Governing (in) Kirkuk:
Resolving the Status of a Disputed Territory in post-American Iraq[1]

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1. Introduction

Kirkuk has been among Iraq's most intractable problems. A diverse province and city with three main ethnic groups—Arabs, Kurds, and Turkomen—who all 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. Supposedly sitting on approximately 10% of Iraq's oil and gas reserves, controlling Kirkuk, 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 those 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, i.e., 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 hydro-carbons law and constitutional reform. Beyond Iraq, Kirkuk matters to Turkey[3] 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,[4] including Turkey. Being, rightly or wrongly, seen 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 so the US, who cannot afford for Kirkuk to derail plans for the withdrawal of combat forces.

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. An agreement was reached between political representatives of Kirkuk in December 2007 on governance arrangements, they committed themselves further to genuine cooperation and power sharing in the

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[3] On the role of Turkey, cf., among others, Bülent Aras, "Turkey, Northern Iraq and Kirkuk", *Foreign Policy Bulletin* 5(2007): 6-9; Philip Giraldi, "Turkey and the Threat of Kurdish Nationalism", *Mediterranean Quarterly* 19(1)2008:33-41; International Crisis Group, *Turkey and Iraqi Kurds: Conflict or Cooperation?* (Middle East Report N°81), Brussels: International Crisis Group, 2008; Robert Olson, "Relations among Turkey, Iraq, Kurdistan-Iraq, the Wider Middle East, and Iran", *Mediterranean Quarterly* 17(4)2006: 13-45; Robert Olson, "Turkey's Policies Toward Kurdistan-Iraq and Iraq: Nationalism, Capitalism, and State Formation", *Mediterranean Quarterly*, 17(1)2006: 48 – 72; Thanos Veremis, "The transformation of Turkey's security considerations", *The International Spectator: Italian Journal of International Affairs* 40(2): 75 – 84.
[4] Cf. Ted Galen Carpenter, "Middle East Vortex: An Unstable Iraq and Its Implications for the Region", *Mediterranean Quarterly* 20(4):22-31.

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 Art. 23 of the 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 that it should become the death knell of 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 UNAMI proposals of 2009, 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 and remedies associated with territorial disputes, I give a broad overview of the three principal forms in which such disputes occur and illustrate this with pertinent examples of past disputes and contextualise their settlement in the broader conflict resolution literature, using this as an 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 contextualises the situation in Kirkuk. Based on personal interaction with key interlocutors from all of Kirkuk's communities and key Iraqi and external players and analysts,[5] I examine the three (im-) balances of grievances, demands and power in Kirkuk that are 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 UN Report on Disputed Territories, I offer some observations on a possible compromise and the benefits it might offer to all the parties involved.

2. Disputed Territories: Conceptualising Stakes and Remedies

Territorial disputes occur in principally 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, such as Nazi German claims to the *Sudetenland* in inter-war Czechoslovakia, Argentinean claims to the Falkland Islands, or 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.[6]

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[5] 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 could thus experience first-hand as part of a small mediation team—the Initiative on Conflict Prevention through Quite 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 (February 2009), Colchester (February 2009), Istanbul (April 2009), New York (April 2009), Exeter (May 2009), and London (June and July 2009).

[6] 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

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, such as in past and present conflicts in Sri Lanka, Sudan, Quebec, Kosovo, and Abkhazia and South Ossetia. Here, too, outcomes differ. 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 which 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, such as in Crimea, Gagauzia, or Aceh. Disputes between states and between states and domestic challengers can also overlap when territorially based self-determination movements do not seek independent statehood but unification with what they consider their ancestral homeland or kin-state. In some cases, such as in the Åland Islands, South Tyrol, Northern Ireland, and Republika Srpska, compromise solutions were found, occasionally with heavy-handed international mediation, that maintain the territorial integrity of the challenged state while providing for a high degree of 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 whom claimed the district as part of their territory. Eventually, and international arbitration ruled that Brčko be held in condominium, thus 'belonging' simultaneously to the two Entities (Republika Srpska and 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 who 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, and thus 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.

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in 1920 and had sought to regain ever since. The Awards were part of joint German and Italian strategy to consolidate their alliance with Hungary.

