



Reviving UN Mediation on Iraq's Disputed Internal Boundaries

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Principal Findings

What's new? Following parliamentary and regional elections this year, Baghdad and Erbil are forming new governments. This presents a fresh opportunity to settle longstanding disputes between them. One of their principal disputes concerns the status of disputed territories, so defined in the Iraqi constitution.

Why does it matter? In response to a Kurdish independence referendum in 2017, Iraqi forces re-took disputed territories from Kurdish parties' control. This event shows that the conflict over Kirkuk and its oil fields remains explosive and could reignite without efforts to resolve it.

What should be done? The UN should revive its stillborn mediation effort of a decade ago and work with regional and international partners to bring the two sides to the table and settle the issues dividing them. In particular, it should work to reach a permanent deal on the disputed territories.

Executive Summary

Amid the Middle East's violent upheavals, Iraq has finally navigated to calmer waters. While Islamic State in Iraq and Syria (ISIS) remnants continue to trouble rural areas north of Baghdad, the group has largely been defeated and dispersed from its territorial strongholds. Despite a low participation rate and multiple claims of fraud, parliamentary elections in May produced the beginnings of a new government five months later. The Kurdish region also held elections and a government there is likewise in formation. The new administrations in Baghdad and Erbil and the appointment of a new special representative of the UN secretary-general for Iraq provide an opening to move boldly on one of Iraq's most enduring and divisive issues: the status of disputed territories and the determination of the Kurdish region's borders. The UN Assistance Mission in Iraq (UNAMI), which conducted a comprehensive study of the disputed districts in 2008-2009 as a stepping stone toward eventual negotiations, is best placed to lead a fresh initiative toward a political settlement on the disputed territories consistent with the Iraqi constitution.

The conflict encompasses an area with a rich blend of ethnic and religious communities, but what lies underneath also matters: vast oil and gas deposits, including Iraq's first discovered oilfield, in and around the city of Kirkuk. The Kurds, who lay claim to Kirkuk and other disputed territories given their large Kurdish population, want to annex these areas to the Kurdish region. Successive governments in Baghdad have strongly resisted this, aware that the Kurdistan Regional Government (KRG) could use Kirkuk's oil to finance a viable independent Kurdish state. The conflict could therefore become one over the territorial integrity of Iraq.

It need not be. Regardless of the Kurdish region's final political status, given its designation in the Iraqi constitution as a federal region it must have an agreed-upon internal boundary with the rest of Iraq. As long as Baghdad and Erbil can find a formula for sharing Iraq's oil revenues, including those deriving from Kirkuk, that boundary's location becomes less politically sensitive. Indeed, in its study on the disputed territories UNAMI discovered that many people in these areas would prefer an "in-between" status for these districts that would preserve their diversity and intercommunal harmony. This would require a series of local power-sharing and joint security arrangements, as well as an overall revenue-sharing deal between the federal government and the KRG.

Domestically, support for a renewed attempt at settling the boundary question is growing. Iraq's new president, Barham Salih, has signalled his intent to address the matter, and parliamentarians with Muqtada Sadr's winning Sairoun list have visited the Kurdish region to initiate discussions. They will need outside support.

The regional environment is also conducive to this effort. When the Iraqi army retook the disputed territories from Kurdish forces in October 2017, the federal government had the support of Iran, Turkey, European states and the U.S., all of which had publicly warned the KRG not to proceed with a Kurdish independence referendum the previous month, viewing it as a step toward Iraq's breakup. Their support for Iraq's territorial integrity has translated in the past into support for efforts to

bring Baghdad and Erbil to the table on the disputed territories question, and should do so again.

In assuming this task, the incoming UNAMI chief, Jeanine Hennis-Plasschaert, should start by testing the political waters, increasing staff dedicated to the issue and developing a strategy for addressing it. In the meantime, the UN should help defuse the fallout between Baghdad and Erbil from the independence referendum, when the federal government and Iran took punitive measures against the Kurdish region by banning international flights and blocking Kirkuk oil from flowing through the Kurdish pipeline to Turkey. The government has reversed some of these measures, but talks on remaining ones are ongoing and the UN can shepherd them to a successful conclusion. Next, UNAMI should start negotiations focusing on “low-hanging fruit”, such as joint security mechanisms in the disputed territories that would prevent ISIS from exploiting security gaps between contending military actors. Ultimately, UNAMI should focus the two sides on the big questions: revenue sharing (not discussed in this report) and the status of the disputed territories.

The alternative is letting the issue linger and hoping that it does not turn violent again. Yet the Kurdish aspiration to incorporate the disputed territories into the Kurdish region is undiminished, as is Baghdad's determination not to give them up. Another violent spasm is just a matter of time, as predictable as the swing of a pendulum. Negotiating a political settlement is a sensible move now that the local and international environments are both conducive to a new UN-led initiative.

Baghdad/Erbil/Brussels, 14 December 2018

Reviving UN Mediation on Iraq's Disputed Internal Boundaries

I. Introduction

The conflict over the status and boundaries of Iraq's Kurdish region dates from the birth of the Iraqi state almost a century ago. It intensified after oil was found in Kirkuk in the late 1920s and a Kurdish national movement arose in the 1960s that challenged Baghdad's rule over what Kurds claimed constituted "Kurdistan" in Iraq, including Kirkuk and its oil fields. An autonomy agreement negotiated in 1970 established a Kurdish region in Iraq, but failed to demarcate its boundaries. This left the status of what later became known as the disputed territories – a wide territorial belt of ethnically diverse districts situated between "Arab" and "Kurdish" Iraq, stretching from the Iranian border in the central east to the Syrian border in the north west – unresolved.¹

Before 2003, this conflict played out in two ways. One was a deliberate effort by successive governments to replace the area's non-Arab population incrementally with Arabs. The other was a destructive cycle of insurgency and counter-insurgency, which culminated in the wholesale slaughter of rural Kurds at the end of the Iran-Iraq War (1980-1988), especially around Kirkuk. Following a Kurdish uprising in the wake of Iraq's defeat in Kuwait in 1991, the U.S. and its allies extended protection to the Kurds. This led Iraqi forces to withdraw from the north, but not from Kirkuk, which they would hold for the next twelve years; the line of control between Iraqi and Kurdish forces became known as the "Green Line". Following elections in 1992, the two main Kurdish rebel groups – the Kurdistan Democratic Party (KDP) of Masoud Barzani and the Patriotic Union of Kurdistan (PUK) of Jalal Talabani – established the Kurdistan Regional Government (KRG) in the de facto autonomous region.

The 2003 U.S. invasion encouraged the Kurdish parties to believe that Kirkuk and its oil was theirs for the taking. They had sided with the U.S. and possessed the only organised military force apart from the Iraqi army, which the U.S. had just dismantled. They gained prominent positions in U.S.-backed governments in Baghdad and used chronic dysfunction in the capital to facilitate their ascent and to monopolise Kirkuk and other disputed territories with U.S. support. Over time, as the U.S. began the long process of rebuilding Iraq's armed forces, Kurdish militias were forced to share military control of the disputed territories with the army, including through a joint security mechanism.²

They encountered more serious obstacles in trying to annex the disputed territories. The Kirkuk oil fields stayed under Baghdad's control, again because the U.S. wanted it so. And, hoping to translate their political role in Baghdad into territorial gains in the north, Kurdish leaders discovered instead that a constitutional process

¹ Apart from Arabs and Kurds, these areas are home to a rich mix of ethnic and religious minorities: Turkmen, Yazidis, Shabak, Chaldo-Assyrians and others.

² Crisis Group Middle East Report N°88, *Iraq and the Kurds: Trouble Along the Trigger Line*, 8 July 2009.

they had helped design in support of their ambition failed to deliver.³ They had hoped that the three-stage process outlined in Article 140 of the constitution – stipulating “normalisation” (ie, de-Arabisation and Kurdish return), a population census and a referendum on the status of the territories – would hand them the prize they sought. Instead, while they enjoyed significant veto power over Baghdad’s policies, as a minority in Iraq they were unable to gain control of these areas.

Many years of frustration followed, as a succession of Iraqi governments expressed support for Article 140 but, exploiting the vagueness of terms such as “normalisation”, “census” and “referendum”, failed to implement it.⁴ The constitution’s December 2007 deadline for this process passed without significant progress. All the same, Baghdad’s weakness after 2003 allowed the Kurdish parties and their militias to exercise near-total political and security control over the disputed territories, Kirkuk included, for fourteen years.

The Islamic State of Iraq and Syria’s (ISIS) spectacular advances in 2014 precipitated the collapse of the Iraqi army in the north. This allowed Kurdish militias to seize full control of the disputed territories, including the Kirkuk oil fields. Yet the reversal came only three years later, in the wake of ISIS’s military defeat, after Masoud Barzani, the Kurdish region’s president, staged an independence referendum. The September 2017 vote proved internally divisive and met with near-universal international opposition. Most contentious was Barzani’s extension of the referendum to the disputed territories in an apparent attempt to leapfrog the stalled Article 140 process. His move triggered an internationally supported counter-action by the Iraqi government of Prime Minister Haider al-Abadi, who sent forces north in mid-October

³ Kurdish parties used their influence in post-2003 Baghdad to shape the constitutional process. They were instrumental in drafting provisions on areas they claimed as part of the Kurdish region. Article 53(A) of the 2004 Transitional Administrative Law (TAL), the U.S.-drafted interim constitution, states: “The Kurdistan Regional Government is recognised as the official government of the territories that were administered by that government on 19 March 2003 in the governorates of Dohuk, Arbil, Sulaimaniya, Kirkuk, Diyala and Neneveh”. While this does not define the disputed territories as such, it suggests they are territories that lay outside the Kurdistan region prior to the regime’s ouster. Moreover, Article 58(A) refers to “certain regions, including Kirkuk”, in which the “previous regime” carried out “practices in altering the demographic character ... by deporting and expelling individuals from their places of residence, forcing migration in and out of the region, settling individuals alien to the region, depriving the inhabitants of work and correcting nationality”. And Article 58(C) reads, referring specifically to disputed territories: “The permanent resolution of disputed territories, including Kirkuk, shall be deferred until after these measures [reversal of Arabisation mentioned in Articles 58(A) and (B)] are completed, a fair and transparent census has been conducted and the permanent constitution has been ratified. This resolution shall be consistent with the principle of justice, taking into account the will of the people of those territories”. Article 140 of the 2005 constitution adopts the TAL’s Article 58 in its entirety and states that it must be implemented by 31 December 2007.

⁴ Examples: Neither Article 58 of the TAL nor Article 140 of the constitution specifies what type of referendum must be held and who should vote in it; nor does either article indicate whether it should be held in all the disputed territories or per district, or otherwise. Nor do these articles say whether the census should take place in all of Iraq or only in the disputed territories.

to retake Kirkuk and most of the other disputed territories.⁵ This military response has set the stage for future conflict.

Decisive international action to help resolve the status of the disputed territories is long overdue. Following the adoption of the constitution and new elections in late 2005, negotiations between Baghdad and Erbil faltered, with profound differences over the definition of disputed territories, the constitutional process and the possible terms of a settlement. When the December 2007 deadline passed without any sign of progress, the UN Assistance Mission in Iraq (UNAMI) launched an ambitious initiative to mediate the conflict. It first conducted a comprehensive study of the socio-economic, political and administrative conditions in each disputed district, releasing a private report to principal stakeholders in April 2009.⁶ Then the initiative died amid electioneering ahead of local and national polls.⁷

Today, with ISIS largely defeated and new elected governments in formation in both Baghdad and Erbil, a negotiated solution on the disputed territories has better prospects. UNAMI should revive its mediation initiative based on its seminal 2009 study. Acknowledging the opportunity, in 2018 the outgoing UN secretary-general's special representative, Ján Kubiš, contracted local researchers to update the 2009 study's empirical data to reflect changes that have taken place during the past ten years.

