

An investigation into the oil and gas contractual and legal relationship between the Kurdistan Regional Government (KRG) and the Iraq Federal Government (IFG).

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2020

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**Research title: An Investigation into the Oil and Gas Contractual and
Legal Relationship Between the Kurdistan Regional Government (KRG)
and the Iraq Federal Government (IFG)**

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**A thesis submitted in partial fulfilment of the requirements of the
Robert Gordon University for the Degree of Doctor of Philosophy
April 2020**

Acknowledgements

I would like to express my sincere and deep gratitude to my supervisors, Dr Leon Moller for his continuous support, guidance and great advice and Mr John Kalberg for his support and useful critique which have been essential to complete this thesis. Without their support and guidance, I would not have been able to complete my studies. I would like also to thank the research office team, especially Dr Sarah Christie for her support and encouragement.

I would like to thank my wife Niga for her constant moral support and encouragement, and my two small children Paraw and Ahmed, who were always complaining about me being busy with the thesis and not having time for them!

I wish to express my appreciation to the interviewees for their participation and contribution to this thesis. Their input is crucial part of the study. I would like to thank whoever supported me by any means in completing my study.

This thesis is dedicated to my parents, who guided me through difficult times during my childhood, my sisters Sargul, Chiman and Diman and my older brother Akram, who I am blessed to have. Without their constant support and encouragement, I would not have been able to complete this thesis.

Last but not least, my gratitude goes to all my family and friends for their support and guidance.

Table of Abbreviations

BODC =	British Oil Development Company
BPC =	Basra Petroleum Company
CPO =	Central Petroleum Organisation
ERAP =	Enterprise de Recherches et d'Activités Pétrolières
FCOG =	The Federal Council for Oil and Gas
FOGL =	Federal Oil and Gas Law
IFG =	Iraqi Federal Government
INOC =	Iraqi National Oil Company
IPC =	Iraq Petroleum Company
IOC =	International Oil Company
KRG =	Kurdistan Regional Government
MPC =	Mosul Petroleum Company
PSC =	Production Sharing Contract
SOMO=	State Organisation for Marketing of Oil
SOOP =	State Organization of Oil Projects
TPC =	Turkey Petroleum Company
TSC =	Technical Service Contract
UN =	United Nations

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Abstract

The Kurdistan Regional Government's (KRG) production sharing contracts (PSCs) with international oil companies (IOCs) have dominated the relationship crises between the KRG and the Iraqi Federal Government (IFG) for the last 15 years. During this period, the KRG has managed to sign 50 PSCs with IOCs without any participation of, or prior approval from, the IFG. The authority of the KRG to manage oil and gas operations and the legality of the KRG's PSC has been contested constantly by the IFG. The federal Constitution (the Constitution) is the primary battlefield between the KRG and the IFG over the management of oil and gas operations. The KRG argues that its act of managing oil and gas operations within its territories is consistent with the constitutional provisions.¹ Articles 111 and 112 of the Constitution are the main sources for oil and gas management. Article 111 concerns the ownership of oil and gas in Iraq, while Article 112 provides how oil and gas should be managed.

This legal dispute is also associated with long-standing ethnic conflict between the Kurds and the IFG for over 80 years. The political dimension has adverse implications for this legally complicated dispute. This research critically analyses the legal arguments forwarded by the disputed parties over the management of oil and gas under the Constitution. It also provides an in-depth investigation into the legality of the KRG's PSC and whether they are consistent with the Constitution. The constitutional issues have complicated the dispute to the extent that settlement would be impossible unless substantial amendments are made to the Constitution or to the Draft Federal Oil and Gas Law. The research considered all relevant national and international laws, examined the legal positions of both parties, scrutinized the views of key players, and provides practical recommendations to achieve an objective outcome.

Kurdistan Oil and Gas Law

Kurdistan Production Sharing Contract (KRG PSC)

¹ The full text of the Iraqi Constitution is available at www.iraqinationality.gov.iq

Legality of the KRG Production Sharing Contract

Constitutional Dispute over the KRG's PSC

Dispute between the Iraq Federal Government and Kurdistan Regional Government over Oil and Gas Operations

History of Oil and Gas in Kurdistan Region

History of Oil and Gas in Iraq

CHAPTER 1 INTRODUCTION

1.1 Introduction

This chapter will give an overview of the oil and gas dispute in Iraq, research question, aims and objectives, and structure the of thesis

1.2 Overview of the Conflict over the oil and gas resources in Iraq

Iraq is the second-largest OPEC oil producer, producing 4.5 million bpd. Its proven oil reserves are estimated at 150 billion barrels, including the Kurdistan regional proven oil.² OPEC estimated the Kurdistan regional proven oil is 43.7 billion barrels and its proven gas is between 3 and 6 trillion cubic meters³. Kurdistan oil makes up 30% of all Iraq proven oil and its gas accounts for 89% of all proven gas in Iraq. Based on the current figures regarding the Kurdistan regional reserves of proven oil and gas, Kurdistan is expected to be one of the world's top petroleum producing regions in the future. Therefore, petroleum production will play an effective role in the region's political future. Accordingly, the current dispute between the KRG and the Iraqi IFG was expected to be legally and politically complex. Any future settlement over oil and gas management between these two governments would not be easy. Compromise over the country's primary economic resource is the most difficult task for both disputing parties, as the oil and gas disputes are associated with complex constitutional issues and long-standing political conflict. Therefore, any attempts to understand the current dispute between the KRG and the Iraqi IFG over oil and gas management requires thorough knowledge and understanding of the historical background of oil and gas operations in Iraq and the political conflict between the Kurds and the Iraqi government.

² Stasa Salacanian. *The battle for Kurdish oil*. Qantara.de 2018. The text available at <https://en.qantara.de/content/iraq%CA%B9s-wrangle-over-natural-resources-the-battle-for-kurdish-oil>

³ PUK MEDIA. Oil Companies in Kurdistan Region. <https://www.pukmedia.com>

1.2.1 *De facto* Kurdistan Regional Government in 1991

As a result of the First Gulf War against the Allied Forces in 1991, the Iraqi government lost control over a large area of Kurdistan, Iraq. In 1991, the United Nations Security Council passed Resolution 688 by which a no-fly zone was imposed on Iraq. The no-fly zone restricted Iraqi aircraft to fly over large areas of Kurdish populated territory.⁴ As a result of the no-fly zone restriction, Kurdish political parties, mainly the Democratic Party of Kurdistan (DPK) and the Patriot United of Kurdistan (PUK), gained control over the large area of Kurdistan for the first time in the history of Iraq. In 1992, the general elections were held in Kurdistan and subsequently, the Kurdistan Regional Government was formed (KRG).⁵ Between 1991 and 2003, the KRG had no formal and legal relationship with the former Saddam Hussein regime; the KRG was a semi-autonomous regional government independent of the central government. However, the KRG received *de facto* international recognition. The United Nations (UN) and western countries dealt with them directly without central government approval. The UN directly dealt with the KRG in respect of its share in the Oil-for-Food Programme.⁶

After the U.S-led coalition force invasion in 2003, a new Iraqi government was formed in 2004. The KRG re-joined the central government. The relationship between the KRG and IFG is now regulated by the Iraqi Constitution of 2005 ("the Constitution"). Article 1 of the Constitution provides that Iraq is a federal state.⁷ The Constitution recognises the KRG as a federal region⁸ and the KRG's authority and its relationship with the IFG is regulated by constitutional provisions.⁹ The Constitution came into effect in 2006. Between 1991 and 2005 the KRG was a semi-autonomous *de facto* regional government and was

⁴ Global Policy Forum (GPF) *No-fly zone*. <https://www.globalpolicy.org/previous-issues-and-debate-on-iraq/no-fly-zones.html>

⁵ *About the Kurdistan Regional Government*, available at www.cabinet.gov.krd

⁶ Johannes Jüde, "Contesting borders? The formation of Iraqi Kurdistan's *de facto* state", *International Affairs*, Volume 93, Issue 4, July 2017, Pages 847–863, <https://doi.org/10.1093/ia/iix125>.

⁷ Article 1: The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq.

⁸ Article 117: First: This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region.

⁹ The relevant articles of the Constitution will be referred to in chapters 3, 4, 5 and 6.

independent of the central government and its authorities in managing internal affairs, including the management of oil and gas.

