International Crisis Group, which proposed a ten-year moratorium on final settlements for Iraq's internal territorial disputes. Interim status has recently been more widely used as a mechanism to settle protracted territorial conflicts. The 2005 comprehensive peace agreement for Sudan foresaw a final resolution of the decades-long conflict between North and South by means of a referendum on independence in the South after an interim period in which the South would benefit locally from substantive autonomy and share power at the centre. The parties have agreed details of the referendum to be held in January 2011 and have reiterated their commitment to abiding by its results. Within Sudan itself, the compromise between North and South on Abyei, noted earlier, is another case illustrating the use of interim arrangements. Further afield, the Bougainville peace agreement of 2001 also provided for a referendum on Bougainville's future political status among Bougainvilleans and within a period of between 10 and 15 years after the election of a Bougainvillean government under the terms of the peace agreement. A historical precedent for such interim solutions can be found in the Treaty of Versailles at the end of the First World War. Here, Germany had to cede to France the Saar Basin with its significant natural resources as part of the former's obligations to pay reparation for war damage. Yet the Saar Basin was also a territory historically disputed between France and Germany and had changed sovereignty several times between them. The Treaty of Versailles determined that, as a League of Nations mandate territory, it was to be administered by a commission of five officials (three appointed by the League and one each by Germany and France) for a period of 15 years, and thereafter a referendum was to be held among the local population giving three options: maintenance of the regime established by the Treaty of Versailles, union with France or union with Germany (for which a majority of the voters opted in 1935).

Importantly, settling on an interim solution is not the same as accepting the status quo as it currently exists. Kirkuk needs to have a more clearly defined status under the Iraqi constitution, its residents need to have an opportunity to elect their local representatives again (there were no provincial elections in Kirkuk in 2009) and these representatives need to be given a chance to establish proper arrangements for the governance of the province. Special status, as interim status, would thus need to include power-sharing arrangements like those foreseen under article 23 of the Provincial Elections Law (Law 36/2008), but extending beyond simply distributing jobs and posts among the key power brokers locally. Any powers assigned

<sup>24</sup> As I am focusing on an interim rather than a permanent settlement of the Kirkuk question, I do not question the integrity of the analysis and proposals of other experts. In particular, O'Leary's and Anderson and Stansfield's proposals for a special status of Kirkuk within the Kurdistan Region of Iraq have significant merit. See O'Leary, *How to get out of Iraq with integrity*, esp. pp. 47–60; Anderson and Stansfield, *Crisis in Kirkuk*, esp. chs 11 and 12.

to Kirkuk would need to be more substantive and numerous than those currently foreseen for governorates in the constitution and the Provincial Powers Law (Law 21/2008). The powers assigned would further need a degree of legal entrenchment that would assure all parties of the relative security of their status—that is, they cannot simply be conferred by delegation from the centre through ordinary (and hence easily changeable) legislation or government decree. This could be achieved, for example, by a special status law with a clause stipulating that it can be changed only with a super-majority in the Council of Representatives. In addition, provision would need to be made for future changes in the status of Kirkuk. One could imagine either a new timeline (or road map) for the implementation of article 140 or a mixture of article 140 and provisions of the Law on the Formation of Regions (Law 13/2008), that is, a widening of the referendum options beyond the issue of Kirkuk joining the Kurdistan Region. This would not rule out any kind of special influence on the part of either the KRG or the central government in Kirkuk (as currently foreseen under option 4 of the UNAMI report), but might be better conceived of as special relationships that different communities within Kirkuk might want to enjoy with ‘outsiders’, including, possibly, an option for the Turkoman community to have a formal relationship with Ankara.

An all-important element in achieving an interim settlement that is sustainable and involves mechanisms for final status determination would be the involvement of local Kirkukis in the process. Political elites from the province have shown not only remarkable appetite for a settlement but also maturity and capacity to reach agreement on how to govern themselves, most notably in the April 2009 Berlin accords. Yet it is not only the question of local governance institutions (i.e. power-sharing arrangements) which needs to be decided locally. Equally important is the question of which policy areas the communities agree lend themselves to exercising powers locally. This involves issues of local administrative capacity (which can be developed) and issues of whether specific competences are exercised jointly by all communities (through power-sharing arrangements) or separately (through community self-governance). The protracted, yet eventually successful, process of devolution of powers in Northern Ireland over a twelve-year period from the original agreement in 1998 illustrates the need to operate on the basis of the principle of consensus not merely between centre and disputed territory but also within the disputed territory itself—and the difficulties of operating in this way. Finally, local communities must be given a say in determining the final status of Kirkuk at the end of an interim period. This should not be limited to simply a local vote in a referendum. It requires local input into its very modalities: when the referendum is held, whether its date is to be predetermined or subject to conditions set for it, whether it can be triggered, further postponed, or abandoned at a specific point and by what procedure, who decides when about what options should be put to the voters, and so on. Again, the important point here is about achieving consensus among the local parties that informs processes that have a significant impact on their lives. While not denying the fact that local parties are not the only ones with a stake in the future of Kirkuk, they are the

ones most immediately affected by it and their interests therefore deserve special consideration—certainly more than they have received to date.

The main advantage of an interim settlement in which Kirkuk would enjoy a special status within Iraq would be that this option just might be acceptable to the main parties involved. For Baghdad, it would offer an arrangement in which Kirkuk would essentially remain under central control, even though it would have enhanced competences compared to ordinary governorates. For Erbil, it would not preclude the future option of Kirkuk joining the Kurdistan Region, thus keeping a crucial Kurdish aspiration alive and offering an important bargaining chip with the central government on other issues equally, if not more, important to the Kurds. It would also ensure that the relationship with Turkey remains intact. Finally, for Kirkuk itself a special interim status would have some important future-proofing qualities: for it would create arrangements that would give Kirkukis real powers independent of either the KRG or the central government, and it would facilitate local governance by establishing power-sharing mechanisms that would enhance the quality of democracy experienced by its residents. It would be difficult to see how any future change of status could legitimately take away either powers or power-sharing institutions from Kirkuk, regardless of whether it became a region of its own, joined the Kurdistan Region or simply at some point had its special status made permanent.