This latter 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. An empowering of the Kurdistan Region in Iraq by 'winning' the territorial dispute over Kirkuk and the political and economic prize that this would entail 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 that each of the states (Iran, Syria, and Turkey) with relatively large Kurdish communities has with them. 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 Turkomen), a dispute between Baghdad and Erbil, and a dispute that draws in regional powers (principally Turkey). What is at stake is 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 transportation 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 group identity-defining moments, etc.). These, individually and collectively, are what is at stake for the disputants. The higher the stakes, the more likely is it that disputants' positions will become firmly entrenched and the more difficult 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.[7] 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 decentralisation. 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 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

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[7] 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, 1-25. The same definition is used in Z. Csergo and S. Wolff 'Regions of Nationalism in Europe', APSA 2009 Toronto Meeting Paper. Online. Available SSRN: <http://ssrn.com/abstract=1449082> (accessed 10 February 2010).

four dimensions—political, economic, military, and territorial.[8] Ulrich Schneckener reaches similar conclusions in a study that is focused on European consociational democracies.[9] Such specific conceptual and empirical links between consociation and federation had already been established by Arend Lijphart 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."[10] 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 sharing within central or federal institutions.[11] Such arrangements prevent majoritarianism by the dominant nationality, and make it more likely that minorities have a stake in the state." 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."[12]

This phenomenon of TSG arrangements occurring in combination with other conflict resolution mechanisms has been identified by several authors over the past few years.[13] Analytically, it is possible to explain both why such multi-dimensional institutional arrangements emerge and why they might have a greater chance of success. 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 to assess their longer-term success.

Leaving aside the rather more trivial condition that TSG is only of real benefit to minorities that live territorially concentrated,[14] two characteristics are particularly important in determining the

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[8] C. Hartzell and M. Hoddie, 'Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management', *American Journal of Political Science*, 47(2)2003: 318-32 and C. Hartzell and M. Hoddie, *Crafting Peace: Power-sharing Institutions and the Negotiated Settlement of Civil Wars*, University Park, PA: Pennsylvania State University Press, 2007.

[9] U. Schneckener, 'Making Power Sharing Work: Lessons from Successes and Failures in Ethnic Conflict Regulation', *Journal of Peace Research*, 39(2): 203-28.

[10] A. Lijphart, 'Consociation and Federation: Conceptual and Empirical Links', *Canadian Journal of Political Science*, 12(3)1979: 499-515, at 506.

[11] 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, forthcoming.

[12] M. Weller and S. Wolff 'Recent Trends in Autonomy and State Construction', 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. 262–70, here 269.

[13] Cf. C. Kettley, J. Sullivan, and J. Fyfe, 'Self-determination Disputes and Complex Power Sharing Arrangements: A Background Paper for Debate', Cambridge: Centre of International Studies, 2001. Online. Available WWW <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 Power Sharing in Theory and Practice*. Leiden: Martinus Nijhoff, 2008, xii-xvii; S. Wolff, 'Complex Power-sharing and the Centrality of Territorial Self-governance in Contemporary Conflict Settlements', *Ethnopolitics* 8(1)2009, 27-45; S. Wolff, 'Peace by design? Towards 'complex power sharing'', in R. Taylor, ed., *Consociational Theory: McGarry and O'Leary and the Northern Ireland Conflict*. London: Routledge, 2009, 110-121. These authors refer to the phenomenon, albeit in somewhat different ways, as 'complex power sharing'. 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 C. Hartzell and M. Hoddie, *Crafting Peace: Power-sharing Institutions and the Negotiated Settlement of Civil Wars*, University Park, PA: Pennsylvania State University Press, 2007.

[14] See, for example, 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

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 exhibit 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 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, destabilizes 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, seeing them as being abused to discriminate against other population groups.[15]

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 geographic and population size, natural resource availability, strategic location, and 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. Power-sharing institutions, however, 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 self-governing entity in ways that maintain a political process of dispute management (rather than resurgence of violence) and enable to state- and TSG-preserving outcomes (rather than state break-ups or abrogation of TSG arrangements).[16] 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) provide for central-level power sharing, given the predominance of England within the UK. On the other hand, the Comprehensive Peace Agreement for Sudan and the

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conflict regulation', in S. Choudhry, ed., *Constitutional Design for Divided Societies: Integration or Accommodation?* Oxford: Oxford University Press, 2008, 41-88; D. Treisman, *The Architecture of Government: Rethinking Political Decentralization*. Cambridge: Cambridge University Press 2007; and S. Wolff, 'Peace by design?'.

[15] This problem can be, and frequently is, also addressed qua strong state-wide human and minority rights legislation and institutions empowered to enforce it.