In 1994, domestic war erupted between the two main political parties of the KRG, the Patriotic Union of Kurdistan (PUK) and Kurdistan Democratic Party (KDP), which resulted in having two separate administrations within the KRG's controlled area. In 1995, the PUK developed the field and started oil production from the Taq Taq oilfield situated near the town of Taq Taq.¹⁰ The Taq Taq oilfield was discovered in 1978 but had been left undeveloped by the former Iraqi regime.¹¹ The KRG signed a PSC with Genel Energy in 2002, and the initial contract was amended in 2004 and in 2006.¹² The KRG concluded a PSC with DNO in 2004.¹³ The initial production from the Taq Taq oilfield was not significantly high. High production required funds, technical expertise, and technology, which the KRG was unable to provide at the time considering the UN economic sanctions on Iraq, including the KRG. Under the UN economic sanctions Iraq was not allowed to export its oil to the international market, and IOCs were not allowed to purchase Iraqi oil. Although Kurdistan was not under the direct control of the Iraqi government, it was subject to the UN economic sanctions. However, the PUK was able to produce tens of thousands of bpd of oil. The production was for local use and transported by tankers to the neighbouring countries. In competition with the PUK, the KDP started searching for oil within the area under its control. Due to the lack of technology and funds, searching for oil by the KDP was not an easy task. Although oil was discovered in different areas within the KDP territories, significant development was not made until after 2003 because of lack financial resources.

¹⁰ *Competent Person's Report Taq Taq Field ss of December 2015*. Prepared for: Genel Energy International Ltd. MAICO Building, The Valley Anguilla, British West Indies TV1 11P. Prepared by McDaniel & Associates Consultants Ltd. 2200, 255 – 5th Avenue SW Calgary, Alberta T2P 3G6. 2016. The report is available at <https://www.genelenergy.com/media/1957/genel-energy-cpr-report-taq-taq-field-311215.pdf>

¹¹ Garland, C. R., I. Abalioglu, L. Akca, A. Cassidy, Y. Chiffoleau, L. Godail, M.A.S. Grace, H.J. Kader, F. Khalek, H. Legarre, H. B. Nazhat, and B. Sallier, 2010, *Appraisal and development of the Taq Taq field, Kurdistan region, Iraq*: Geological Society, London, Petroleum Geology Conference series 7, p. 801–810, doi:10.1144 /0070801. The text is available at <https://pgc.lyellcollection.org/content/7/1/801>

¹² The full text of all the contracts are available at <http://cabinet.gov.krd/p/p.aspx?l=12&p=1>

¹³ Al Arabia TV. Iraqi: Oil and Gas Part 1. available at https://www.youtube.com/watch?v=DruYvQxDXAU&feature=em-share_video_user

After the collapse of the former Iraqi regime, the KRG enjoyed greater autonomy in governing the Kurdistan region. In 2005, a new Iraqi government was formed and the KRG found even greater autonomy and began acting more independently. After the invasion, a new investment law was introduced in Iraq by the Coalition Provision Authority (CPA), Order 39,¹⁴ and the KRG introduced its own investment law. Both investment laws were favourable to international companies to encourage international investment to participate in rebuilding the country, including IOCs. The KRG began to invite IOCs to invest in Kurdistan's oil. The KRG announced that it would provide the PSC to IOCs to persuade them to invest in the KRG oil and gas sector. The terms and clauses of the KRG's PSC were generous to IOCs. Because of the favourable terms of the KRG's PSC, IOCs were racing to engage in KRG oil and gas operations to the extent that it affected their participation in the federal government bids for oil and gas licence.¹⁵ The large participation of the IOCs in the KRG's oil and gas operations pushed the IFG to confront the KRG's on the basis that the KRG does not have right to manage oil and gas without co-operation with the federal government and that the KRG's PSC is not constitutional as its terms are contrary to the provisions of the Iraqi constitution. The KRG completely disagreed with the Iraqi government's stance over the legality of its PSCs and insisted that its oil and gas contracts with IOCs are constitutional and were concluded in accordance with the provisions of the Iraqi constitution.

The dispute over the KRG's oil and gas contracts with the IOCs has become the most controversial and legally complicated issue in the relationship between the federal government and the KRG in the last 15 years. The IFG made it clear that the KRG does not have the exclusive right to manage the natural resources, including oil and gas, within its territories without prior approval from the central government. In addition, the terms of its PSC are so favourable to the IOCs that they breach the relevant provisions of the Constitution. The KRG has repeatedly confirmed that the Constitution grants the KRG a right to manage the natural resources, including oil and gas, within its territories, and that its PSCs are in conformity with the Constitution.

¹⁴ The full text is available at <http://govinfo.library.unt.edu/cpa-iraq/regulations/>

¹⁵ Chris Edwards. *Iraq oil and gas regime – Part 2*. Reed Smith 2013. The full text is available at <https://www.reedsmith.com/en/perspectives/2013/07/iraq-oil-and-gas-regime--part-2>

1.2.2 Efforts to resolve the problem

There have been on-going meetings and negotiations between the KRG and the Iraqi federal government to settle this matter. The matter is so legally complicated that settlement would be almost impossible. It should be noted that the oil and gas dispute is associated with other disputes between the IFG and the KRG, such as the KRG's share from the annual petroleum revenue or annual general budget, and the territorial dispute.¹⁶ Therefore, in the presence of the other disputes, the oil and gas dispute would be more difficult to settle. The IFG relies on the constitutional provisions in denying the KRG's right to manage oil and gas without co-operation of the federal government and claims that the PSC model is not consistent with the Constitution. In response to the IFG's claim over the legality of its right to manage oil and gas and its PSC, the KRG argues that its oil and gas contracts with IOCs are conducted in accordance with the KRG Oil and Gas Law No 22 of 2007 and the Constitution. It further confirmed that all oil and gas contracts concluded before the enactment of the KRG Oil and Gas Law No 22 and the Constitution, have been modified or amended in a way to be consistent with the Constitution.

1.2.3 The legality of the KRG's PSC

The disagreement between the Iraqi IFG and KRG over the legality of the KRG's PSCs began around the same time as the KRG concluded a PSC with the Norwegian Oil company DNO ASA on 25 June 2004.¹⁷ Prior to its PSC with the DNO ASA, the KRG concluded a PSC with a Turkish oil company GENEL Enerji as on 17 July 2002.¹⁸ However, the Iraqi government formally declared its denial to the KRG's right to sign oil and gas contracts with IOCs without co-operation of the IFG from 2004 and onward, after the KRG concluded the PSC with DNO.

¹⁶ Anjli Raval. *Oil and Gas Correspondent, Financial Time. Interview with Richard Mallinson, Geopolitical Analyst, Energy Aspect.* The video is available at <https://youtu.be/tBmLPK0mx34>.

¹⁷ Tawke- *Production Sharing Contracts (PSC)- Iraq-KRG.* A copy of the signed contract is available at the KRG's Ministry of Natural Resources website at <http://mnr.krg.org/index.php/ku/the-ministry-ku/contracts/pscs-signed>

¹⁸ *Taq Taq - Production Sharing Contracts.* A signed copy of the contract is available at the KRG's Ministry of Natural Resources website at <http://mnr.krg.org/index.php/ku/the-ministry-ku/contracts/pscs-signed>

The IFG argued that under Article 112 of the Constitution the KRG does not have exclusive constitutional rights to manage oil and gas within its territories and it cannot sign oil and gas contracts with IOCs without prior approval from the IFG. The KRG does not agree with the IFG's interpretation of Article 112. The KRG argues that both Articles 112 and 111 of the Constitution confirm the KRG's right to manage oil and gas operations within its territories, including signing oil and gas contracts with IOCs.

1.2.4 Oil and gas dispute under the Constitution

Before the enforcement of the Constitution, the IFG had no legal authority to stop KRG from managing petroleum operations. This was because Iraq had no national law or legislation regulating oil and gas operations and the KRG action of managing petroleum operations was unprecedented in Iraq's legal system. Therefore, any attempts by the IFG to deny the KRG the right to manage oil and gas or to sign PSC lacked a legal basis. It may be argued that the same problem applies to the KRG that there was not any national law or legislation granting the KRG a right to manage oil and gas within its territories, or to sign oil and gas contracts with IOCs.