This report highlights the latest developments in the disputed territories and provides an analytical basis for international re-engagement with the vexing question of Iraq's disputed internal boundaries (DIBs). It is based on interviews with the principal international, national and regional policymakers, as well as local decision-makers in the disputed territories. It covers the central (Kirkuk) and south-eastern parts of the disputed territories (Tuz Khurmatu and Khanaqin) that have experienced the worst turbulence in the past few years.⁸

⁵ Crisis Group Middle East Briefing N°55, *Oil and Borders: How to Fix Iraq's Kurdish Crisis*, 17 October 2017. The army takeover of Kirkuk was enabled by the decision of a powerful PUK faction not to put up resistance. As a result, Kurdish defences crumbled.

⁶ The effort was led by Staffan de Mistura, the UN special representative of the secretary-general for Iraq at the time, and Andrew Gilmour, his deputy.

⁷ The best description of the UNAMI study is *Iraq's Disputed Territories: A View of the Political Horizon and Implications for U.S. Policy*, published by the U.S. Institute of Peace in March 2011. The author, Sean Kane, had been a UNAMI staff member (2006-2009) who contributed to the study. See also Crisis Group Report, *Trouble Along the Trigger Line*, op. cit., pp. 7-10. Crisis Group gained access to the UNAMI study via one of the parties who received a copy of it in 2009. In 2018, few senior Iraqi policymakers appeared to remember or otherwise be aware of the study, and did not know how to obtain a copy, while expressing great interest in it. Crisis Group interviews, Baghdad and Erbil, January and October 2018.

⁸ For Crisis Group's analysis of one Ninewa district, see Crisis Group Middle East Report N°183, *Winning the Post-ISIS Battle for Iraq in Sinjar*, 20 February 2018.

II. The Disputed Internal Boundaries Question in a Nutshell

Kurdish leaders have claimed the disputed territories in northern Iraq ever since colonial powers, in their view, cheated them out of an independent state at the end of World War I. A more sober reading suggests that a dispute existed only from the moment oil was found in Kirkuk in the 1920s, and became manifest no earlier than the Barzani-led Kurdish nationalist insurgency of the early 1960s.⁹ Nonetheless, the longstanding dispute has coloured relations between the central government and the Kurdish parties for over half a century. An effort to resolve it through a constitutional process after the 2003 U.S. invasion has been unsuccessful.

Article 140 of the 2005 constitution, which the Kurdish parties were instrumental in drafting, lays out a process for resolving the disputed territories' status with the aim of drawing a permanent boundary between the Kurdish federal region and the rest of Iraq. Kurdish parties envisioned it as a mechanism that would enable the "return" of the disputed territories to Kurdistan. Conversely, the central government saw it as a Kurdish attempt to appropriate an integral part of Iraq and destroy its territorial unity.¹⁰

Dysfunction in Baghdad, as well as the unwillingness of successive federal governments to embrace a Kurdish project to appropriate these territories, stymied progress. The deeper fear was that Kurds would use their relative post-2003 strength and leverage their tight bond with the U.S. to annex oil-bearing regions and declare an economically viable independent state that would rival the remaining Iraqi rump state. That was a red line for Baghdad, just as Kurdish leaders drew a red line under an implementation of Article 140 that did not see them gain control of these territories, or at least those parts with significant Kurdish populations and oil fields.

Other groups living in the disputed territories contest Kurdish narratives about the region's past or future. Iraq's Turkmen are a minority who fear domination by a more powerful force, whether the Iraqi federal or Kurdish regional government. They prefer a degree of autonomy from both through local power-sharing arrangements and joint security control in which they would participate. They reject the official designation of a given area as disputed if relatively few Kurds live there. For example, a local council member in the Saadiya sub-district of Diyala governorate, an ethnic Turkmen, declared:

⁹ To the extent that the colonial powers, Britain and France, promised to establish a Kurdish state – a claim that is disputed – the territory being contemplated for this lay in what today is Turkey and in its dimensions were a good deal smaller than the Kurdish-inhabited areas of Turkey, Iran, Iraq and Syria.

¹⁰ Iraq's first constitutional review (2007-2009) designated several articles of the constitution disputed, including Article 140, suggesting that they all be renegotiated. Kane, *Iraq's Disputed Territories*, op. cit. p. 11. Shiite Islamist parties, which held the political majority during the drafting process in 2015, agreed to include Article 140 and related articles favourable to Kurdish interests in exchange for Kurdish concessions on other issues, but they likely did so with the intention of using their political majority to ensure that it would never be implemented.

We live in mixed areas; you find people from all three main ethnic groups in every residential conglomeration Designating the disputed areas must be reconsidered because my area, for example, Al-Saadiya, does not have a significant Kurdish population. There is no justification for considering it disputed.¹¹

Yet Kurds claim that Saadiya, cleansed of its Kurdish population during previous regimes' Arabisation campaigns, is historically part of Kurdistan and must be restored to it.

The common Arab view of the "dispute" is starker still. A Sunni Arab council member of Qara Tepe sub-district in the same governorate said:

No territory can be disputed inside a united country. We can have a disagreement only about how to govern areas located on the boundary between the Kurdistan region, which itself belongs to Iraq and is not an independent state, and the rest of the country.¹²

This is the Arab nationalist view of Iraq as a single centralised state. But this group lost out in 2003 and again in the subsequent constitution-drafting process; they adamantly reject Article 140, in particular, which affects the areas in which they live.

In its extreme form, under Iraq's post-1958 republican regimes, the Arab nationalist view led to the forced removal of Kurds from their properties and the involuntary designation of Turkmen as Arabs in the population register and decennial headcount.¹³ Taken to its logical conclusion during a war with Iran (1980-1988) that the Saddam Hussein regime had initiated, Arabisation led to genocidal killings of Kurds (and some small minority groups that identified with the Kurds) in rural areas of the Kurdish autonomous region and in oil-bearing parts of what later became disputed territories.¹⁴

Today, the brand of Arab nationalism that propped up past republican regimes is waning, and Sunni Arabs have found themselves in a position of political weakness. The same council member proceeded to say:

The dispute is historical. We learned from the older generation that in the 1930s, and before, the Kurds were the main population in Qara Tepe and adjacent areas, and that Arabs came and confiscated the area after armed confrontations between the two sides. But this is history. We are living together now, and only need to accept each other and agree on rules of coexistence.¹⁵

Today, the local Arab population feels abandoned by a central government run by Shiite Islamist parties that believes it needs to take no proactive steps to hold on to the disputed territories and prefers to ignore the problem.¹⁶

¹¹ Crisis Group phone interview, Adnan Khalil Ismail, deputy speaker of Saadiya council and head of the Iraqi Turkmen Front in Saadiya, 14 March 2018.

¹² Crisis Group phone interview, Jabbar al-Lihaybi, Qara Tepe council member, 13 March 2018.

¹³ "Claims in Conflict: Reversing Ethnic Cleansing in Northern Iraq", Human Rights Watch (2004); and Roberta Cohen and John Fawcett, *The Internally Displaced People of Iraq* (Washington, 2002).

¹⁴ "Genocide in Iraq: The Anfal Campaign against the Kurds", Human Rights Watch, (1993).

¹⁵ Crisis Group phone interview, Jabbar al-Lihaybi, Qara Tepe council member, 13 March 2018.

¹⁶ A former Khanaqin provincial council member made this valid point. He said: "Unfortunately, the central government is the first to violate the rules and laws. It was never serious about finding a

For the Kurds, permanent formal control of the disputed territories remains an unrealisable aspiration, at least as long as Iraq, Iran and Turkey oppose the emergence of an economically viable Kurdish state. In October 2017, these states demonstrated their readiness to support or resort to military force to prevent such an eventuality, setting back Kurdish prospects of achieving independence by decades.¹⁷ This has left Kurdish parties with no option but to rebuild their strength, continue challenging federal and paramilitary control in the disputed territories whenever they can, and wait for a more conducive regional environment.

The referendum in September 2017 has left the PUK and KDP internally fraught and divided against each other in their approach to Baghdad. Each has a faction that supported the referendum and another faction that either publicly or quietly opposed it. The opponents within both the KDP and PUK, whose political stars have risen in the wake of the referendum's fallout, express readiness to engage in political negotiations with Baghdad over the disputed territories. The referendum's most ardent supporters within these two parties, by contrast, have a more uncompromising stance.¹⁸

After the Iraqi armed forces, aided by Shiite paramilitary groups, retook most of the disputed territories from Kurdish control in October 2017, some argued that Baghdad now controlled them permanently.¹⁹ Yet as the Kurds have not relinquished their claim to these areas, the army takeover merely marked the end of another cycle of contestation. "Control of the disputed territories is like a pendulum", a Turkish official said. "Hence the need for a political solution".²⁰

Baghdad and Erbil are not the only voices that matter in resolving the disputed territories' status. While both have a stake in the demarcation of a permanent boundary, the local population has an equally important stake in these territories' stability and prosperity. As long as the prospect of an imposed or negotiated solution remains distant, their best bet – as local politicians of all backgrounds have suggested – rests in a UNAMI-led process, consistent with Article 140, that delivers interim local security and power-sharing arrangements.

solution for the disputed territories. It only uses the issue as a political card to keep pressure on the sides for political gain. It refers to the constitution only when it serves its interests". Of course, the same accusation can be levelled at the KRG. Indeed, he proceeded to accuse the KRG: "They use the disputed areas issue as a way of dominating the Kurdish discussion. Kurds are more divided than any time in the past". Crisis Group phone interview, Ziyad al-Dalwi, former Diyala provincial council member, and a leader in the Kurdistan Islamic Union, 14 March 2018. For a description of how the KRG interpreted the constitution to advance its interests in the disputed territories, see Crisis Group Report N°120, *Iraq and the Kurds: The High-Stakes Hydrocarbons Gambit*, 19 April 2012, pp. 3-8.

¹⁷ An official of a Kurdish opposition party said: "We are now close to being back where we were in 1991. The mentality is the same, though; the only thing that is new is that we now have shiny buildings, hotels and restaurants". Crisis Group interview, Suleimaniya, January 2018. A senior Kurdish official agreed. "It's like the game 'Snakes and Ladders'", he said. "Today we're back down from 99 to one". Crisis Group interview, Erbil, January 2018.

¹⁸ Crisis Group interviews, Erbil, September 2018.

¹⁹ Crisis Group interviews, Baghdad, January 2018.

²⁰ Crisis Group interview, Ankara, January 2018.

III. Recent Developments in the Disputed Territories

The common threads in Iraq's disputed territories are the fact that the Kurdish region lays claim to them, their ethnically mixed population, and the presence of oil and gas. In reality, each of the fourteen districts that make up the disputed territories, spread over four governorates, has a different blend of peoples, cultures and economic challenges. Each of the three areas profiled here – Kirkuk, Khanaqin and Tuz Khurmatu – contends with competing armed actors, intercommunal hostility and tensions with Baghdad. These issues will all complicate future negotiations. The UNAMI study acknowledged this diversity by examining the specific characteristics of each area separately. Any new effort to settle the disputed territories issue will likewise have to account for divergent needs and problems at the local level.

This should be possible. Conversations with political figures and ordinary citizens in the disputed territories consistently suggest that most want a stable settlement that benefits all local communities, achieved through dialogue and negotiation, more than they want a change to the territories' official status.²¹ Despite the failure to implement the constitution, most continue to invoke it as the sole basis for a peaceful solution.²²

A. Kirkuk

Kirkuk governorate, like the other disputed areas, is a borderland between predominantly Arab Iraq and its Kurdistan region.²³ Its population includes (Sunni) Kurds, (Sunni) Arabs and (Sunni and Shiite) Turkmen, as well as a small community of Chaldean and Assyrian Christians. Kirkuk used to be a garrison town on a prominent Ottoman trade route (which explains its urban Turkmen population) and existed as a backwater in the early years of the Iraqi republic – until oil was found.