[16] Yash Ghai observes correctly that "[a]utonomy 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 Darby, J. and McGinty, R. eds., *Contemporary Peacemaking: Conflict, Violence, and Peace Processes*. Basingstoke: Palgrave, 2003, 184-193, here 187-8.

constitution of Iraq of 2005 both provide consociational institutions to include 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.[17]

Applying such a conflict resolution perspective to Kirkuk allows focusing 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 disputes 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 decentralisation. 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 (i.e., between the communities in Kirkuk) and possibly at the centre or, if applicable, the next higher 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—i.e., the nature of the political-institutional relationship along the above four parameters and the nature of its legal entrenchment—then it is that they, unsurprisingly, are highly context-dependent. What the disputants have at stake is informed by their grievances and in turn shapes their demands. The ability to realise these demands is a function of the balance of power between the disputants which is partly determined 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 is a particular group, how compact does it live) and geography (e.g., how clearly defined and contiguous is the disputed territory). Structural factors, in turn, also shape disputant 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 (e.g., Serbs in Bosnia and Herzegovina or Kurds in Iraq). A smaller group that does not even constitute a majority in the disputed territory will want to ensure it has such a say at the local level and can retain a maximum amount of control over its own affairs qua forms of corporate (or cultural) autonomy and power sharing in order to make territorial self-

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[17] The (sad) caveat here is, of course, that the formal existence of institutions does not automatically translate into their proper functioning.

governance meaningful, rather than turn it into 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 than shuttle diplomacy; well-resourced, outcome-driven international mediation biased against secession enables and constrains conflict parties in different ways than talks between conflict parties facilitated by under-resourced, yet impartial NGOs; negotiations which involve only one principal negotiator on each side offer different opportunities for settlement than 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 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 negotiation table.

3. Grievances, Demands and Power in Kirkuk: Three (Im-) Balances[18]

The population of Kirkuk is composed of three major ethnic groups—Arabs, Kurds, and Turkmen. The relative size of these population groups can only be estimated at the moment as no reliable census has been conducted since 1957. The UN currently estimates the total population of Kirkuk at just over 900,000 people.[19] Of these, just over half are estimated to be Kurdish, while Arabs and Turkomen constitute roughly 35% and 12% of the population, other communities around 1%.[20]

Part of the problem in Kirkuk today is that over time the population of Kirkuk has significantly shifted as a result of Saddam Hussein's Arabisation campaign which involved the 're-districting' of Kirkuk (i.e., the detachment of several districts from Kirkuk governorate), the expulsion of Kurds and, albeit to a lesser extent, Turkomen, and the settlement of Arabs, primarily Shia' from the south of Iraq. These historic injustices have been recognised legally in the post-Saddam period. Initially, Article 58 of the Transitional Administrative Law of 2004 (TAL) provided 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 addressing past wrongs, conducting a census and passing a permanent constitution. The 2005

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[18] 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):433-443; Aram Rafaat, "Kirkuk: The Central Issue of Kurdish Politics and Iraq's Knotty Problem", *Journal of Muslim Minority Affairs* 28(2): 251-266; and David Romano, "The Future of Kirkuk", *Ethnopolitics* 6(2):265-283.

[19] Inter-agency Information and Analysis Unit, Kirkuk Governorate Profile, http://www.iauiraq.org/reports/GP-Kirkuk.pdf (accessed 19 March 2010).

[20] Election results from the 2010 parliamentary elections confirm this partially, inasmuch as Kurdish parties obtained just over half of all votes cast.

constitution reaffirmed the provisions of Art. 58 of the TAL, and set a deadline for the conclusion of this process by 31 December 2007. From this, further problems arose. Return migration of Kurds is seen by Arabs and Turkomen 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 Arabisation policies. While Kurdish return migration is not universally popular among all Kirkuk Kurds either, with some of them fearing a deterioration of inter-ethnic relations, Kurds in Kirkuk and the Kurdistan Region are more or less unanimous in their condemnation of the delay in the referendum process under Art. 140 of the Iraqi constitution. All three communities in Kirkuk thus have very different narratives of past present suffering and injustices, narratives, moreover, in which the respective other communities are more often than not perpetrators rather than fellow victims. Grievances based in past victimisation, 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 completely anathema and synonymous with future discrimination and marginalisation. Even a Kirkuk outside the Kurdistan Region but one that 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 for a Kirkuk governorate with only the limited powers foreseen under the Provincial Powers Act (Law 21/2008) and for internal power-sharing arrangements that ensure the equal distribution of seats in the (provincial) assembly and of senior posts in the administration on an equal basis between Arabs, Kurds, and Turkomen. 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.