Following the enactment of the Constitution in 2006, the dispute entered a new era, in which the constitutional provisions play a primary role in the legal arguments relied upon in the dispute. The dispute was mainly on the interpretation of Article 111, 112 and 115 of the Constitution. Each side of the dispute interprets Article 111 and 112 in a way that protects their interest. The IFG and the KRG's interpretation of these two articles is critically examined in the later chapters of this study. In addition to the constitutional provisions, the relevant federal and regional law and legislation is considered. Before the enactment of the Constitution, the KRG was managing oil and gas operations in accordance with the oil and gas contracts it signed with the IOCs until 2007 when the Oil and Gas Law of the Kurdistan Region-Iraq, No. (22)-2007 was passed.¹⁹

¹⁹ The full text of the law is available at [mnr.krg.org/images/pdfs/Kurdistan Oil and Gas Law English 2007.pdf](http://mnr.krg.org/images/pdfs/Kurdistan_Oil_and_Gas_Law_English_2007.pdf).

Article 141 of the Law No 22-2007 grants the KRG authority to amend or modify any terms or clauses of oil and gas contracts concluded by the KRG with IOCs before the enforcement of the Constitution that were inconsistent therewith, to bring them in line with the relevant provisions of the Constitution.

The Iraqi government argues that the issues with the KRG's PSCs could not be resolved through amendment or modification of the existing oil and gas contracts. The issue is that the KRG did not have the exclusive right to sign oil and gas contracts with IOCs without prior approval from the Iraqi government; therefore, the PSCs are not constitutional. The dispute over the legality of the KRG's PSC remains unresolved.

The tensions between both governments escalated further when the KRG concluded a PSC with the giant American oil company Exxon-Mobil in 2011.²⁰ The IFG used different methods to stop the deal, including threatening Exxon-Mobil with the termination of its oil and gas contracts with the central government if they do not withdraw from the oil contract with the KRG. At the same time, it threatened the KRG with cutting its share of the annual budget if it continues signing PSCs with IOCs. The IFG repeatedly confirmed that the KRG's oil and gas contracts must be approved by the central government in advance, otherwise they are not constitutional. The threat did not persuade Exxon-Mobil to withdraw from the contract with the KRG and did not stop the KRG from granting further PSCs to IOCs.

1.3 Aims and Objectives

The primary aim of this thesis is to provide an in-depth investigation into the legal dispute between the KRG and Iraqi IFG over the KRG's exclusive right to manage oil and gas operations within its territories. It explores the dispute over relevant oil and gas law and relevant provisions of the Iraqi constitution in examining and analysing the legal arguments relied upon by the disputed parties in this long-standing dispute. In this investigation, the terms and clauses

²⁰ KRG confirms ExxonMobil contract at Erbil oil and gas conference. Available at www.mnr.krg.org.

of the PSC and TSC are fully evaluated considering the relevant law and Constitution.

The objectives are as follows:

To provide a legal framework for regulating the relationship between the KRG and IFG over the management of oil and gas.

To provide a legal jurisprudence for legal professions and academics on oil and gas law. Therefore, there is little legal knowledge among Iraqi practitioners and academics in this area of law.

To provide a legal solution to this long-standing dispute supported by national and international legal authorities.

To provide recommendations to the disputing parties on how an acceptable settlement to protect mutual interests can be reached.

1.4 Research question

The research attempts to answer the research question, which is: **To what extent does the Iraqi Federal Constitution grant the KRG an exclusive right to manage oil and gas operations within the KRG's territories?** In other words, can the KRG manage oil and gas operation under the Constitution, including signing oil and gas contracts with IOCs without prior approval from the IFG.

Secondary Question: **Are the KRG's PSCs consistent with the Iraqi Federal Constitution?** The IFG argues that terms and clauses of the KRG's PSC are so generous to IOCs that it does not achieve the highest benefit for the people of Iraq as is stipulated by Article 112 of the Constitution. In addition, the IFG claims that the immunity KRG's PSC grants to IOCs undermines the sovereignty of Iraq. The research examines the terms of the KRG's PSC to answer the above questions.

1.5 Research Methodology

The research methodology is qualitative and desk based supported with empirical data collected from the interviews of the individuals who are directly involved in the Iraqi oil and gas sector.²¹ The research methodology is designed to explore the main points of the legal dispute between the IFG and the KRG over the KRG's oil and gas contracts with IOCs. It is designed to fully investigate the core issue of the dispute and to evaluate the legal arguments of both sides to achieve the objectives of this study. Therefore, it is important that an appropriate method should be selected to ensure the validity and accuracy of data collected and the findings the research makes. Chapter five provides the details of the data collection method, the instruments used to collect the data, and the data analysis strategy. For data collection, the research relies on primary and secondary sources. Sources include the Constitution, Oil and Gas Law of Kurdistan Law. No (22)-2007, Production Sharing Contracts (PSC) the KRG has concluded with IOCs, other domestic legislation and international law, data from the literature reviewed, and data collected from the interviews conducted with the individuals who are directly involved in oil and gas disputes from both the IFG and the KRG. It also provides the reasons for the selected method and approach in conducting the research, including why the specific approach was taken in the research and why the analysis techniques were applied.

1.6 Structure of the research thesis

This thesis comprises of six chapters as follows:

Chapter one provides a general outline of the research question and the nature of the legal dispute between the KRG and the central government and the main points of the dispute. This chapter provides a brief discussion of both side's arguments concerning the research question. It also discusses the main

²¹ Paul Chynoweth. *Advanced research methods in the built environment*. Chapter Three, Legal Research. P29. Available online at http://www.csas.ed.ac.uk/data/assets/pdf_file/0005/66542/Legal_Research_Chynoweth_-_Salford_Uni..pdf

objectives and aims of the research and finally provides brief outlines of each chapter of the research thesis.

Chapter two explains the methodology of the research and what method and strategy were adopted to conduct the research. It explores the sources of the data (primary and secondary sources and interviews). It discusses the difficulties the researcher experienced during the data collection and conducting the interviews. It also justifies the methods used.

Chapter three explains the historical background of oil and gas concessions and contracts in Iraq from the 1920s to 2003 and how the terms of the concession agreements changed and were finally terminated. The chapter discusses the nationalisation of Iraqi oil and the introduction of the service contract. It discusses the changes in the oil contract and legal developments concerning oil and gas between the 1920s and 2003.

Chapter four examines the ownership of oil and gas generally, and particularly the ownership of oil and gas in Iraq, including the KRG. The chapter discusses how the Constitution deals with oil and gas ownership, particularly Article 111. The chapter discusses different doctrines of ownership in general and in respect of natural resources. It also discusses the ownership of oil and gas in Sharia Law as the Iraqi civil law is mostly based on the Sharia law.

Chapter five analyses the dispute between the IFG and the KRG over the management of oil and gas operations within the KRG's territories and the disputed territories. This chapter critically examines the KRG's right to manage oil and gas under the relevant articles of the Constitution. The chapter further explores the dispute between the IFG and the KRG's interpretation of Articles 111 and 112 of the Constitution and how it affects the relationship between the disputed parties. The chapter evaluates the terms of the KRG's PSC in the light of the domestic law and the relevant provisions of the Constitution, and how the KRG's PSCs are different from the IFG's Technical Service Contracts (TSC).

Chapter six comprises of three parts. Part one explains the findings of the research. It provides a critical evaluation of the disputed parties' constitutional arguments over the management of oil and gas operations in Iraq and why the dispute is legally complicated. Part two provides recommendations to the disputing parties on how to remove the legal barriers and defects to reach an

acceptable solution to this long-standing crisis over the management of oil and gas in Iraq. Part three concludes the research and provides the outcome of the thesis. It also highlights the contribution of the thesis to this area of law.

CHAPTER 2 RESEARCH METHODS AND FINDINGS

2.1 Introduction

This chapter is divided into two parts. Part 1 provides a detailed discussion of the data collection methods, the reasons for the selected methods and approach in conducting the research, including why the specific approach was taken in the research and why the analysis techniques were applied. Part 2 provides the findings of the research.

2.2 Research Methods

2.2.1 Overview of data collection

The purpose of this research is to examine and explore the KRG's PSCs and the KRG's right to manage oil and gas operations unilaterally without prior approval from, or co-operation with, the IFG, and whether the KRG's claim to have the exclusive right to manage oil and gas operation is supported by the Constitution and to what extent the KRG oil and gas contract with IOCs are consistent with the Constitution. To answer the above questions the research critically analyses the provisions of the Constitution, other federal legislation (if any), the KRG's oil and gas laws, regulations, and legal arguments forwarded by both sides of the dispute.