Long the site of Iraq's sole super-giant oil field, Kirkuk provided revenue to successive governments in Baghdad for decades. Eventually, southern oil fields replaced it in prominence, but Kirkuk proved a critical lifeline during the war with Iran in the 1980s, when the southern fields, infrastructure and pipelines became inoperable. Imbued with a strong Arab nationalist ideology, Baathist-led regimes carried out extensive Arabisation of Kirkuk to solidify their control of oil; under Saddam Hussein, this reached genocidal proportions in the 1988 Anfal campaign.²⁴

The 2003 U.S. invasion reversed that process, though largely without violence: Kurds returned, displacing and politically marginalising Kirkuk's Arabs (and to a

²¹ Crisis Group interviews, Diyala, Salah al-Din and Kirkuk governorates, first half of 2018; and Crisis Group's post-2003 research in the disputed territories.

²² Based on Crisis Group's research, as well as mediation efforts by the Friedrich Naumann Foundation (2008-2012) and the Dialogue Advisory Group (ongoing from 2009).

²³ See Crisis Group Middle East Report N°56, *Iraq and the Kurds: The Brewing Battle over Kirkuk*, 18 July 2006; Report N°64, *Iraq and the Kurds: Resolving the Kirkuk Crisis*, 19 April 2007; Report N°80, *Oil for Soil: Toward a Grand Bargain on Iraq and the Kurds*, 28 October 2008; Report, *Trouble Along the Trigger Line*, op. cit.; Report N°103, *Iraq and the Kurds: Confronting Withdrawal Fears*, 28 March 2011; and Report, *The High-Stakes Hydrocarbons Gambit*, op. cit.

²⁴ See "Genocide in Iraq", op. cit.

lesser extent Turkmen).²⁵ Under U.S. protection, the two main Kurdish parties – the PUK and KDP – established political and military dominance, but were unable to annex Kirkuk to the Kurdish region, despite their openly expressed intent to do so via a process outlined in Article 140 of the constitution.

When the constitutional deadline for a referendum on the status of Kirkuk and other disputed territories passed at the end of 2007, politics in Kirkuk became paralysed. Whenever Iraq held governorate elections, Kirkuk was an outlier, as local parties could not agree on a formula that would not turn election results into a de facto referendum on Kirkuk's status (on the assumption that Kurds invariably vote for Kurdish parties, which support Kirkuk's incorporation into the Kurdish region).²⁶

1. The Fight against ISIS and its Fallout

In June 2014, ISIS fighters stormed toward Kirkuk city from their hideouts in the governorate's Arab districts to the west. Iraqi forces stationed on the city's outskirts and at the oil fields collapsed; Kurdish party militias, the Peshmerga, replaced them: the PUK took the city while the KDP seized the main oil fields.²⁷ A three-year stand-off between the Peshmerga and ISIS followed, with repeated clashes along the front lines south and west of the city. Kirkuk's Kurdish governor, Najmaddin Karim, tightly controlled life in the city through the Asayesh, the Kurdish security police, which local Arab and Turkmen politicians claimed was responsible for a surge in arbitrary arrests, kidnappings and assassinations.²⁸

The governor also took a series of controversial steps from 2014 onward that Arabs displaced from Hawija and other governorates saw as an ongoing Kurdish effort to reduce Kirkuk's Arab population. He ordered the demolition of unlicensed housing in Arab areas in the south-western part of Kirkuk city, created complicated administrative procedures for Arabs displaced from ISIS-controlled areas to enter the city, and allegedly prevented the registration of Arab infants born in Kirkuk hospitals in the population register.²⁹ He also used the Kurdish parties' majority on the provincial council to achieve some of the Kurds' signal nationalist objectives, incurring the resentment of the area's Arab and Turkmen communities. In March 2017, he successfully pushed for a council vote to raise Kurdistan's flag on local government buildings.³⁰ The next month, he tried to bring before the council a highly incendiary

²⁵ Local Arab and Turkmen leaders accused the Kurdish parties of engaging in demographic engineering by providing incentives to Kurds not originally from Kirkuk to settle there as well.

²⁶ In Kirkuk and other disputed territories, local perspectives on governing arrangements and the distribution of administrative posts are informed first and foremost by an ethno-sectarian calculus: every side seeks a configuration that maximises its own demographic weight and prevents it from becoming a disenfranchised minority.

²⁷ The PUK held onto the Baba dome of the Kirkuk oil field, as well as the Jambour and Khabbaz fields, while the KDP seized the Avana dome of the Kirkuk oil field (it already had control of the field's Khurmala dome) and the Bai Hassan field.

²⁸ Crisis Group interviews, an Arab and a Turkmen politician, Kirkuk, May 2018. Both cited a Human Rights Watch report, "Kurdistan Region of Iraq: 350 Prisoners 'Disappeared'", 21 December 2017.

²⁹ Crisis Group interviews, Kirkuk, May-June 2018.

³⁰ "Kirkuk raises Kurdistan flag over state buildings after 'historic' vote", *Rudaw*, 28 March 2017. A Kurdish council member claimed that he opposed the flag-raising measure but, as a Kurdish nationalist, could not vote against it. Crisis Group interview, Kirkuk, May 2018. Kirkuk's Kurds often feel

proposal to hold a referendum in the governorate to determine whether it would join the Kurdish region, but the council ended up not voting on it.³¹ And at the end of August, he used the same mechanism to enable the participation of Kirkuk in the Kurdish independence referendum.³² Local Arabs and Turkmen viewed these moves as deeply injurious, opposed them vigorously and boycotted the relevant council vote.

2. Backlash against the Kurdish Independence Referendum

In early October 2017, shortly after the referendum, the Iraqi army, supported by fighters from paramilitary groups called the Hashd al-Shaabi (Popular Mobilisation Units), drove up from the south and pushed ISIS out of Kirkuk's western districts. On 16 October, they advanced further, entering Kirkuk and other disputed areas and pushing the Peshmerga back toward the Kurdish region. The Kirkuk governor, Kurdish council members and most of the Kurdish local government directors fled in the same direction, along with thousands of Kurdish inhabitants who feared retribution. Most of the latter returned soon, but not the Kurdish politicians and officials; as a result, provincial council activities have halted ever since for lack of a quorum.³³

The Baghdad government promptly took control, deploying local and federal police within the city and leaving the army and Hashd to secure the perimeter and oil fields.³⁴ It also asserted authority over local administration, promoted the (Arab) deputy governor to acting governor, and replaced absentee personnel. The areas' Arabs and Turkmen took heart, relieved at the departure of the Kurdish security police in particular, and sensed a new power-sharing opportunity that under Kurdish rule had seemed unlikely. Some politicians waxed triumphant. Tahsin Kahya, a prominent Shiite Turkmen leader on the provincial council, said: "Shiite Turkmen regained the power they deserve in Kirkuk only now thanks to the support of the central government and the power of the Shiite militias".³⁵ Others were more cautious:

The sectarian militias are becoming stronger at the expense of government forces. This is very dangerous to peace and coexistence in the city. The government is losing control over the country's territory. Iranian flags and pictures of Khomeini are everywhere in Kirkuk now.³⁶

they are in a vise: on one hand, needing to follow their party leadership's orders and, on the other, wanting to maintain the cohesion of their local community, which is bolstered by a good deal of intermarriage, especially between Kurds and Turkmen.

³¹ "Kirkuk council votes for referendum on joining Iraqi Kurdistan", *Middle East Eye*, 4 April 2017.

³² "Kirkuk province votes in favour of participating in Kurdistan's referendum", *Rudaw*, 29 August 2017.

³³ Kurdish council members are protesting the city's insecurity (the absence of Kurdish security forces) and the dominance of what they deem illegal forces (the Hashd).

³⁴ To be clear, the PUK and KDP lost control of all the oil fields in Kirkuk they had seized in 2014 or had controlled before, minus one: they lost the Baba and Avana domes of the Kirkuk oil field, and the Jambour, Khabbaz and Bai Hassan fields. The KDP was able to hold on to the Khurmala dome of the Kirkuk oil field, which is located in a disputed part of Erbil governorate.

³⁵ Crisis Group interview, Kirkuk, 26 May 2018.

³⁶ Crisis Group interview, Kirkuk, May 2018.

While the army is in control of Kirkuk city, the Hashd are more aggressive.³⁷ The various security forces are stationed outside the city but enter at liberty. The Hashd have taken advantage of their security role to replace almost every government position vacated by a Kurd, usually with a Shiite Turkmen. They control roads throughout the governorate, levying fees at checkpoints. Meanwhile, ISIS is attempting a comeback. The town centre of Hawija may be free of ISIS, but the group raids villages in the district on a nightly basis, terrifying their inhabitants.³⁸ A local observer noted that while the Hashd may be strong, they seem to avoid entering predominantly Sunni areas to confront ISIS and instead patrol the roads. As a result, “local people are suffering from both ISIS and the Hashd, because each organisation accuses them of supporting the other”.³⁹

The referendum and its fallout exacerbated deep political divisions in the Kurdish region, within the KDP and even within the Barzani family, and severely weakened the Kurds' hand with Baghdad. Few in the Kurdish region do not yearn for statehood, but Masoud Barzani's opponents questioned the referendum's timing, suspecting that it was part of an attempt to consolidate his autocratic rule. A KDP politician said, “Kurds have the right to have their own state. But we should have chosen a better time to conduct the referendum. The whole world turned against us. We lost much of what we achieved – because of the referendum”.⁴⁰

Barzani's critics especially blamed him (and the PUK faction that enabled the army's entry into Kirkuk) for the loss of the disputed territories and their resources. For months after the referendum, Kurdish leaders' sole response was to disown subsequent developments in Kirkuk, boycott meetings in which the disputed territories question was discussed, and refuse to put up candidates in Kirkuk for the national elections, while waiting for the U.S. to come around and mediate their conflict with the central government.⁴¹ They also repeatedly accused Kirkuk's acting governor,

³⁷ See Crisis Group Middle East Report N°188, *Iraq's Paramilitary Groups: The Challenge of Rebuilding a Functioning State*, 30 July 2018.

³⁸ A local observer noted that “when the army liberated Hawija, they only cleared the town and the roads leading to it from Tikrit and Bayji. But Hawija district has 400 villages. The army did not go to any of these. So ISIS fighters are still there; there are lots of them, and they are moving everywhere. The local people can do nothing about it, even though everyone knows who these guys are”. Crisis Group interview, Kirkuk, June 2018.

³⁹ Crisis Group interview, Kirkuk, June 2018.

⁴⁰ Crisis Group interview, Kirkuk, May 2018.

⁴¹ Local PUK leaders also fled in October 2017, thinking that the Iraqi army and Hashd might harm them. Since then, however, they have been engaged in active negotiations with the Baghdad government over the Kurdish political role in Kirkuk. For its part, the KDP declared it would not participate in the May 2018 parliamentary elections in Kirkuk while the Hashd remained in control of security. Additionally, a KDP politician said the party decided not to compete in Kirkuk because the leadership realised that the elections outcome would not affect the city's status: “One or two seats in the Council of Representatives in Baghdad will not change the facts in Kirkuk. Only provincial elections will shape the picture and be the starting point toward serious dialogue on the city's future”. He said the party would return to Kirkuk once a new government took over in Baghdad. Crisis Group interview, Kirkuk, May 2018.