Kurds, on the other hand, in their majority consider Kirkuk as an inalienable part of the historic and geographic Kurdish region and point to Article 140 of the 2005 constitution that 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 Baghdad's procrastination on the referendum date and modalities does not, from a Kurdish perspective, bode well 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 rather substantial concessions to Arabs and Turkomen along those lines. As far as Kirkuk's future status is concerned, Kurdish views are more diverse. While local KDP and PUK officials 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 PUK and 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, but advocate a Kirkuk region with close links to, but not controlled by, either Baghdad or Erbil.

The position of the different Kurdish factions is 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 of the Kurds on 'recovering' Kirkuk is the strategic partnership that has grown between Erbil and Ankara. Not only is Turkey one of the main foreign investors in the Kurdistan Region, but potentially also an important evacuation route for its considerable oil and gas reserves, thus 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 in Baghdad (and hence the need for potentially costly concessions on other fronts) and locally in Kirkuk (and hence the possibility of future instability and insecurity in an enlarged Kurdistan Region).

The smallest among Kirkuk's three main communities are the Turkomen 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, Turkomen are wary of domination from either Baghdad or Erbil and have advocated to date for a strong Kirkuk region in which they are protected qua 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 into the political process of the province.

These potentially explosive local dynamics to one side, Kirkuk also has become a symbol of the contentious nature of the broader Iraqi political process and has become entangled 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 Turkomen alike, it is also presumed to sit on about 13% of Iraq's hydrocarbon reserves, and determining its political status within Iraq and its internal governance arrangements goes to the heart of the 2005 constitution and some of the reforms proposed to it. 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 marginalisation of all local communities in Kirkuk, and to their instrumentalisation by the power brokers in Baghdad and Erbil. What is more, the international community has largely come to accept this structure, and endorsed, and 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.

In turn, this centralisation of the Kirkuk settlement process has led to 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 Turkomen 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 by committing themselves to 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, this is further complicated by the rivalry between KDP and PUK and by the emergence of a third major Kurdish political party, Gorran, which, while it has 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'a alliance,

Iraqiya, received in the 2010 polls indicates a potential convergence of Arab and Turkomen interests, as well as a hardening of their opposition to a referendum and subsequent inclusion of Kirkuk into the Kurdistan region. With Baghdad and Ankara equally opposed, and Washington more concerned with rapid exit and a modicum of at least short-term stability afterwards,[21] the balance of power over Kirkuk is now strongly stacked against Kurdish aspirations.[22]

4. 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, positions to become ever more entrenched and radicalised. 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 Art. 140 and one that is informed by the UNAMI proposals of April 2009 on disputed territories. In the following two sections I discuss these two sets of parameters 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.

4.1. 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 Act (Law 21/2008). Under this option, the legislative body of Kirkuk—the Provincial Council—would have powers extending to electing and removing 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

[21] Brendan O'Leary has emphasised the need for a responsible American exit that ensures a sustainably stable Iraq after August 2011. Cf., e.g., Brendan O'Leary, "Departing responsibly", *Dissent* 56 (2): 30-35. Available http://www.dissentmagazine.org/article/?article=1406. Accessed 19 March 2010.

[22] 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 (January and December 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 one rival party), to 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 seats commanded in the Council of Representatives and in terms of intra-Kurdish party-political divides.

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, 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 advisors. [23]

As an autonomous region pursuant to the Iraqi Constitution (Article 119) Kirkuk would enjoy significantly more legislative and executive powers than as a governorate. The 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 will be a single-governorate region, constitutionally it is also possible that Kirkuk forms 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 Art. 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, Art. 140 has a number of specific implications that set it apart from a similar outcome under the procedure possible under Article 119 and Law 13/2008. First, Art. 140 is a constitutional provision, forcing, if implemented a decision on the status of Kirkuk, while the Art. 119—Law 13/2008 procedure is only triggered under very specific conditions. In other words, except for the provisions of Article 140, the Constitution, thus, does not make any arrangements for a governorate to join an existing region. The Constitution does, however, recognise, implicitly and explicitly, the existence of the Kurdistan Region but does not specifically define its borders. This means that an enlarged Kurdistan Region, pursuant either to Art. 140 or Art. 119—Law 13/2008, would enjoy the same constitutional protections as the existing one. The main difference between these 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

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[23] At present, and until provincial elections are held in Kirkuk pursuant to Local Elections Law (esp. Art. 23), the Provincial powers Act does not yet apply, but Kirkuk is governed under the provisions CPA 71 applies with regard to local legislative and executive powers.

region, its authorities, and the mechanisms for exercising such 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.