The research is primarily library-based, and it also involves conducting interviews with key individuals from both sides of the dispute and from academics, details of the interviews are provided in the later parts of this chapter. In addition to the current constitutional provisions and federal and regional legislation regarding oil and gas management in the country, the research also provides an historical background of oil and gas contracts and management of oil and gas operations for the period from 1927 when oil first discovered in Iraq until 2004 when the new Iraqi government was formed. It discusses how oil and gas laws and contracts have been developed over the last century and their implications on the current oil and gas contracts used in Iraq. To this end, a review was conducted of most literature relating to oil and gas contracts used by the IFG and the KRG, legislation, and the relevant provisions of the Iraqi constitution. Therefore, most of the data was collected from primary sources.

2.2.2. Data collection methods

The research primarily deals with the legal disputes between the IFG and the KRG over the KRG's right to manage oil and gas operations within the KRG's territories and the KRG's PSCs in light of the Constitution, Oil and Gas Law of Kurdistan Law No. (22)-2007, national legislation, and literature on a national and international level. It analyses the terms and clauses of the KRG's existing oil and gas contract with IOCs considering the relevant articles of the Constitution concerning oil and gas management in Iraq. Therefore, doctrinal legal research is the most appropriate method to be used in this research. Paul Chynoweth describes doctrinal legal research as being *"concerned with the formulation of 'legal doctrines' through the analysis of legal rules. Within the common law jurisdictions, legal rules are to be found within statutes and cases (the sources of law) but it is important to appreciate that they cannot, in themselves, provide a complete statement of the law in any given situation. This can only be ascertained by applying the relevant legal rules to the particular facts of the situation under consideration."*²² He also states that *"The methods of doctrinal research are characterised by the study of legal texts and, for this reason, it is often described colloquially as 'black-letter law'."*²³ The black letter is the most traditional approach to methodology. *"This method of dissertation research aims to reduce the study of law to an essentially descriptive analysis of a large number of technical and co-ordinated legal rules to be found in primary sources"*.²⁴ Through this approach, the research critically analyses the legal disputes between the IFG and KRG and exploring the legal authorities referred to by both the IFG and the KRG in support of their legal arguments over the KRG's exclusive rights to manage oil and gas operations within its territories without prior approval from the central government.

Multiple qualitative research methods assisted the researcher in collecting comprehensive and accurate data in relation to the research topics. More importantly, the use of the multiple qualitative methods assisted in neutralising any partiality in data obtained from the interviewees when compared with the

²² Paul Chynoweth. *Advanced research methods in the built environment*. Chapter Three, Legal Research. P29. Available online at http://www.csas.ed.ac.uk/data/assets/pdf_file/0005/66542/Legal_Research_Chynoweth_-_Salford_Uni..pdf

²³ *Ibid*

²⁴ *Ibid*

information from the secondary sources. Accordingly, more accurate findings can be made. This is discussed in detail in the latter parts of this chapter.

This thesis conducts a thorough investigation into oil and gas legislation in Iraq and KRG and the KRG's PSCs and will also provide a historical background of oil and gas contracts, oil concessions from the time when oil was first discovered in Iraq in 1927 until now. It discusses how oil and gas law and contract developed over the last century and their implications on the current oil and gas contracts. To this end, a review was conducted of national and foreign literature relating to current and old Iraqi and KRG's oil and gas contract, legislation and relevant provisions of the Iraqi constitution. Further insight into the current legal dispute between the Iraqi government and the KRG will be provided via a series of semi-structured interviews with the key individual involved in this matter. Details of the qualitative methods, research strategies and approaches used in this research are discussed below.

2.2.3. Approach to the research development

The approach to developing the research is an important part of every research which the researcher relies on to explore the research topic, and to answer the research question in an academic way. Every social research, including legal research, must have an approach in conducting the research, which is either deductive or inductive. Some researchers use a combination of deduction and induction, called abduction.²⁵

The deduction approach involves developing or testing a theory by analysing the collected data. The research starts with the theory and then moving to the data collection. This approach mostly applies to natural sciences research and to quantitative methodology. In contrast, the inductive starts with data collection to critically analyse a phenomenon and then build a theory based on the outcome of the research. This strategy starts with data collection and then moves to build a theory.²⁶ As indicated above, there are other researchers who apply an abduction approach, which is a combination of deduction and induction. It starts either way, from theory to data or from data to theory. The most

²⁵ Kenneth F. Hyde, Recognising deductive processes in qualitative research, *Qualitative Market Research*, 1 June 2000

²⁶ M. Saunders, P. Lewis, A. Thornhill. *Research methods for business students* (7th ed. 2016) Pp 145-148

appropriate strategy for this research is the induction approach as this research will start with collecting data in respect of the research topic and then critically analysing and evaluating them in order to answer the research question.²⁷.

Selecting an appropriate approach will assist the researcher to collect the relevant information to the research topic and analysing them in a systematic way in order to reach a clear conclusion. Therefore, the research will primarily adopt the documentary analysis, historical analysis, and comparative analysis to achieve its aims in collecting the relevant data on the research topic.

2.2.4. Research strategy

The research strategy will assist the researcher to make a good plan on how to go about the data collection sources, and then direct the researcher to achieve an accurate answer to the research question. This will ultimately assist the researcher to choose the right sources data and to select the right textbook, journals and articles to use in the research to reach the right conclusion.²⁸

Choosing the right strategy for the research requires careful consideration of important issues in respect of the research question, the nature of the relationship the researcher has with the research topic, whether the researcher has any direct or indirect control over the events that the researcher is investigating, and when the investigated events took place, whether they took place recently or are historical events.²⁹

To understand the nature of the legal dispute between the IFG and the KRG over the KRG's rights to deal with the natural resources and the right to grant oil and gas contracts to IOCs, a brief historical background of oil and gas concession and contract are required. An historical background of oil and gas concession and contracts is crucial to show how the terms and clauses of oil and gas contracts have been developed. The effect of this development on oil and gas law and legislation during the same time. it will also assist the researcher to show the full picture of the current crises between the IFG and the KRG and why the ongoing dispute between these two governments are complicated and

²⁷ *Ibid*

²⁸ M. Saunders, P. Lewis, A. Thornhill. *Research methods for business students* (3rd ed. 2003)

²⁹ Robert K. Yin, "Case study research, design and method". *Applied Social Research Series* Vol 5. (3rd ed, 2003)

extremely difficult to settle with the current legal framework regulating oil and gas operation in Iraq.

2.2.5. Historical events

The historical background of oil and gas operations in Iraq is profoundly important to understand the current dispute between the IFG and the KRG over the management of oil and gas in the country. The historical events are relevant to the current dispute, therefore a history of oil and gas contracts and the national laws and legislation regulating oil and gas operations is inevitable when the researcher does not have control over the events pertaining to the research topic nor has direct contact with the individuals involved in the research subject.³⁰ The primary and secondary data will become the main source of evidence when the research matter concerns a problem from the past. Therefore, this strategy is required to explore how the KRG's PSCs have developed over the last 13 years. It would be difficult for the researcher to conduct a full investigation into this legally complicated matter without referring to the Turkish Petroleum Company's (TPC) searching for oil in Iraq in the 1920s under the oil concession agreement and oil and gas contracts granted to IOCs by the Iraqi government from 1950s until now, and how these contacts have been developed through history. Through this strategy, the research identifies the legal issues of the on-going dispute between the IFG and the KRG over the KRG's PSCs during the last 15 years. Therefore, the historical strategy is a better option to explore historical events. This is an important element to critically analyse how the legal dispute over the management of oil and gas started and how the dispute has developed to the current situation. The research explores the legal arguments the KRG relies on to defend its rights to manage natural resources, specifically oil and gas, within its territories. Accordingly, without the history strategy it would not be easy to understand the current relationship crises between the KRG and the Iraqi government, and how this relationship has been shaped by the on-going legal dispute over the management of oil and gas during the last 15 years. Analysing the early development of Iraq's oil and gas contracts and the KRGs PSCs is crucial to understanding all aspects of this long-standing legal dispute between the KRG and IFG.

³⁰ Robert K. Yin, "Case study research, design and method". *Applied Social Research Series* Vol 5. (3rd ed, 2003).