Rakan Saeed, of supporting a “new Arabisation” by encouraging Arabs to move into the governorate.⁴²

3. Electoral Pitfalls

The Kurdish hand in Kirkuk was considerably weaker at the time of the May 2018 national elections. This is why local non-Kurds cried fraud when elections results, tabulated for the first time through electronic voting, showed that the PUK had managed to win six of the governorate council's twelve seats, showing strength even in localities such as Hawija that are mainly Arab.⁴³ Abd-al-Rahman Manshed al-Asi, an Arab politician, remarked, “People mock the elections in Kirkuk, saying that voters put an *iqal* [traditional Arab head cover] into the ballot box but a *sherwal* [traditional Kurdish dress] came out”.⁴⁴ A subsequent partial recount ordered by the Council of Representatives did not bring solace to the PUK's opponents, as the overall results in Kirkuk remained unaltered: the PUK held on to the six seats it had won.⁴⁵

The election fracas threatened to undermine the single positive development in Kirkuk over the past year: in early March, all the principal political stakeholders in Kirkuk agreed to a draft law to hold provincial council elections in Kirkuk for the first time since 2005.⁴⁶ These elections are scheduled to take place in the first half of 2019 along with those in Iraq's other governorates, but Kirkuk politicians' notable

⁴² For example, “Kurds claim appointed governor authorizes another Kirkuk Arabization”, *Rudaw*, 3 November 2018. The governor's supporters claim, however, that Arabs arriving in the city were displaced from the governorate's western districts, such as Hawija, which remained unstable because of an ongoing ISIS presence. Crisis Group interviews, Kirkuk, May 2018. A recurring theme in Kirkuk is that the ruler of the moment encourages members of his ethnic group to move in at the numerical expense of the others. Yet there is no law that would block Iraqi citizens from residing anywhere in the country.

⁴³ Crisis Group Statement, “The Contested Iraqi Parliamentary Elections in Kirkuk”, 24 May 2018.

⁴⁴ Crisis Group interview, Abd-al-Rahman Manshed al-Asi, political bureau member of the Arab Project, Kirkuk, 27 May 2018.

⁴⁵ Speculation about how the PUK pulled off its strong showing in Kirkuk centred on suspicion that it manipulated the results with Iranian help through its supposed control of the electronic tabulations via its influence in the electoral commission. The majority of the local Kurdish population is likely to have voted for the PUK, as it has in past elections, but that would not explain the PUK's victory in predominantly Arab districts.

⁴⁶ The deal was mediated by the Dialogue Advisory Group. UNAMI then worked with the Council of Representatives' legal committee to draft a provincial elections law that included a clause on Kirkuk, which the council then passed shortly thereafter. Crisis Group interviews, persons involved in the effort, April 2018. Local people tend to equate provincial elections with a census, which in turn they see as prejudging the outcome of a referendum, because they assume that most people will vote in support of their ethnic group. Moreover, they see a referendum result that places Kirkuk and its oil fields within the Kurdish region not only as upsetting the city and governorate's fragile ethnic balance but as paving the way for Kurdish independence. Such a development would confront non-Kurds with the prospect of being incorporated into a state other than Iraq, and could raise the spectre of population displacements of the type – though not of the magnitude – of a post-partition India. Most people, including local Kurds, prefer to avoid such a scenario for the instability and uncertainty it would cause. This is why one of the most divisive issues in past election attempts in Kirkuk has been voter registry verification. The parties managed to resolve, or at least postpone, that problem in March 2018 by inserting a line in the electoral law stating that the electoral commission would amend the registry within a year after the elections.

loss of confidence in Iraq's electoral processes following the parliamentary elections may produce a boycott or a low voter turnout from the Arab and Turkmen populations. In Al-Asi's words: "This election forgery will negatively affect any possible solution for the issue of Kirkuk. The Arab community will never trust the political process again".⁴⁷ Tahsin Kahya sounded a different warning:

I have serious fears that this fraud might happen again during the provincial council elections. It would seriously affect the future of Kirkuk even more than fraud in the parliamentary elections. The formation of the provincial council based on the number of seats each component garners in the provincial elections in December will play a role in shaping the process of finalising the status of Kirkuk.⁴⁸

4. Brokering New Power-Sharing Deals

In sum, Kirkuk's unhappy post-2003 situation has been prolonged, now once again under central government stewardship. What has changed is that a new balance of forces has come about: the once-strong Kurdish security forces remain outside the disputed territories, blocked by the central government, while the army and associated militias exercise only a tenuous control over these areas, leaving room for ISIS to make trouble in the western districts.

This suggests that an intermediate way forward, short of a UN-mediated resolution of these areas' status, could involve renewed cooperation between the army and Peshmerga through a joint security mechanism outside municipal boundaries (as indeed existed in 2009) and the continued deployment of a police force recruited from the local population inside the city.⁴⁹ But on both sides, these should be professional forces decoupled from political parties.

Local politicians sound as if they are ready for change. This is true especially on the Arab side, now that the Kurds have suffered a setback. The acting governor, Rakan Saeed, observed that international and regional powers now have a "mutual interest" in facilitating a settlement for Kirkuk following their common stance against the Kurdish referendum.⁵⁰ Afifa al-Jumaili, a political bureau member of a local political party, the Arab Project, speculated that even the Kurds might be ready to make a deal with the central government if it meant they could come back to the city. She added:

Kurds must come back to Kirkuk and all the disputed areas. They must participate in the political process here. Even the Kurdish security forces can come back and take part in the security file, but this has to be agreed with Baghdad based on a prior political agreement among all sides here. The way the Kurdish Asayesh

⁴⁷ Crisis Group interview, Abd-al-Rahman Manshed al-Asi, political bureau member of the Arab Project, Kirkuk, 27 May 2018.

⁴⁸ Crisis Group interview, Tahsin Kahya, provincial council member, Kirkuk, 26 May 2018.

⁴⁹ In January 2009, the U.S., then an occupying power, established joint coordination centres in urban areas in Kirkuk governorate to promote communication, dialogue and coordination between police and emergency services, with an army and Peshmerga liaison officer present in a central coordination centre in Kirkuk city. Crisis Group Report, *Trouble Along the Trigger Line*, op. cit., pp. 14-15; and Crisis Group Report, *Confronting Withdrawal Fears*, op. cit.

⁵⁰ Crisis Group interview, Kirkuk, 25 June 2018.

and Peshmerga behaved with Arabs was unacceptable. But the security forces currently controlling Kirkuk and Hawija are not acting any better toward Arabs.⁵¹

Most local non-Kurds reject the return of the Asayesh, and to a lesser extent the Peshmerga. This is partly because of local perceptions of the security police's past practices – locals accuse them of arbitrary detentions, disappearances and assassinations – and partly because non-Kurds fear that the Kurdish security forces will help annex the disputed territories.⁵² This issue remains the primary sticking point preventing a local agreement. Mohammed Kamal, a Kurdish provincial council member with the KDP, set the terms of a deal to which the Kurds could agree:

There must be a joint force drawn from the Iraqi army, the federal police, Peshmerga and Asayesh to run the security file in Kirkuk. Each unit should be responsible for a specific area in order to prevent clashes between them. We also must have a new joint administration in Kirkuk through agreement between Baghdad and Erbil.⁵³

While all sides appear to agree to some kind of joint control and administration, the process for establishing these arrangements remains undefined. Awat Amin, an unaffiliated Kurdish member of the provincial council, suggested that the Kurds' preferred method of solving Kirkuk – through a self-serving interpretation of the constitution – has become obsolete:

Everyone [in Kurdistan] must understand that in Kirkuk we are dealing with people, not territory. Article 140 is no longer good enough to solve the Kirkuk issue. The process must be divided into sub-files: power sharing, property disputes, oil revenue sharing, security and provincial elections during a transitional period. Baghdad and Erbil must agree to share the security file in Kirkuk This must be done under international supervision. UNAMI should be involved in the details of the Kirkuk issue.⁵⁴

A Turkmen colleague on the council, Ali Mehdi Sadeq, suggested sequencing the process:

We have to start with the easiest issue and move toward the more complicated. For example, UNAMI should first help with opening an international airport in Kirkuk, then find a way to establish a joint administration, and then move to other disputes, such as oil, development, property claims, community reconciliation, the governorate's boundaries and, at the very end, the status of Kirkuk.⁵⁵

He added a local mantra: "Nothing can be solved in Kirkuk by imposition or majority rule. Consensus must be the basis for a permanent settlement". This principle itself is something most can agree to, despite – or perhaps because of – the fact that both sides have violated it when attempting to push through their preferred scenario.

⁵¹ Crisis Group interview, Kirkuk, 14 June 2018.

⁵² Crisis Group interviews, Kirkuk, January-May 2018.

⁵³ Crisis Group interview, Kirkuk, 27 May 2018.

⁵⁴ Crisis Group interview, Kirkuk, 6 June 2018.

⁵⁵ Crisis Group interview, Kirkuk, 11 June 2018.

B. *Diyala: Khanaqin*

Situated close to a political fault line – the Iran-Iraq border – Khanaqin was contested even during the time of the Ottoman and Persian empires. The disputed area, which includes the Jalawla, Saadiya and Qara Tepe sub-districts, also lies on the principal trading and pilgrimage artery between Tehran and Baghdad, and its lands are highly fertile thanks to the Diyala river that waters them.⁵⁶ Oil was first extracted at the beginning of the 20th century from the trans-border Naft Khana field. In addition to a Kurdish population, the presence of oil may be a reason why, ever since the emergence of the Kurdish nationalist movement, Kurdish leaders have sought to draw Khanaqin into the Kurds' administrative orbit.

The district has also witnessed its share of demographic manipulation, from the denaturalisation and deportation of Shiite (Fayli) Kurds starting in the 1970s, to the Saddam regime's Arabisation policies, to the KRG's post-2003 pressures on Arabs to leave Khanaqin city to Saadiya and Jalawla.⁵⁷ As a result, these areas all have a mixed population, but Khanaqin city has mainly Kurds (divided between Sunnis and Shiites), whereas the sub-districts appear to be majority Arab, with significant Turkmen and Kurdish minorities.⁵⁸ Insurgency and counterinsurgency have prevented effective governance since 2003, especially in the sub-districts: elected local councils could barely operate amid violence, assassination attempts and threats.

In June 2014, ISIS took Saadiya and Jalawla sub-districts, but not Khanaqin city. Five months later, the Hashd and PUK Peshmerga drove them out. The return of the army and federal police and the arrival of the Hashd transformed local conflicts. The Hashd took the upper hand once the army had retaken the area and moved on; as a result, the federal government has remained largely absent, including at the administrative level. This created room for the Hashd (mainly the Badr Organisation and Asaeb Ahl-al-Haq) to tax merchants on the roads and intimidate non-Shiites. "They do not respect the law or the government", a local Kurdish politician said.⁵⁹ The Hashd increasingly packed local governing institutions with Shiite staff, to the benefit of local Shiite Turkmen in particular.

In response to such actions, many people, especially Kurds, left the area, expecting trouble, and some have yet to return; many others who left their lands during the earlier fight against ISIS have not yet gone home because their villages were destroyed, security remains weak and services are unavailable. The Hashd allegedly expelled a number of Kurdish families from Jalawla-area villages and induced others to leave

⁵⁶ Qara Tepe technically is a sub-district of Kifri, but has been administered by Khanaqin.

⁵⁷ In the Kurds' eyes, the Khanaqin district's Shiite Arabs are newcomers (*wafideen*) from the south, beneficiaries of the Saddam regime's Arabisation policies, while its Sunni Arab tribes include many former regime officers (and their families) who were responsible for implementing those policies. After the latter's ostracism after 2003, some joined insurgent groups, gravitating toward ISIS as it seized adjacent areas in 2014.

⁵⁸ Precise population figures and ethnic breakdowns are not available. They are a matter of active speculation, exaggeration and manipulation. Using various measurements, the 2009 UNAMI study does a heroic job of creating a realistic picture.