4.2. The UN Report on Disputed Territories

The UNAMI Report on disputed territories was released to KRG and central government officials in April 2009 and did not receive a particularly enthusiastic welcome by 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. If nothing else, the way in which UNAMI approached the possible resolution of the Kirkuk dispute indicates that the perception is of this being achievable principally as a bargain between Baghdad and Erbil, and as such is also in line with 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 hydro-carbons law and constitutional reform, among others. Crucially, the key issue for UNAMI in the recommendations on Kirkuk appears to have been maintaining its perceived impartiality—by producing a report that would be equally rejected by both sides.[24] According to UNAMI, there are four possible options for resolving the dispute over Kirkuk.[25]

The first option is a clarification of Art. 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 (i.e., Erbil and Baghdad) could agree on the modalities of a referendum, this would not, in fact, offer any solution itself: Kirkuk could join the KRG or not, if the referendum goes the way of the Kurds, arrangements would need to be determined for the status of Kirkuk within the KRG, and if the referendum goes 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 fixing 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 to join, or become, a region. As an 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 for such a major concession on their part. Yet again, even if such a deal was possible, the marginalisation 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 Turkomen are unlikely to do so.

The third option offered in the UNAMI Report is Dual Nexus, i.e., jurisdiction over Kirkuk shared by the KRG and the central government. Under this option, Kirkuk's status could be either that of a

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[24] Conversation with ICG official. Istanbul 3 April 2009.
[25] Apparently, there was also consideration of a fifth option—dividing Kirkuk—but this was dropped from the final version of the UNAMI Report and instead emphasis was placed on keeping Kirkuk Province as a single entity.

governorate or of a region, but it would not be part of the Kurdistan Region. The powers to be exercised 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 stellar 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 is if the entity is self-governing and the two condominium powers exercise 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 could possibly 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 mid-term, for resolving the status of Kirkuk without destabilising Iraq.

5. A Possible Compromise and Way Forward

As noted in the introduction, resolving territorial disputes 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. Any such compromise solution 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 would have some potential currency if one assumes that there is little life left in the Art. 140 process, at least not as it currently stands. Special status could then be conceived of also as interim status,[26] an idea floated by the ICG who proposed a ten-year moratorium on settling 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

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[26] 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. Cf. O'Leary, *How to Get Out of Iraq with Integrity*, esp. pp. 47-60 and Anderson and Stansfield, *Crisis in Kirkuk*, esp. Chapters 11 and 12.

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 provides for a referendum on Bougainville's future political status among Bougainvilleans and within a period of between 10 to 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 having 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, thus, would need to include power-sharing arrangements like those foreseen under Art. 23 of the Provincial Elections Law, but extending beyond simply distributing jobs and posts among the key power brokers locally. Any powers assigned to Kirkuk would need to be more substantive and numerous than what is currently foreseen for governorates in the constitution and the Provincial Powers Act (Law 21/2008). The powers assigned would further need a degree of legal entrenchment that would assure all parties of relative security of their status, i.e., not simply delegation from the centre qua ordinary (and hence easily changeable) legislation or government decree. For example, this could be regulated in a special status law with a clause that the law can only be changed with a supermajority in the Council of Representatives. In addition, provision would need to be made for future changes in the status of Kirkuk. One could either imagine a new timeline (or roadmap) 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), i.e., widening the referendum options beyond the issue of Kirkuk joining the Kurdistan Region. This would not rule out any kind of special influence 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.

All important 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 need 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 (qua power-sharing arrangements) or separately (qua 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 to need for, as well as difficulties of, operating on the basis of the principle of consensus not merely between centre and disputed territory but also within the disputed territory itself. 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 is the referendum held, is its date pre-determined or are conditions set for it, can it 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, etc. Again, the important point here is about achieving consensus among the local parties that informs processes that have a significant impact on their life. 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, and 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 option would be that this 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 as it would create arrangements that would give Kirkukis real powers independent of either the KRG or the central government and facilitate local governance by establishing power-sharing arrangements 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 becomes a region of its own, joins the Kurdistan Region or simply at some point has its special status made permanent.