2.2.6 Data sources

The historical analysis covers all past and present information and evidence in relation to the oil concession agreements granted to the TPC and to the IPC in the 1920s and 1930s, and different types of the production service contract granted to IOCs by the Iraqi government from the 1950s to the present and in respect of the KRG's PSCs. Local and foreign authors who are a good source of the data. Some of these authors were directly involved in the KRG's oil and gas contract. Information from these authors is detailed and reliable similarly, some of the authors were directly involved in drafting KRG's PSCs. Therefore, information and evidence from these authors are sources of first-hand data in respect of the legal dispute between the IFG and the KRG over the KRG's PSCs.

2.2.7 Archival analysis

Archival analysis was the main strategy for exploring the terms and clauses of the oil contracts in Iraq from the time when oil first discovered and how they have developed from oil concession to the PSC. The archival approach is a favoured option to obtain sufficient information and evidence on different types of the oil contracts between the IFG and the ICOs during the last 100 years and is a primary source of first-hand data in respect of the KRD's PSCs.

Chapter three of this research discusses the historical background of oil contracts in Iraq. The research constantly refers to historical events and documents in the other chapters in exploring and analysing historical data pertaining to the research questions.

Using archival analysis does not necessarily mean the research does not refer to recent events and documents regarding oil and gas contracts in Iraq and KRG. The research refers to both recent and historical documents.³¹ The research explores, discusses, and analyses all recent and historical events and data to establish whether the KRG has the exclusive rights to manage oil and gas within its territories and their revenues, issues surrounding oil and gas ownership, different interpretations of the relevant provisions of the Constitution concerning oil and gas ownership, the characteristics of the KRG's oil and law,

³¹ A. Bryman. "Research methods and organization studies", *Contemporary social research series*. Vol 20. (e1989).

the Iraqi petroleum regime, the relevant international regulations, and similar situations elsewhere in the world.

The research critically analyses all recent and historical sources the IFG and the KRG have referred to in their legal arguments over the legality of the KRG's PSCs, including the KRG's oil and gas law, Iraqi petroleum regulation, interpretation of the relevant provisions of the Constitution, textbooks, journals and online articles. Three main legal issues are analysed in detail: the legal reasons the KRG believes its PSCs with IOCs are constitutional; the legal provisions the IFG relies on to dispute the KRG's rights to manage oil and gas within its territories and that the KRG's PSCs are unconstitutional; and most importantly, how IOCs are satisfied that their oil and gas contract with KRG are legal and to what extent they are certain that the KRGs PSCs are not legally disputable.

To investigate the above questions and explore and analyse the main points of the legal dispute between the parties, the research refers to historical and recent events, legislation, documents, and local and foreign literature as follows:

- 1- The oil concession granted to the TPC in the 1920s and the oil concessions granted to IPC between the 1930s and 1950s;
- 2- Technical service contract between the Iraqi oil state company and IOCs between the 1960s and 2003;
- 3- Production service contract between the Iraqi oil state company and IOCs from 2003 until now;
- 4- Production sharing contracts between the KRG and IOCs from 2005 until now;
- 5- Other studies, textbooks, journal articles, and academic research on the legality of the KRG's PSCs with IOCs and the on-going legal dispute between and KRG and Iraqi government over the legality of those contracts;
- 6- Law No 80 of 1961 (Iraq);
- 7- Oil and gas regulations and legal documents such as the relevant provisions of the Constitution of 2005, Kurdistan Regional Government's Oil and Gas Law No 22 of 2007, Federal Oil and Gas Law of 2007 and as amended in 2011;

- 8- The official websites of the KRG's Ministry of Natural Resources and official website of the Iraqi Oil Ministry. These official sources provide current information about Iraq's oil and gas contract, including statistical data about the number of oil and gas contracts. Most of this data is in Kurdish, Arabic, and English;
- 9- The press and mass media. These sources are in Kurdish, Arabic and English. They offer current information about the ongoing dispute between the KRG and Iraqi government in respect of the legality or constitutionality of the KRG's PSCs the KRG's oil revenue and how these issues have affected the relationship between them.
- 10- Semi-structured interviews, as discussed below.

2.2.8 Interviews

The purpose of the interview was to obtain first-hand data from individuals who are directly or indirectly involved in oil and gas dispute between the IFG and KRG over oil and gas management within the KRG's territories. There have been difficulties in contacting the interviewees and meeting them because meeting and interviewing individuals who are involved in the dispute from both the KRG and IFG was extremely difficult due to the security problems, the availability of the interviewees, and the distance between the interviewer and the interviewees. The interviewees are all based in Iraq while the research was conducted in Scotland. However, the author visited Iraq to meet and interview the interviewees. Contact was made with many individuals, but the researcher was not able to interview all of them due to the unavailability of those people. Several interviews were conducted face-to-face in Iraq and others were conducted through Skype. The interviews were conducted in Kurdish and Arabic. The interviews were translated into English. The Kurdish and Arabic and the English translated version of the interviews were sent to the interviewees to confirm that they were happy with the translation and confirm that no information was removed or added to the interview. A list of prepared questions was asked during the interview to discover more about the legality of the KRG's PSCs and the legal arguments forwarded by both parties in their dispute. The list of the questions is in Annex 2.

Three key individuals, who have been involved in oil and gas management from the Iraqi parliament and the Kurdistan parliament, were interviewed. The

researcher attempted on different occasions to contact the former Iraqi Ministers of Oil, Mr Hussein Al-Shahristani and Mr Abdul Karim Luaybi, the KRG Minister of Natural Resources, Dr Ashti Hawrami, and Mr Tariq Shafiq, who is one of the drafters of the Federal Oil and Gas Law. Unfortunately, the researcher was not able to interview them due to the difficulties in contacting them. Happily, the above individuals were interviewed by Ruba Husari in 2009, 2010 and 2011 on the same subject matter. The transcripts of the interviews were published on the Iraq Oil Forum's official website at www.iraqoilforum.com. The information the researcher was looking to obtain from the above individuals is available in the interviews published by Iraq Oil Forum. The above individuals expressed their views on oil and gas dispute in other websites and TV interviews.

In terms of interview preparation, permission for the interviews was sought in advance via email. A list of the questions for the interview was sent to the interviewee a day before the interview took place to ensure that the interviewees had sufficient time to read and understand the questions and make prepare ahead of the interview. Each interview lasted between 15 and 30 minutes and was recorded (with the consent of the interviewee). General guidance was sent to the interviewees with respect of the researcher and the purpose of the interview. The list of the questions for the interview was discussed with the supervisors and they were approved by the supervisors before sending them to the interviewees.

The questions are divided into four parts; questions for individuals in the IFG, questions for individuals in the KRG, questions for individuals in political parties, and questions for academics. The interviews were designed to suit the participant's backgrounds and the nature of their involvement in the research matter to ensure the research adheres to ethical academics and non-bias. The questions for the individuals from the KRG are different from the questions for the participants from the Iraqi government, in other words questions for Kurdish participants are different from the question for the Arab participants, and there were different questions for academics. The questions for the individuals in government were different from the question for the oppositions. This is to ensure the research keeps its neutrality and to strike the balance between different ethnicities and political backgrounds of the interviewees.

The researcher contacted many individuals to arrange a face-to-face interview or through Skype, but only managed to interview a small number of individuals who were personally involved in drafting oil and gas law and contracts, and who were closely aware of the ongoing dispute between the KRG and Iraqi government over the KRG's oil and gas contract with IOCs. The purpose of the interviews was to collect the first-hand information from those who are directly or indirectly involved in the research topics. For individuals who the researcher was not able to interview, their views and opinions have been expressed through TV, newspapers, journals, social media and websites. The researcher has referred to these as a data collection source.

Since the methodology used in this research is qualitative, conducting interviews with a small number of individuals did not undermine the methodology of the research. The information intended to be obtained from the individuals who supposed to be interviewed, was obtained from that small number of the people interviewed. This has been supported by Hussey and Hussey,³² who states that: *"The aim of a phenomenological paradigm is to get depth, and it is possible to conduct such research with a sample of one"*. As discussed above, the primary purpose of the interviews was to obtain first-hand information from those directly involved in the legal dispute over the KRG's oil contracts with the ICOs, which was achieved through the interviews and the other sources as discussed above.