⁵⁹ Crisis Group phone interview, Ziyad al-Dalwi, former Diyala provincial council member, and a leader in the Kurdistan Islamic Union, 14 March 2018.

for fear of reprisal (for Kurdish parties' post-2003 efforts to drive away local Arabs).⁶⁰ Only in Khanaqin town, with its majority-Kurdish population, has the PUK been able to hold on to the security file. Meanwhile, ISIS attacks continue, launched from the countryside in a tactic copied from Kurdish rebels in the 1980s.⁶¹

The government's October 2017 takeover of the disputed territories included Khanaqin district. It unfolded relatively smoothly, because the PUK agreed to withdraw; its Peshmerga militia readily coordinated with the federal army as the latter advanced.⁶² Yet the district's mixed population has enabled significant political mischief by outside actors preying on ethnic and sectarian discord, especially the Hashd, which found among local Shiites a supportive constituency who rejected PUK rule and its efforts to annex Khanaqin to the Kurdish region.⁶³

After fifteen years of violence and intermittent fighting, people appear exhausted. Local leaders express fresh appetite for stabilising the situation through security and power-sharing arrangements. In the absence of these, they stress the need for inter-communal consensus and trust. Because ethnic groups' political representatives traditionally have pursued a zero-sum approach to settling their disputes, they recognise this will require external mediation and security guarantees.⁶⁴

C. *Salah al-Din: Tuz Khurmatu*

The district of Tuz Khurmatu (often referred to simply as "Tuz") in Salah al-Din governorate directly north of Baghdad has suffered more violence than other disputed areas in the immediate aftermath of the October 2017 takeover by the Iraqi army and Hashd. This may be because the area has suffered violent interethnic and sectarian clashes since 2003 involving Sunni Kurds and Sunni and Shiite Turkmen, as well as Sunni Arabs.

Tuz is a northern transportation hub, located on the Baghdad-Kirkuk highway. Like Kirkuk, its centre is Turkmen in origin, while its countryside to the north and east is predominantly Kurdish, with Arab tribes in the south and west. The Amerli sub-district is largely Shiite Turkmen in the town but the area's villages are predominantly Sunni Arab, while Suleiman Beg sub-district is mainly Sunni Arab. Post-2003

⁶⁰ Crisis Group phone interview, Khalil Khudadad al-Khalidi, head of the PUK office in Jalawla, 13 March 2018. He supplied a figure of 700 Kurdish families, and suggested that a number of local Sunni Arabs, previously with ISIS, had joined the Hashd (mainly to protect themselves), and were using the opportunity to take revenge on the Kurds.

⁶¹ "Villages evacuate as rising insurgency targets new territory", *Iraq Oil Report*, 28 September 2018.

⁶² Crisis Group phone interview, Khalil Khudadad al-Khalidi, head of the PUK office in Jalawla, 13 March 2018. He said, "The PUK took the decision to cooperate with the Iraqi army to avoid bloodshed on both sides". Those involved were Mahmoud Sengawi, the PUK commander in Diyala, and Hadi al-Ameri, leader of the Hashd. The local PUK official was highly critical of the KDP's decision to proceed with the independence referendum, saying the PUK could not afford to "jeopardise its strong historical relations with Iran", with which it shares a range of interests as well as a long border, "just as the KDP does with Turkey".

⁶³ Khanaqin's Shiites are split among its Kurdish, Turkmen and Arab populations. Many Kurds support the Kurdish parties, mainly the PUK, rather than the Hashd.

⁶⁴ Crisis Group phone interviews, Khanaqin-area politicians, 13-14 March 2018.

election results have shown that Tuz district is highly diverse, with no single ethnic group holding a majority.⁶⁵

As the 2009 UNAMI study documented, Iraq's republican regimes subjected the district's Turkmen and Kurdish populations to demographic engineering after 1959, and especially after 1970 as the Baath consolidated control following the 1968 coup that brought it to power. Until 1976, Tuz was a district in Kirkuk; that year, the regime detached it from Kirkuk and placed it in the newly created Salah al-Din governorate. This meant that the area's administrative centre of gravity moved from Kirkuk to (Arab) Tikrit, diluting Turkmen and Kurdish influence in Tuz. The regime targeted the district's Kurdish population in the 1988 Anfal campaign: the army destroyed their villages and murdered a good part of the rural Kurdish population, particularly in the Qader Karam sub-district.⁶⁶

The fall of the regime in 2003 and arrival of Shiite Islamist parties as government leaders in Baghdad created new tensions in mixed-population areas. In Tuz, this included the city itself, as well as Amerli.⁶⁷ Sunni Arabs in Amerli complained routinely of discrimination at the hands of local authorities, while Sunni Arabs in Suleiman Beg say they suffered from official neglect.⁶⁸ In post-2003 Iraq generally, Sunni Arabs have felt excluded from politics and institutions. Their resentment toward the Shiited government in Baghdad fed the chronic insurgency in their areas well before the arrival of ISIS.

Tensions also arose between Sunni and Shiite Turkmen, with the latter associating the former with the Hussein regime.⁶⁹ Sunni Turkmen, alienated from Baghdad and politically sympathetic to Turkey, aspire to incorporate Tuz into an autonomous Turkmen region that they consider their ancestral homeland (*Turkmanele*) to prevent Kurdish attempts to annex the area. But they have run into opposition from Shiite Turkmen, whose post-2003 political (and sectarian) affinities lie with Baghdad, from which they receive privileged protection.

During 2003-2017, the city of Tuz saw frequent clashes between Kurdish parties, mainly the PUK, which maintained security control, and Turkmen parties. The June 2014 arrival of ISIS in the district's southern and western parts and efforts to drive it out destroyed Arab and Turkmen villages. Under Iranian guidance, PUK Peshmerga allied themselves with Shiite Hashd fighters to battle ISIS, punishing local Arabs they suspected of collaboration with the group.⁷⁰ Shiite militias retook Amerli as early as September 2014, a mere three months after ISIS had seized it; the army and

⁶⁵ While tribes are strong in the district's countryside, conflicts in Tuz have not been inter-tribal as much as intra-tribal, as the largest tribe, the Al-Bayat, comprises both Arabs and Turkmens, and Sunnis as well as Shiites.

⁶⁶ See "Genocide in Iraq", op. cit. Qader Karam was a sub-district of Tuz until 1989 (when it was attached to Suleimaniya governorate). The Khor Mor gas field is located in the Qader Karam area; it was developed after 2003.

⁶⁷ A truck bomb in Amerli in July 2007 killed some 160 people, one of the largest such attacks in Iraq's post-2003 history.

⁶⁸ Crisis Group interviews, Tuz Khurmatu, March 2018.

⁶⁹ To some extent, this sectarian intra-Turkmen conflict reflected the one in Tel Afar (Ninewa governorate) but never reached the same proportions.

⁷⁰ Local Arabs complain that since 2003, the PUK has accused them successively of being Baathists, al-Qaeda and ISIS. Crisis Group interview, Arab politician, Tuz Khurmatu, 7 March 2018.

Hashd drove out the group in 2015. Local Arab leaders claim that, since January 2015, Hashd and security forces have detained some 700 Arabs, usually on suspicion of being affiliated with, or supporting, ISIS; in many cases, their whereabouts remain unknown.⁷¹ Meanwhile, ISIS has continued to threaten the areas west of Tuz, as close as the city's outskirts.

Despite their common front against ISIS, the PUK and the Hashd (mainly Asaeb Ahl al-Haq) parted ways on the question of Tuz's status. Their confrontation came to a head in 2017, when the PUK asked the district council to vote for the district's participation in the Kurdish independence referendum. The council (which has seven Kurdish, seven Arab and seven Turkmen members) turned down the request. In the referendum's wake, as Iraqi forces moved into the disputed territories, Tuz's Kurdish residents fled, and the Hashd wrought major destruction on Kurdish property. Backed by the Hashd, local government administrators sacked Kurdish public employees who did not return, replacing them with Turkmen.⁷² Instability has come also from another quarter: ISIS insurgents roam the countryside, attacking villages at night.⁷³

Local politicians expressed their views on the district and their role in it in strikingly different ways. The district council's deputy speaker, a Shiite Turkmen, declared:

Dreams have come true in Tuz. What happened on 16 October [2017] was the dream of all citizens. This is our golden age. Our Kurdish citizens realised that their future lies with their fellow Iraqi people, with Iraq We are one country and one nation. There no longer is a dispute between us. It was only Kurdish pressure on Arabs and Turkmen that used to generate tensions.

He also stated that the joint army-Hashd operation was "the practical way to solve the question of the disputed territories".⁷⁴

Kurds and Sunni Arabs have another reading, no less blinkered. For example, a Kurdish opposition politician said:

Kurds and Turkmen both claim that Tuz is originally theirs. It's not up to history to decide, though. The reality is that today, apart from all the Kurds here, many Sunni Arabs in Tuz want the city to become part of Kurdistan. This is because in that case they expect to be treated the way Kurds are treated [under the KRG] The local Kurdish authorities did not treat Sunni Arabs well before 16 October [2017]. The Peshmerga [of the PUK] destroyed many Sunni Arab villages after liberating them from ISIS in Amerli. This was a mistake. But now Sunni Arabs are suffering even more under Hashd domination.⁷⁵

⁷¹ Crisis Group interview, Arab politician, Tuz Khurmatu, 7 March 2018.

⁷² "They exercised their freedom of choice", a Shiite Turkmen politician commented. Crisis Group interview, Ali al-Huseini, district council deputy speaker, Tuz Khurmatu, 7 March 2018. Part of the problem with the Hashd in Tuz may be that their commanders have little control over fighters, who are generally undisciplined. Crisis Group interview, Turkmen politician opposed to the Hashd, Baghdad, January 2018.

⁷³ "Villages evacuate", *Iraq Oil Report*, op. cit.

⁷⁴ Crisis Group interview, Ali al-Huseini, Tuz Khurmatu, 7 March 2018.

⁷⁵ Crisis Group interview, Ayoub Jumaa Jabbar, a local Gorran leader who is also the head of the ministry of displacement and migration's local branch, Tuz Khurmatu, 7 March 2018.

In reality, most Sunni Arabs have no desire to live in the Kurdish region, given their experience under Kurdish rule after 2003. A local politician said: "Tuz can never become part of Kurdistan. Most citizens prefer to stay under the central government, even with its sectarian policy".⁷⁶

When UNAMI conducted its survey in 2008, it found that local Turkmen preferred the district to become a governorate of its own or join Kirkuk governorate, but only if Kirkuk were accorded a special, stand-alone status. Local Kurds wanted Tuz reattached to Kirkuk, which they hoped to incorporate into the Kurdish region. And local Arabs preferred that Tuz either be converted to a governorate or remain a district within Salah al-Din governorate.⁷⁷ These perspectives do not appear to have shifted since then.

The only sensible way to reconcile these demands would be to postpone the status question until Baghdad and Erbil reach a negotiated agreement, and in the meantime create a power-sharing arrangement in the district, as well as joint security control between Baghdad and Erbil, with the police recruited from local communities. Currently, the Hashd are fully in control outside the district's urban areas; it comprises one brigade of Sunni Arabs, held under tight control.⁷⁸ In town, local security forces are now mostly Shiite, and Shiite commanders head police stations.

In the May 2018 parliamentary elections, both of Tuz district's seats were won by the Fatah alliance, established by Hashd leaders.⁷⁹ The local Shiite Turkmen politician said: "We already have a power-sharing arrangement in Tuz, so there is no need to discuss it again. All ethnic components are represented in district government and local government".⁸⁰ Yet security dominance by a single group – a minority in the district and even more so in the governorate – is a recipe for continued violent conflict.

⁷⁶ Crisis Group interview, Arab politician, Tuz Khurmatu, 7 March 2018. He added: "I told the Kurds: from the moment you were in charge [from 2003 onward], the Arabs in Tuz have suffered only kidnappings, killings and disappearances".

⁷⁷ Crisis Group interviews, Tuz Khurmatu, March 2018.

⁷⁸ The Hashd in Tuz are under the command of a Shiite Turkmen politician, Yilmaz al-Najjar. Crisis Group interviewed him in Baghdad in January 2018. He made clear that Hashd control enabled a reshuffling of local government positions to create institutional realities that reflect the new ruling order – at the expense, in particular, of the PUK/Kurds.

⁷⁹ These were the only two seats Fatah won in Salah al-Din governorate. Many Sunni Arabs from Tuz were displaced outside the district, and say they faced difficulties in voting.

⁸⁰ Crisis Group interview, Ali al-Huseini, district council deputy speaker, Tuz Khurmatu, 7 March 2018.

IV. Views on Reviving the UN Process on the Territories

A. *The Iraqi Federal Government*

The government's October 2017 military push changed the situation on the ground more than it expected but less than it wanted. On 16 October, government forces punched their way into Kirkuk, facing little armed resistance after the PUK agreed to "open the gates".⁸¹ Initial reports suggested that the U.S. had greenlighted an operation to retake the Kirkuk oil fields.⁸² Within hours, however, as the little resistance that the KDP Peshmerga and PUK dissenters put up crumbled, Iraqi forces, assisted by the Hashd, retook all of Kirkuk governorate, including the city and oil fields, as well as most other parts of the disputed territories from the Iranian to the Syrian border: Khanaqin, Tuz Khurmatu and various districts in Ninewa. But the U.S. allegedly blocked government forces from taking control of the Feysh Khabour border crossing into Syria and the Ibrahim Khalil border crossing into Turkey.⁸³

Prime Minister Abadi made clear that the government intended to restore Iraqi sovereignty over its international borders, including those located within the Kurdish region, but would allow the area real autonomy, as per the constitution. A senior adviser to Abadi sounded an optimistic note, but attached a condition:

There are past examples of cooperation between Baghdad and Erbil. This means that the conflict can be solved when both sides have good intentions. But first we must have fundamental rules of the game: do the Kurds want to be part of Iraq or not?⁸⁴

The federal government is aware that the referendum's fallout limited Erbil's ability to impose terms on the disputed territories question.⁸⁵ Baghdad says it favours dialogue with Kurdish parties that support Iraq's unity, ie, critics of Masoud Barzani's referendum move.⁸⁶ It also seems conscious that government forces do not exercise

⁸¹ A Western diplomat suggested that Iran had presented the PUK with a *fait accompli* but in exchange for an orderly withdrawal from Kirkuk and other disputed territories offered them an honourable way out: no humiliating defeat and a continued political role in these areas. Crisis Group interview, Baghdad, October 2018.

⁸² Crisis Group interview, senior State Department official, Washington, 16 October 2017, as the operation was underway.

⁸³ Crisis Group interview, Turkish foreign ministry official, Ankara, January 2018. If this analysis is correct, and as indications at the time suggested, the Iraqi forces' advance into disputed territories beyond the Kirkuk oil fields received a U.S. flashing yellow light. A Western diplomat said Abadi wanted to restore mutual trade, following the breakdown in Iraqi-Turkish relations after Maliki's re-election in 2010, and therefore was keen in October 2017 to wrest control of Iraq's single border crossing with Turkey from the KRG. Crisis Group interview, Baghdad, January 2018. There have also been talks about opening a second crossing at Ovaköy (also known as Ovaçik), and to rebuild the strategic Kirkuk pipeline through there, but these discussions have yet to produce results.

⁸⁴ Crisis Group interview, Baghdad, January 2018.

⁸⁵ An aide to an Iraqi political leader said: "The referendum reversed the situation in which the Kurds imposed terms. We were lucky that Barzani rejected all the deals that he was offered! Everyone turned against him as a result". Crisis Group interview, Baghdad, January 2018.

⁸⁶ The 2 October 2018 Council of Representatives' vote on Iraq's next president – a position *de facto* reserved for a Kurd – showed the deputies' strong preference for a candidate who had opposed the

full control in the disputed territories: violence continues in some areas due to lack of coordination or outright enmity between the army, the Hashd and the Peshmerga.⁸⁷ This is true especially in parts of Kirkuk governorate and around Tuz Khurmatu, both of which have significant gaps in security coordination that ISIS and other insurgent groups exploit. Government officials also express concern that the KDP in particular might seek revenge for its ouster from Kirkuk in October 2017 and provoke insecurity in order to demonstrate that state security forces are not in control, thereby creating a pretext for the Peshmerga to return to the disputed territories and cooperate in joint security arrangements.⁸⁸

Baghdad has a clear interest in a settlement concerning Kirkuk. While it may be more dependent on Iraq's southern oil fields than on Kirkuk's aging one, Kirkuk's contribution to its overall output, once fully restored, could still be significant, and also provide valuable diversification in export outlets.⁸⁹ Moreover, a settlement would cement the Kurdish region more solidly within Iraq, reducing and deferring the risk of Kurdish secession. There are also good economic reasons. Speaking in January 2018, Abadi's adviser continued:

We are losing a lot of money by not having control over the Feysh Khabour border crossing with Syria and the Ibrahim Khalil crossing with Turkey [both of which the KRG has controlled since 1991]. We need to impose our sovereignty over Iraq's federal borders. The same is true for the airports [in Erbil and Suleimaniya]. And oil must be exported by SOMO [the state oil export agency]; there can be no autonomous Kurdish oil sales. If we can solve these matters, then solving the disputed territories question will be easy. It is not a big deal, because we believe in decentralisation. It may take a couple of generations, but decentralisation will make for a stronger, not a weaker, Iraq.⁹⁰

By November 2018, two of these three issues had been resolved. The new government in Baghdad struck a deal with Erbil, reportedly under significant U.S. pressure, to send Kirkuk oil through the Kurdish pipeline to Turkey.⁹¹ And earlier in the year, Baghdad regained nominal sovereignty over Erbil and Suleimaniya airports (and in

September 2017 independence referendum: they chose Barham Salih, a former deputy prime minister in Baghdad, over Fuad Hussein, Masoud Barzani's former chief of staff.

⁸⁷ Crisis Group interviews, aide to senior Iraqi politician, and senior security official, Baghdad, January 2018.

⁸⁸ Crisis Group interview, senior security official, Baghdad, January 2018.

⁸⁹ BP estimates the Kirkuk field to contain nine billion barrels of recoverable oil. Reuters, 2 July 2018. The aging field has been much abused in the past (mainly by water injection), and awaits rehabilitation with external help; BP currently holds the contract. In 2014, ISIS destroyed the Iraqi pipeline to the Mediterranean port of Ceyhan in Turkey; it has yet to be rebuilt. The export of Kirkuk oil through the Kurdish pipeline to Turkey resumed in November 2018.

⁹⁰ Crisis Group interview, Baghdad, January 2018. He added, "The Kurdish region needs a real democracy. Billions of dollars are disappearing, and they dismissed the speaker of the regional parliament summarily. We have nothing against the Kurds as Iraqi citizens, but what happened in the last fifteen years benefited only a handful of families. We cannot have this 'citizen-plus' status anymore. There are a lot of young new voters; you can't cheat them".

⁹¹ "U.S. intervention unlocks oil flows from Kirkuk", *Financial Times*, 30 November 2018.

exchange lifted the ban on international flights).⁹² In November, Baghdad and Erbil also unified their separate customs checkpoints at road entrances to the Kurdish region.⁹³

Finally, while settling the disputed territories question may not be Baghdad's top priority, it is for Erbil, and delaying a resolution will continue to colour all their interactions. Yet the principal problem is the continuing dysfunction in policymaking and governance in Baghdad, as the mid-2018 crisis in Basra demonstrated. Even if the will exists among the Iraqi leadership to reach a new accommodation with the KRG about the disputed territories, the government may prove unable to mobilise the required institutional resources to implement a deal.

There are some early signs that the will is there. Iraq's new president, Barham Salih, a Kurd, announced in late October he had a proposal to resolve the Kirkuk dispute, but did not provide detail.⁹⁴ Subsequently, two newly elected parliamentarians of Muqtada Sadr's Sairoun list initiated discussions about Kirkuk in Baghdad, Erbil and Suleimaniya.⁹⁵ And in November, Masoud Barzani met with senior politicians in Baghdad to discuss a range of issues, including the disputed territories.⁹⁶

In the long term, the Kurdish desire to control Kirkuk and its resources may prove to be stronger than the government's, but Baghdad will retain sufficient spoiling power to hamper Kurdish ambitions. This would prolong an unhappy situation on the ground, spawn further outbursts of violence and possibly trigger renewed recourse to military action.

B. *The Kurdistan Regional Government*

The failure of the Kurdish independence referendum raised mutual cries of betrayal and widened old fault lines among and within Kurdish parties. The KDP leadership accused the PUK of betraying the Kurdish nation by allowing Iraqi forces into Kirkuk, while PUK leaders accused the KDP of the same by entrenching its power through undemocratic means and forcing an independence referendum down the Kurds' throat at the wrong moment.⁹⁷ The two sides also could not agree after the referendum on precisely what happened in their joint discussions during the lead-up.⁹⁸

⁹² Reuters, 13 March 2018. "Nominal", because Kurdish authorities were able to continue the practice of not requiring Iraqi visas for arriving non-citizens.

⁹³ "Customs checkpoints between Iraq and Kurdistan Region to be scrapped: official", *Rudaw*, 11 November 2018.

⁹⁴ Nawhi Saeed, "Will new Iraqi government resolve Baghdad-KRG issues?" *Al-Monitor*, 4 November 2018. Saeed rightly points out that Salih's role is mainly ceremonial, and that he faces other obstacles: he lacks support from his own party, the PUK, and as importantly, also from the KDP.

⁹⁵ See *Rudaw* (Arabic), 30 October 2018; and *Baghdad Today* (Arabic), 5 November 2018.

⁹⁶ "Barzani focuses on wider Iraqi issues on Day 2 of Baghdad visit", *Rudaw*, 23 November 2018.

⁹⁷ Crisis Group interviews, Suleimaniya and Erbil, January 2018. The two parties have a history of mutual betrayal. One example: in 1996, the KDP invited the forces of Saddam Hussein into Erbil in order to push out the PUK. An opposition leader accused both parties: "Oil-based corruption brought us to this point. It drove and sustained the Kurdish 'nationalism' of the two parties and leading families, even if Masoud Barzani's desire for Kurdistan to become independent is genuine. Plus, they survive on crises. ISIS was a godsend to them; their next move may be to trigger a civil war" in order to stay in power. Crisis Group interview, Suleimaniya, January 2018. Predictions of

The decision to proceed with the vote in the disputed territories fed the narrative that the KRG intended to annex Kirkuk in order to undergird a future independent state economically, and thus provided cover for Abadi to take it back. A senior international diplomat said: "I told Barzani that staging a referendum would be a mistake, but that including the disputed territories would be a fatal mistake. But he responded that Kirkuk was the essence. It was clear to me that this was an attempt at annexing Kirkuk", circumventing the process laid out in the constitution, which calls for a referendum on the territories' status.⁹⁹

The loss of the disputed territories severely weakened Erbil's leverage against Baghdad, while the subsequent fragmentation of the Kurdish political scene is making it harder for the KRG to achieve an end to punitive sanctions. The referendum debacle also clipped the wings of those who pushed hardest for it, while opening political space for its critics.¹⁰⁰ This latter group included the region's prime minister, Nechervan Barzani (Masoud's nephew), who soon took the lead in regaining lost diplomatic ground with the U.S., Turkey, Iran and the Baghdad government.¹⁰¹ His mantra was that, prior to the referendum, the Kurdish region enjoyed powers exceeding what the Iraqi constitution grants it, and that afterward it had fewer, so now there was a need to rebalance and negotiate a fair deal for the region consistent with the constitution.¹⁰²

civil war may be premature, but the allegations of election fraud in Suleimaniya and Kirkuk, implicating the PUK, in May were a warning that not all is well in the Kurdish polity.