22.9 Problems with primary and secondary data

The researcher has experience various difficulties in collecting the relevant data concerning the research question.

(a) Primary data

The starting point in analysing this dispute is the relevant articles of the Constitution. The interpretation of Articles 111 and 112 of the Constitution is the core of the dispute between the IFG and the KRG over the management of oil and gas in Iraq, and the only institution competent to rule over the interpretation, the Federal Constitutional Court, has not done so. Secondly, the individuals who have been selected to be interviewed in respect of this research

³² Hussey, J. and Hussey, R. (1997) Business Research: A Practical Guide for Undergraduate and Postgraduate Students. Macmillan, London

were all politically affiliated to the IFG in Baghdad and to the KRG. With the current sectarian conflict in Iraq, there is a possibility that the interviewees were likely to be partial in their answers. Therefore, the same key questions in respect of the main issues such as the legality of the KRG's oil and gas contract, the interpretation of the relevant provisions of the Iraqi constitution, and the ownership of oil and gas were equally put to all the interviewees, and information disclosed by other individuals in press conferences, TV interviews, online publications, and government publications were considered. This was to collect accurate data about the research question and to neutralise the data from any bias. Consideration was given to the other secondary sources such as papers by academics, articles and analysis by lawyers, and studies by practitioners in oil and gas law.

(b) Secondary data

Collecting data about oil and gas contracts in Iraq was not an easy task, especially data about the oil concession agreements granted to IOCs between the 1920s and 1950s, and the different types of the service contract from the 1950s until the invasion of Iraq in 2003. This research explores the oil contracts from the time oil was first discovered in Iraq until the present, which covers a wide range of oil contracts, laws, and regulations over the period of a century. This would not be an easy task especially for a country like Iraq, which has been affected by many international wars and domestic conflict and instability and many military coups. Therefore, the saved data about oil and gas agreements and contracts may have been destroyed or has disappeared. Iraq has not been able to computerise and save all data regarding oil and gas contracts. At the time of writing this research, the website of the MoO has been referred to for information regarding the research question, but there was not much information which could be used in this research. The website was poorly designed and only contained information about the recent activities of the MoO, annual oil revenue, list of the MoO companies and state oil companies, some recent legislation regarding oil and gas management, and MoO news.

The secondary data sources are mostly from 1990 and onward, or from non-Iraqi sources, such as foreign textbooks and journals. Articles, online publications, conference news, and TV programmes all are in English. Some foreign sources refer to the historical events, notes, comments and personal

memories from individuals who were involved in the oil business in Iraq. Access to the original sources of these data is very difficult, if not impossible. This is because they may no longer exist.

(c) Limitation in the available literature

The literature of this area of law is limited to a certain extent. There are several articles written by Iraqis in Kurdish and Arabic. There are more articles in English than Kurdish and Arabic.

The leading expert in this field is Dr Zedalis, Rex J at the University of Tulsa, who has provided more details on the KRG's PSCs than anyone else. He has thoroughly discussed oil and gas issues between the KRG and Iraqi government. His book, *The legal dimensions of oil and gas in Iraq*, is a leading textbook in this area of law. Unlike Peter Cameron, Zedalis has concentrated on the legal aspect of the problem. He has explored the provisions of the Iraqi Oil and Gas Law and the KRG's Oil and Gas Law 2007.

Professor Peter D. Cameron, Director of CEPMLP,³³ from the University of Dundee was often involved in the KRG's PSCs as a consultant. He believes that the motive behind the KRG's PSCs is a dream of independence. To achieve this, a sustainable economy is needed, and oil and gas revenue would guarantee that.

Ben Holland, in a short article "Are Kurdistan's oil contracts constitutional" examines the legality of the KRG's PSCs. He concentrates on examining the KRG's PSCs in the light of the relevant provisions of the Constitution, in particular, Article 112. His findings are similar to those of Peter Cameron and Zedalis.

There are many TV and newspapers interviews of the KRG and Iraqi government's officials on the matter. Dr Ashti Hawrami, the KRG Minister of

³³ Peter D. Cameron, "Managing the politics of oil reforms: Lessons from Iraq: keynote address at oil and gas in federal systems conference, March, 2010, Washington DC". *Centre for Energy, Petroleum & Mineral Law & Policy*.

Natural Resources, does not believe the current relationship crisis between KRG and Iraq is caused by the KRG's PSCs.³⁴

Deniz Tas³⁵ considered this matter from a different angle. He believes the KRG's PSCs is a matter of ownership, and whoever has the right of ownership of oil and gas has the right to manage oil and gas.

The differences in interpretation triggered Thomas. W. Donovan's attention.³⁶ He states that due to the ambiguities in the Constitution's provisions, each side of the dispute wants to exploit that ambiguity in its interest. He suggested that to overcome this problem, the relevant articles should be amended to prevent different interpretation. Alternatively, a formal interpretation of the relevant articles should be provided by parliament or a competent court, and that interpretation must be binding.

The above literature dates back to five or six years ago. The current political situation in Iraq, the current war with ISIS, and the sharp drop of oil and gas prices may have changed many things, including the desire of the parties to resolve this problem and confront ISIS together. Although several meetings have taken place between the KRG and IFG on different occasions, the dispute remains unresolved.³⁷

2.2.10 Final remarks on the research methods

This chapter reviews the main sources on which the researcher relies for data collection and the appropriate method to explore the research questions. The researcher prioritised the sources of data used in legal research like this, and the data must be accurate and reliable. The researcher is committed to the ethical principles of academic research and has followed procedural requirements to avoid any partiality and bias in writing this research and in selecting the data collection sources, in particular the data from the interviewees. Therefore, a qualitative method of a doctrinal and comparative

³⁴ Togy talk to Dr. Ashti Hawrami, Minister for Natural Resources, Kurdistan Regional Government. *The Oil and Gas Year Kurdistan Region of Iraq 2009*, By Wildcat Publishing

³⁵ *Petroleum development in the Kurdistan region of Iraq: A struggle over competency*. 2012

³⁶ Thomas. W. Donovan, *The Iraqi upstream oil and gas industry following the 2010 general elections*. 2010.

³⁷ *Baghdad's oil deal with the KRG*. Petroleum Economist, 01/05/2015, P12-12.

nature was selected to achieve the aims and objectives of the research. The primary questions this research seeks to answer are whether the KRG has the exclusive right to manage oil and gas within its territories, whether the KRG's oil and gas contracts with IOCs are constitutional, and how this affects the relationship between the IFG and the KRG. In doing so, should all oil and gas contracts be treated the same in terms of legality, or should a differentiation should be made between oil and gas contracts concluded by the KRG with IOCs before the new constitution came into effect in 2006, and those contracts concluded after that. Should oil and gas contracts concluded by the KRG for oil and gas within the disputed territories with the IFG be treated differently from those concluded for oil and gas within the KRG's undisputed area?

The research follows an inductive approach as this is most appropriate. The literature assists the researcher to consider other studies and research in this area of law, such as the legality of the KRG's PSCs and the question of oil and gas ownership in Iraq. The opinion of experts and writers on this subject have been considered. A historical strategy was employed as understanding the current legal dispute and relationship crises between the IFG and the KRG would be difficult without the knowledge of the early history of the oil concession agreements and oil and gas contracts since the 1920s. This aids the researcher to demonstrate the significant barriers and obstacles preventing the parties from reaching a settlement on the disputed issues. An archival strategy was also selected to explore and investigate the terms and clauses of the KRG's PSCs between 2003 and now, and how they are different from the IFG's service contract. The selection of these two research methods is an effective method to cover a wide range of data sources. Qualitative sources included data collected from the interviews, different interpretations of the relevant provisions of the Constitution and legislation, and media reports. This method is best suited to the research to guarantee a better and fairer outcome.

CHAPTER 3 HISTORY OF PETROLEUM OPERATIONS IN IRAQ

3.1 Introduction

The dispute over the Kurdistan Regional Government (KRG)'s oil and gas contracts with international oil companies (IOCs) has been the most controversial issue between the KRG and IFG since the invasion of Iraq by the Coalition Force in 2003. Since 1992, the KRG has enjoyed a semi-autonomous self-administered rule over the Kurdish populated area, specifically the provinces of Sulaymaniyah, Erbil, and Duhok, which are shown in figure 1 below. Following the formation of the IFG in 2004, the KRG was formally recognised as a regional government within Iraq. This was confirmed by Article 117 of the Constitution of 2005. The purpose of the constitution in Iraq was to reflect the real structure of a new federal, democratic, and pluralistic system, which is confirmed in paragraph four of the preamble of the Constitution.³⁸ The Constitution reflects the political, legal, economic, cultural, and social developments and changes in Iraq after the invasion and regulates the relationship between the KRG and the IFG. The exclusive power of the regional government and IFG are identified in the Constitution, and certain powers are shared between the KRG and the IFG. The management of oil and gas operations is regulated by Articles 111 and 112 of the Constitution. Article 111 vests the ownership of oil and gas in the people of Iraq in all governorates and regions. However, the article does not explain who has exclusive authority to exercise ownership rights over oil and gas as a representative of the people of Iraq. Article 112 of the Constitution explains how oil and gas should be managed. The KRG argues that the Constitution grants certain rights and authorities to the KRG, including the right to manage oil and gas within the

³⁸ Iraqi Constitution of 2005. Preamble "We, the people of Iraq, who have just risen from our stumble, and who are looking with confidence to the future through a republican, **federal, democratic, pluralistic system**, have resolved with the determination of our men, women, elderly, and youth to respect the rule of law, to establish justice and equality, to cast aside the politics of aggression, to pay attention to women and their rights, the elderly and their concerns, and children and their affairs, to spread the culture of diversity, and to defuse terrorism".

KRG's territories.³⁹ Accordingly, the KRG has concluded over 50 oil and gas contracts with IOCs during the last 15 years. Some of the contracts date back to 2004, prior to the enforcement of the Constitution.⁴⁰ The KRG uses a production sharing contract (PSC) as a model contract for IOCs, which is different from the service contract, the model contract used by the IFG to manage oil and gas operations with IOCs. The dispute is legally complicated and politically motivated. This study focuses only on the legal aspect of the dispute.

The management of oil and gas within the KRG's territories independently, without any co-operation from the IFG, is extremely significant for the KRG. As a long-term objective, this will guarantee the KRG's road towards independence in the future. The motivation behind the KRG's ambition to manage oil and gas unilaterally is not unknown. It is clear for the IFG that managing oil and gas without co-operation of the IFG will help the KRG to build its own economy, separated from the IFG. Therefore, the KRG's management of oil and gas has been firmly disputed by the IFG. The IFG argues that the KRG's management of oil and gas unilaterally is contrary to Article 112 of the Constitution. The KRG confirms managing oil and gas within its territories without co-operation with the IFG is not departure from the oil and gas management framework stipulated by Article 112 of the Constitution. There is not an agreement between the KRG and IFG over the interpretation of the oil and gas management under Article 112 of the Constitution.

To understand the current conflict between the KRG and the IFG over the management of oil and gas, an historical background of oil and gas operations and model contracts in Iraq is required. This enables the researcher to assess

³⁹ Article 12 of the Iraqi Constitution 2005. First: The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law.

Second: The federal government, with the producing regional and governorate governments, shall together formulate the necessary strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encouraging investment.

⁴⁰ *KRG's PSC with DNO*. The full text of the contract can be accessed at the KRG Ministry of Natural Resources at <http://mnr.krg.org/index.php/en/the-ministry/contracts/pscs-signed>

the depth of the dispute, and why it is so difficult for the disputed parties to reach an agreement.

3.2 The search for oil in Mesopotamia

The current Iraqi state did not exist before the First World War (WWI). Prior to WWI, Iraq was part of the Ottoman Empire and was called Mesopotamia.⁴¹ Mesopotamia comprised of three *vilayets* (*vilayet* is an Arabic word meaning 'province'): the Vilayet of Basra in South, the Vilayet of Baghdad in the middle and in the north, Vilayet Mosel.⁴² Kirkuk was part of Vilayet Mosel. The map in figure (2) below shows Mesopotamian territories before 1920.

Figure (2)



[BBC - History - British Relations with Iraq](http://www.bbc.co.uk/history/recent/iraq/britain_iraq_01.shtml)

Map showing the Ottoman provinces of Mosul, Baghdad and Basra.⁴³

Following the collapse of the Ottoman Empire in WW1, Iraq was established in 1920. The distinction between Mesopotamia and Iraq is important here because the search for oil and attempts for oil concessions began before the creation of Iraq in 1920. The search for oil in Mesopotamia is traced back to the beginning

⁴¹ Simon, Reeva Spector, and Eleanor H. Tejirian, editors. *The creation of Iraq, 1914-1921*. Columbia University Press, 2004. *JSTOR*, www.jstor.org/stable/10.7312/simo13292.

⁴² Dr. Ferruh Demirmen. "Part I: Quest for oil, oil in Iraq: The Byzantine beginnings". *Global Policy Forum*. 25 April 2003 available online at www.globalpolicy.org.

⁴³ BBC available at http://www.bbc.co.uk/history/recent/iraq/britain_iraq_01.shtml

of the 20th century, after the discovery of oil in 1908 at Masjid-i Suleiman in Persia⁴⁴ by a British businessman, William K. D'Arcy. D'Arcy was the first person in the Middle East to obtain an oil concession from the Iranian government. In 1901, D'Arcy obtained a concession agreement from the Persian Shah, for the exploration and development of oil in the Persian Empire (Kingdom of Iran).⁴⁵ The concession was for 60 years. It covered 500,000 square miles, equivalent to five-sixths of the Persian Empire.⁴⁶

In 1901, D'Arcy began negotiations with the Ottoman Empire for an oil concession in Mesopotamia.⁴⁷ The negotiation continued until 1912 but D'Arcy was unsuccessful in obtaining the concession because there was strong competition from the German government to obtain an oil concession from the Ottoman Empire. The Germans started negotiations with the Ottoman Empire, the Turkish Sultan, before the British to obtain oil concession in Mesopotamia. The competition between the Germans and the British to obtain oil concession from the Ottoman Empire led to both preventing each other from obtaining it. In 1899, the Germans, through the Deutsche Bank, obtained a concession in Mesopotamia for a railway called Baghdad Railway.⁴⁸ Prior thereto, Germany obtained a concession from the Othman Empire to build a railway from Berlin to Istanbul and a further concession was granted to the Germans to extend the railway to Baghdad. The later railway concession included mining rights extending 20 kilometres on both sides of the projected railway. The Germans made the first request to the Ottoman Empire to obtain a right for searching oil within the railway concession area,⁴⁹ and a request to extend the concession

⁴⁴ Dr. Ferruh Demirmen. "Oil in Iraq: The Byzantine beginnings". *Global Policy Forum*. 25 April 2003 available online at www.globalpolicy.org

⁴⁵ Sarah Kent. "A brief history of the Iranian oil industry". *The Wall Street Journal*. 2015. It can be accessed on line at <https://www.wsj.com/articles/a-brief-history-of-the-iranian-oil-industry-1428063016>

⁴⁶ Dr. Mohammad Malek. "History of Iran. Oil in Iran between the two World Wars". *Iran Chamber Society*, 08 October 2017. It can be accessed online at http://www.iranchamber.com/history/articles/oil_iran_between_world_wars.php

⁴⁷ *The International Petroleum Cartel*, staff report to the federal trade commission, released through subcommittee on monopoly of select committee on small business, U.S. Senate, 83d Cong., 2nd sess (Washington, DC, 1952), Chapter 4, "Joint control through common ownership--the Iraq Petroleum Co., Ltd.," pp. 47-112. It can be accessed on line at <https://www.mtholyoke.edu/acad/intrel/Petroleum/ftc4.htm>

⁴⁸ The Baghdad Railway, 1899-1914. It can be accessed at <https://www.mtholyoke.edu/acad/intrel/boshtml/bos139.htm>

⁴⁹ *History of the IPC and Mr. Gulbenkian's part in its foundation*, also letter from H. Riedemann to W. C. Teagle, October 10. 1920.

area to include a larger area. The German negotiation with the Turkish Sultan was not easy as it opposed the British interest for an oil concession.