⁹⁸ One of the principal issues of post-mortem dispute was the disputed territories. The KDP (and some diplomats) insisted afterward that the PUK had agreed to support the referendum on the condition that the disputed territories be included, but that Masoud Barzani, acknowledging the risk of an Iraqi and international backlash, had been reluctant to go in that direction. Other diplomats say that, to the contrary, the PUK had set no conditions, and that Barzani had pushed for the disputed territories' inclusion in the referendum from the moment the idea first took root at the beginning of 2017. Crisis Group interviews, Erbil and Baghdad, January 2018. These interviews were with persons who had spoken with Barzani in the months before the referendum or otherwise had been in the room when the matter was discussed.

⁹⁹ Crisis Group interview, January 2018. The other two steps are "normalisation" – the return to the disputed territories of Kurds forced out by previous regimes, and the removal of Arabs resettled there from other parts of Iraq during that period – and a population census.

¹⁰⁰ Several senior Kurdish officials argued against holding the referendum in September 2017, but could not voice their position publicly, as opposing Kurdish independence is political suicide in Kurdistan, and many people would not readily distinguish between the principle of holding a referendum and its timing.

¹⁰¹ On 24 October 2017, the KRG froze the referendum's results, and in November, the KRG declared it would "respect" the Iraqi Supreme Court ruling that the constitution does not allow any part of the country to secede. "Statement from Kurdistan Regional Government, 25 October 2017; and "KRG respects Iraqi Federal Court ruling as basis for dialogue", *Rudaw*, 14 November 2017. Some interpreted the word "respect" as not quite amounting to a full "commitment" (*ihitiram*, not *iltizam*) to the ruling, thereby possibly leaving a future way out for the Kurds. Yet they saw it as a significant Kurdish concession nonetheless. They also interpreted Abadi's reluctance to lift sanctions on the KRG as part of a strategy to induce the KRG to commit to the Supreme Court's ruling regarding the referendum. Crisis Group interview, Baghdad, January 2018. On 20 November 2017, the Supreme Court ruled the referendum unconstitutional. In response, Nechervan Barzani called the ruling "unilateral" but said the KRG would not challenge it. BBC, 20 November 2017.

¹⁰² As a Western diplomat put it: "In pushing for independence the Kurds lost their autonomy". Crisis Group interview, Baghdad, October 2018. Crisis Group interview, Nechervan Barzani, Erbil,

Nechervan Barzani has long said that the Baghdad government should be the KRG's "strategic partner", and has reiterated that third-party mediation will be critical to resolving the disputed internal boundaries question: "The UN should be the vehicle, with backing from the U.S. and EU. They have spent a lot of money. Now they should engage seriously". He added that "the goal must be to set the boundary: where is the hedge around our garden? And also to have a fair deal on revenue sharing". He indicated that Masoud Barzani fully supported his approach.¹⁰³ It remains unclear whether this is so,¹⁰⁴ and a new regional government has yet to be formed following the 30 September 2018 Kurdish National Assembly elections.

Yet as early as January 2018, senior officials around Masoud Barzani indicated a desire to return to the UNAMI-led process,¹⁰⁵ and Barzani himself signalled his intent to re-engage with the federal government on a range of issues during his Baghdad visit in November. This does not suggest that a deal is within reach, however: when the KRG reviewed the 2009 UNAMI study at the time, it assembled a long (unpublished) list of criticisms, which it is certain to put on the table if serious talks commence.¹⁰⁶ A senior KRG official suggested that before addressing the disputed territories' final status, discussions should start with intermediate steps, including a

17 January 2018. The prime minister has long held that the status of Kirkuk should be determined through negotiations between Erbil and Baghdad based on Article 140, not by force, and that he could live with an outcome by which Kirkuk would have a special status outside the Kurdish region, with power and revenue-sharing arrangements in place. See Crisis Group reporting on Kirkuk over the past decade. This is consistent with his view of Kurdish independence, which he supports but does not consider a priority as long as the international and regional environment is not conducive to it. "If Kurds see that they get a fair share [in Iraq], they will never go to a referendum again", he said. This would defer the prospect of Kurdish independence but, according to a senior KRG official, "The Kurds should see independence the way the Shiites see the reappearance of the 12th Imam: not in our lifetime but sometime in the future". Crisis Group interview, Erbil, 16 January 2018. In the Shiite tradition of Islam, the 12th Imam, Muhammad al-Mahdi, went into occultation (*ghayba*) in 874 and is expected to reappear one day.

¹⁰³ Crisis Group interview, Erbil, 17 January 2018.

¹⁰⁴ After the May 2018 parliamentary elections, the KDP tried to get back into national politics, but stumbled when it discovered it could not play the role of kingmaker in Baghdad as it had in years past, and was unable to get its candidate for Iraqi president, Fuad Hussein, chosen by the parties. He subsequently was appointed finance minister.

¹⁰⁵ Crisis Group interviews, Erbil, January 2018. Masoud Barzani resigned from the presidency after the referendum debacle. No presidential election has been scheduled, and he remains the de facto leader of the divided Kurdish region. In early December, the KDP announced that Prime Minister Nechervan Barzani would be its candidate for president of the Kurdish region, and Masoud's son Masroun Barzani its candidate for KRG prime minister. "Nechirvan Barzani to presidency, Masroun Barzani to prime ministry: KDP", *Rudaw*, 3 December 2018. As the position of president is largely ceremonial, if successful, this move could represent a shift in power away from Nechervan in favour of his uncle, who remains the power behind the throne, and his cousin,.

¹⁰⁶ Crisis Group interview, Erbil, January 2018. An official with the opposition party Gorran argued that now is not the time to seek a deal with Baghdad, because "the Kurds won't concede when they're weak, and Baghdad won't negotiate when they're strong. The cycle of revenge will continue". He rejected the notion of Kirkuk as a special region outside the Kurdish region, and called for steps by Baghdad to implement the constitution, including by establishing an upper house of parliament, which could exercise a check on the central government's power. Crisis Group interview, Sulaimaniya, January 2018.

mechanism for managing security and administration in Kirkuk and other disputed territories.¹⁰⁷

C. *Outside Powers*

Outside powers played a critical role in turning the Kurdish independence referendum into a debacle. The U.S. and its European allies, as well as Turkey and Iran, all warned Masoud Barzani not to go ahead.¹⁰⁸ Warnings not to proceed came from senior U.S. officials, including Secretary of Defense James Mattis and Secretary of State Rex Tillerson, citing the need to avoid distractions in the ongoing fight against ISIS. At the same time, U.S. officials expressed sympathy toward Barzani as a reliable partner in that fight. They counselled him to use the promise to defer the referendum for a couple years as a way to extract concessions from Baghdad; in exchange, they pledged to provide diplomatic backup in future negotiations with Baghdad over disputed issues.¹⁰⁹

Negotiations went right up until the referendum date, 25 September, at which point calls by the U.S. and other Western governments on Barzani to postpone the referendum became uniform and deafening. A senior KRG official said: “The international community’s criticism was incremental. It became visceral only toward the end, while momentum was building toward a referendum”.¹¹⁰ At the same time, some of Barzani’s Western advisers allegedly helped persuade him that this was his chance and that the U.S. would not act on its threats because of support for the Kurds in U.S. Congress and a strong anti-Iran strategy sentiment within the Trump administration, in which the KRG could likely play a central role.¹¹¹

Ankara did not step up opposition to the referendum until the final days before the vote, thinking that the U.S. and others might dissuade Barzani. A Turkish official speculated about Barzani’s motives to put aside near-unanimous advice not to proceed:

We expected Barzani to back down at the last moment, so we didn’t escalate our warnings until very late in the game What drove Barzani? Perhaps his eyes were

¹⁰⁷ Crisis Group interview, Erbil, January 2018.

¹⁰⁸ Referendum supporters in the Kurdish leadership claim that they received mixed messages from both the U.S. and Turkey in the lead-up to the referendum. Crisis Group interviews, Erbil, January 2018.

¹⁰⁹ The two sides worked toward a deal through letters and WhatsApp messages, which they continued to exchange until the very last day before the referendum, but they failed to achieve an agreement in time. Crisis Group interviews, U.S. official, senior Kurdish officials and others, Baghdad and Erbil, January 2018.

¹¹⁰ Crisis Group interview, Erbil, January 2018.

¹¹¹ Crisis Group, senior Kurdish official, Erbil, January 2018. For a breakdown by category of Western supporters of Kurdish independence, see Joost Hiltermann, “The Kurds Are Right Back Where They Started”, *The Atlantic*, 31 October 2017. Some Kurdish referendum supporters say that they had banked on the close relationship between Israeli Prime Minister Benjamin Netanyahu – the only political leader to openly back the referendum – and Donald Trump’s son-in-law Jared Kushner to ensure U.S. support for the referendum after the fact, or at least prevent any sanction for proceeding with it. Crisis Group interviews, U.S. Iraq policy expert, Washington, October 2018; and Western diplomat, Baghdad, October 2018.

clouded because of concern over his legacy [as leader of the Kurdish national movement]. And perhaps because he received mixed messages from Turkey, and may have misread our intentions. But our top leadership is adamant that it wants to preserve Iraq's unity.¹¹²

Ankara announced sanctions on the KRG on 25 September but ultimately did not implement them.¹¹³ Turkey also expressed support for a renewed attempt to settle the DIBs question. A Turkish official said, "We want to bring Erbil and Baghdad together, and help them reach a settlement on Kirkuk".¹¹⁴

Iran emerged as the winner in what became an international contest over the referendum and its aftermath. With the U.S. and Turkey – Barzani's allies – already opposed to the referendum, Tehran was able to push Baghdad to respond when Barzani defied his allies' wishes. Iran had long opposed Kurdish secession and Kirkuk's annexation by the KRG, which it saw as a gateway to Kurdish independence. Now it saw the opportunity to thwart any further Kurdish moves by supporting Iraqi forces to retake the disputed territories.¹¹⁵ Iran also imposed sanctions on the KRG on 25 September, including a border closure that it relaxed shortly thereafter.

Iran has shown interest in an arrangement for Kirkuk through its attempts to mediate an understanding between stakeholders over a power-sharing deal, including the appointment of a new governor, after October 2017. Those efforts ended in stalemate as election campaigning heated up in the first months of 2018, but they illustrated the importance Tehran attaches to a peaceful settlement for Kirkuk that would reinforce the relationship between Erbil and Baghdad and dampen Kurdish hopes of regaining sole control.¹¹⁶

¹¹² Crisis Group interview, Ankara, January 2018.

¹¹³ He added, noting that Turkey had not acted on its threat to close the border, and that Kurdish oil was still flowing through the Turkish pipeline, even if at half capacity (because of the KRG's loss of the Avana and Baba domes of the Kirkuk oilfield, as well as the Bai Hassan field): "Turkey wanted to teach the KRG a lesson. But it values its relationship with the KRG". Crisis Group interview, Ankara, January 2018. Another reading suggests that Turkey wanted to limit the fallout from the episode, and not allow Iran further gains at Turkey's expense. A Turkish diplomat suggested that Turkey's position on the referendum had enabled the Iran-backed Iraqi move into the disputed territories and, as a result, an Iranian threat to Turkey's energy supply from Iraq. From October 2017 onward, oil from the Kirkuk field was being trucked to Iran instead and refined there in exchange for oil products from southern Iran. Crisis Group interview, January 2018. Exports to Iran were cut in late 2018 in response to U.S. sanctions on Iran.

¹¹⁴ Crisis Group interview, Ankara, January 2018.

¹¹⁵ A Kurdish politician observed sourly that "Iran plays the game of warning us against particular moves, then extricating us when we're desperate, thus emphasising our dependence on them". Crisis Group interview, Suleimaniya, January 2018.

¹¹⁶ Crisis Group interviews with participants in talks at the residence of Hadi al-Ameri, head of the Fatah list in the May 2018 elections, Baghdad, January 2018. A senior KRG official said: "Iran blamed the Baghdad government for the referendum, saying it had pushed the Kurds in that direction [by alienating them]. If this is the case, Iran won't oppose an amicable arrangement consistent with the Iraqi constitution in the disputed territories". Crisis Group interview, Erbil, January 2018. He said his information came from an Iraqi delegation that had visited Tehran and quoted Qasem Soleimani, the commander of the Qods Force of the Iranian Revolutionary Guard Corps, who is responsible for military operations in Iran's neighbourhood.

It soon became clear that outside powers (more than Prime Minister Abadi, who faced elections) preferred to mend fences with the KRG once they had converged on punishing it for the referendum. The reason was as simple as their opposition to the exercise in the first place: they all believe in Iraq's territorial integrity, and realised that the only way to preserve it would be to tie Baghdad and Erbil more closely together in the overall architecture of the state. An adviser to an Iraqi political leader articulated the U.S. position succinctly: "The U.S. won't give up Iraq for Kurdistan".¹¹⁷

These powers also know that the best way to ensure a better relationship between Baghdad and Erbil would be to conclude deals on the disputed territories and revenue sharing.¹¹⁸ The U.S. has long backed such efforts – it was a principal supporter of the 2008-2009 UNAMI initiative – and its position remained unchanged after October 2017.¹¹⁹

D. *A New Mediating Role for UNAMI*

Discussions in Baghdad and the Kurdish region in 2018 show that both sides may have an appetite for returning to talks. Regional forces permit if not encourage it, and UNAMI has expressed interest in resuscitating its attempted mediation, based on its 2009 study on individual disputed districts. In its report, UNAMI steered clear of proposing solutions for the disputed territories, except by saying that its work should serve as a basis for dialogue. It notably refrained from suggesting who – Baghdad, Erbil or some other authority – should exercise administrative jurisdiction in each disputed area.¹²⁰ Yet in the case of Kirkuk governorate it laid out four plausible scenarios; in all four cases, the area received a special status that would not place it fully under either Baghdad's or Erbil's control.¹²¹

What matters now is less the outcome, which should not be prejudged, than the process. To bring the two sides closer together, the UN, with the full backing of diplomats in Baghdad, should first seek to resolve the fallout from the Iraqi government's punitive actions against the KRG in September 2017. This chiefly involves the tradeoff between Kurdish oil sales via the Iraqi marketing agency and the region's annual budget allocation from Baghdad, and the question of Baghdad's control over its borders and oil exports.¹²² Iraq's new Arab prime minister and Kurdish president, Adil

¹¹⁷ Crisis Group interview, Baghdad, January 2018. An Iranian diplomat said: "There was very close cooperation between Iran, Turkey and Iraq on the Kurdish referendum. That's a big achievement. It shows that we can work together on issues of common concern". Crisis Group interview, January 2018. A Turkish official agreed: "Yes, the Kirkuk operation constituted a convergence of interests between Tehran, Baghdad, Ankara and Washington". Crisis Group interview, Ankara, January 2018.

¹¹⁸ A Turkish official said Turkey believes that the Kurdish region's viability depends on Kirkuk oil. In other words, Turkey supports the region's viability, but not its independence. Crisis Group interview, Ankara, January 2018.

¹¹⁹ Crisis Group interview, Western diplomat, Baghdad, January 2018.

¹²⁰ "UN Mission Submits Reports on Disputed Internal Boundaries in Northern Iraq", UN press release, New York, 22 April 2009.

¹²¹ Sean Kane also discusses options for Kirkuk. Kane, *Iraq's Disputed Territories*, op. cit., pp. 39-43.

¹²² There is also the budget question. The council of representatives passed the 2018 budget with delay in April 2018 over protests from the KRG, which saw its allocation reduced from 17 to 12.67 per cent. The proposed 2019 budget has the same allocation. "Iraqi parliament approves budget,

Abdul-Mahdi and Barham Salih, may be able to lay the groundwork for bridging the divide between Baghdad and Erbil, given their longstanding working relationship. Moreover, Abdul-Mahdi is viewed positively in Erbil, as is Salih in Baghdad. Yet the challenge they face is significant, as neither has a strong or unified constituency at home.¹²³

Turning to the disputed territories, UNAMI's first step should be to undertake an internal effort to draft a possible roadmap and explore the readiness of the two main protagonists and key external stakeholders – Iran, Turkey, the U.S., the EU and EU member states – to participate directly or indirectly. Next, UNAMI should consider reviving the high-level task force it established in May 2009, comprising representatives of the federal government and KRG, and possibly extend it to include representatives from the disputed territories. That group's first step could be to identify low-hanging fruit, progress on which could help build trust and create a more fertile ground for addressing more complex questions. Issues that are both important and can realistically be addressed, if not necessarily speedily resolved, include resettlement of the displaced, violence in Tuz Khurmatu, joint security arrangements in ethnically diverse localities and outstanding land claims via the so-called Article 140 Committee, currently dormant.

If UNAMI and the task force make progress in these areas, it may be possible to move to a broader settlement. But any attempt to take shortcuts will result in failure. Likewise, a process that does not take into account local communities' wishes cannot succeed, as they have to approve a resulting deal in a referendum per Article 140 and sustain it afterward.¹²⁴ UNAMI will need to consult both local and international stakeholders consistently to identify and overcome inevitable obstacles.

Kurdish lawmakers boycott vote", Reuters, 3 March 2018; and "Kurdistan Region not satisfied with 2019 budget proposed by Iraqi cabinet", *Rudaw*, 29 October 2018.

¹²³ "Will new Iraqi government resolve Baghdad-KRG issues?", *Al-Monitor*, 3 November 2018. Salih reportedly announced that he had developed a proposal for resolving the Kirkuk issue, but provided no detail.

¹²⁴ Since Article 140 does not specify what type of referendum must be held, it does not exclude the possibility of an affirmative referendum after the sides have reached a deal – as opposed to an "ethnic" referendum in the absence of a deal, which could only deepen divisions and provoke further conflict.

V. Conclusion

The conflict over the disputed territories and the unresolved boundary of the Kurdish region has lingered for decades and occasionally spawned violence. These open issues leave both Iraq's territorial unity and the governing system that would result from a reconfiguration of borders clouded in uncertainty, and the country's post-conflict transition in limbo.

In 2017, a new constellation of forces emerged that may enable a negotiated settlement. If the past is any guide, the road will be hard, and setbacks will be unavoidable. But not embarking on that road would be unwise, and a lost opportunity. A Kirkuk politician articulated best why the process, and its hoped-for successful outcome, are so important, at least for the local population:

The solution for the disputed areas is to ensure justice and freedom for all citizens regardless of their ethnic background or religious orientation. Only then will we no longer care who is ruling us and from where the security forces are coming, as long as they are protecting us. At that time, we will no longer have to talk about the need for power-sharing arrangements.¹²⁵

Baghdad/Erbil/Brussels, 14 December 2018

¹²⁵ Crisis Group interview, Kirkuk, May 2018.

Appendix A: Map of Disputed Territories in Iraq



Appendix B: About the International Crisis Group

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early-warning bulletin, providing a succinct regular update on the state of play in up to 70 situations of conflict or potential conflict around the world.

Crisis Group's reports are distributed widely by email and made available simultaneously on its website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is chaired by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord (Mark) Malloch-Brown.

Crisis Group's President & CEO, Robert Malley, took up the post on 1 January 2018. Malley was formerly Crisis Group's Middle East and North Africa Program Director and most recently was a Special Assistant to former U.S. President Barack Obama as well as Senior Adviser to the President for the Counter-ISIL Campaign, and White House Coordinator for the Middle East, North Africa and the Gulf region. Previously, he served as President Bill Clinton's Special Assistant for Israeli-Palestinian Affairs.

Crisis Group's international headquarters is in Brussels, and the organisation has offices in seven other locations: Bogotá, Dakar, Istanbul, Nairobi, London, New York, and Washington, DC. It has presences in the following locations: Abuja, Algiers, Bangkok, Beirut, Caracas, Gaza City, Guatemala City, Hong Kong, Jerusalem, Johannesburg, Juba, Mexico City, New Delhi, Rabat, Tbilisi, Toronto, Tripoli, Tunis, and Yangon.

Crisis Group receives financial support from a wide range of governments, foundations, and private sources. Currently Crisis Group holds relationships with the following governmental departments and agencies: Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Global Affairs Canada, Danish Ministry of Foreign Affairs, European Union Instrument contributing to Stability and Peace, Finnish Ministry for Foreign Affairs, French Development Agency, French Ministry of Europe and Foreign Affairs, Icelandic Ministry for Foreign Affairs, Irish Aid, Japanese International Cooperation Agency, Liechtenstein Ministry of Foreign Affairs, Luxembourg Ministry of Foreign Affairs, New Zealand Ministry of Foreign Affairs and Trade, Norwegian Ministry of Foreign Affairs, Qatari Ministry of Foreign Affairs, Swedish Ministry of Foreign Affairs, Swiss Federal Department of Foreign Affairs and the Emirati Ministry of Foreign Affairs.

Crisis Group also holds relationships with the following foundations: Carnegie Corporation of New York, Elders Foundation, Henry Luce Foundation, John D. and Catherine T. MacArthur Foundation, Korea Foundation, Oak Foundation, Open Society Foundations, Ploughshares Fund, Robert Bosch Stiftung, Rockefeller Brothers Fund, UniKorea Foundation and Wellspring Philanthropic Fund.

December 2018

Appendix C: Reports and Briefings on the Middle East and North Africa since 2015

Special Reports

Exploiting Disorder: al-Qaeda and the Islamic State, Special Report N°1, 14 March 2016 (also available in Arabic and French).

Seizing the Moment: From Early Warning to Early Action, Special Report N°2, 22 June 2016.

Counter-terrorism Pitfalls: What the U.S. Fight against ISIS and al-Qaeda Should Avoid, Special Report N°3, 22 March 2017.

Israel/Palestine

The Status of the Status Quo at Jerusalem's Holy Esplanade, Middle East Report N°159, 30 June 2015 (also available in Arabic and Hebrew).

No Exit? Gaza & Israel Between Wars, Middle East Report N°162, 26 August 2015 (also available in Arabic).

How to Preserve the Fragile Calm at Jerusalem's Holy Esplanade, Middle East Briefing N°48, 7 April 2016 (also available in Arabic and Hebrew).

Israel/Palestine: Parameters for a Two-State Settlement, Middle East Report N°172, 28 November 2016 (also available in Arabic).

Israel, Hizbollah and Iran: Preventing Another War in Syria, Middle East Report N°182, 8 February 2018 (also available in Arabic).

Averting War in Gaza, Middle East Briefing N°60, 20 July 2018 (also available in Arabic).

Rebuilding the Gaza Ceasefire, Middle East Report N°191, 16 November 2018 (also available in Arabic).

Iraq/Syria/Lebanon

Arming Iraq's Kurds: Fighting IS, Inviting Conflict, Middle East Report N°158, 12 May 2015 (also available in Arabic).

Lebanon's Self-Defeating Survival Strategies, Middle East Report N°160, 20 July 2015 (also available in Arabic).

New Approach in Southern Syria, Middle East Report N°163, 2 September 2015 (also available in Arabic).

Arsal in the Crosshairs: The Predicament of a Small Lebanese Border Town, Middle East Briefing N°46, 23 February 2016 (also available in Arabic).

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