Before the German and British competition for oil concession, in or around 1891 an Armenian businessman, C. S. Gulbenkian, prepared a comprehensive report on the oil possibilities in Mesopotamia at the request of the Turkish Sultan.⁵⁰ The report contained important information about the possibility of oil in Iraq that attracted the attention of the Turkish Minister of the Liste Civile and the Minister of Mines. The Report persuaded Sultan Abdul Hamid to transfer the ownership of the large area of land in Mesopotamia from the Ministry of Mines to the Liste Civile. This transfer was the transfer of the ownership of the land from the government to his private account.⁵¹

The discovery of oil in Persia and Gulbenkian's report on the possibility of oil in Iraq were two major factors that persuaded the British and German to race for oil concession in the region. Before the Gulbenkian Report, there was historical evidence confirming the possibility of oil in Iraq, specifically in Kirkuk.⁵² In 1904, the Anatolian Railway Co represented Germany's interests when it successfully obtained a concession for exploring oil within the 20 kilometres on both sides of the Baghdad railway.⁵³ The map in figure 3 shows the Berlin – Baghdad railway. The Germans attempted to obtain a further concession for searching oil or even mining rights in Mesopotamia, but they were unsuccessful because the Anatolian Railway Co did not fulfil its contractual obligations under the 1904 concession by failing to complete the exploring and development stage within the timeframe. Therefore, Germany's dreams for an oil concession never materialised and their negotiation with the Turkish Sultan finally ended with a promising letter granting the Anatolian Railway Co favourable terms if any future

⁵⁰ Daniel Yergin. *The prize, the epic quest for oil, money, and power*. Edition 1991. p.186.

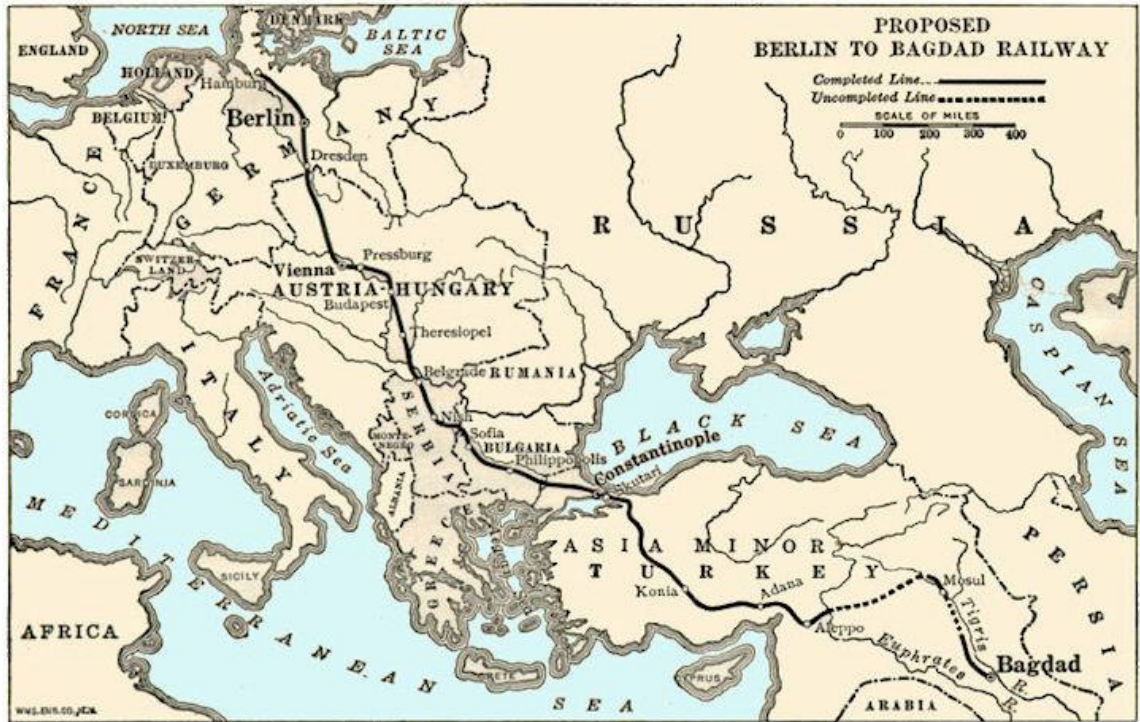
⁵¹ From *Memoirs of Calouste Sarkis Gulbenkian with particular reference to the origins and foundation of the Iraq Petroleum Co., Ltd.*, Lisbon, September 16. 1941.

⁵² Yergin. 1991. p. 204.

⁵³ Marian Kent. *Oil and empire: British policy and Mesopotamia oil, 1900-1920*. Online version, Barnes & Noble, 1976.

mining concession were granted to them.⁵⁴ Accordingly, the 1904 concession between the Anatolian Railway Co and the Ottoman Empire become void.⁵⁵

Figure (3)



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In addition to the failure of the Anatolian Railway Co to meet its contractual obligations under the 1904 concession, the British competition for an oil concession around the same time was another reason to end the Germans' dream for an oil concession in Mesopotamia. The British businessman D'Arcy represented the British interests in the race for an oil concession in Mesopotamia. His efforts produced no benefit for the British but managed to persuade the Turkish Sultan to invalidate the German concession.⁵⁷

In 1910, the Ottoman Empire had gone through some political changes, including the removal of Sultan Abdul Hamid from power by a pro-British group

⁵⁴ From *Memoirs of Calouste Sarkis Gulbenkian with particular reference to the origins and foundation of the Iraq Petroleum Co., Ltd.*, Lisbon, September 16. 1941.

⁵⁵ W. C. Teagle, *Confidential memorandum of negotiations with the Turkish Petroleum Co. Ltd.*

⁵⁶ <https://www.google.co.uk/search?q=baghdad+railway+map>

⁵⁷ Murat Ozyuksel. *The Berlin-Baghdad Railway and the Ottoman Empire: Industrialization, Imperial Germany and the Middle East* (1st edit) 2016.

called the Young Turk Revolution.⁵⁸ The political developments in the Ottoman Empire helped the British government to protect British interests in the Ottoman territories. The National Bank of Turkey was established and Gulbenkian was appointed as a director and a member of its executive committee. Gulbenkian's business backgrounds and his intensive knowledge of oil in Mesopotamia made him the right person for both positions in the National Bank of Turkey and, more importantly, to lead the negotiation with the Ottoman Empire to obtain an oil concession in Mesopotamia.⁵⁹

With his business experience, skill, and knowledge of oil, Gulbenkian managed to remove the barriers to obtain the oil concession in Mesopotamia. He believed the competition between the British and German was the major obstacle preventing the British and Germans from obtaining oil concession between 1904 and 1912. Therefore, the cooperation between the British and the Germans was essential for a successful negotiation with the Ottoman Empire, and co-operation between the two rivals would produce a satisfactory solution to the oil concession. Gulbenkian finally managed to convince the British and Germans to work together in their efforts for oil concession and an agreement between the National Bank of Turkey, representing British interest, and the Deutsche Bank, representing the German interest, was reached.⁶⁰ The two rivals agreed to form a British limited-liability company, 25% of which was given to the Deutsche Bank.⁶¹ In January 1911, the British limited-liability company was replaced with African and Eastern Concessions Limited, and again in October

⁵⁸ D. Ergil. A REASSESSMENT: THE YOUNG TURK, THEIR POLITICS AND ANTI-CONONIAL STRUGGLE. 1975.

<https://ojs.lib.uom.gr/index.php/BalkanStudies/article/viewFile/1518/1540>

⁵⁹ *The International Petroleum Cartel*, Staff Report to the Federal Trade Commission, released through Subcommittee on Monopoly of Select Committee on Small Business, U.S. Senate, 83d Cong., 2nd sess (Washington, DC, 1952), Chapter 4, "Joint Control Through Common Ownership--The Iraq Petroleum Co., Ltd.," pp. 47-112.

<https://www.mtholyoke.edu/acad/intrel/Petroleum/ftc4.htm>

⁶⁰ Deutsche Bank owned Anatolian Railway and Baghdad Railway.

⁶¹ *The International Petroleum Cartel*, Staff Report to the Federal Trade Commission, released through Subcommittee on Monopoly of Select Committee on Small Business, U.S. Senate, 83d Cong., 2nd sess (Washington, DC, 1952), Chapter 4, "Joint Control Through Common Ownership--The Iraq Petroleum Co., Ltd.," pp. 47-112.

<https://www.mtholyoke.edu/acad/intrel/Petroleum/ftc4.htm>

1912 the latter was changed to the Turkish Petroleum Co (TPC). In 1929, the TPC finally changed to the Iraqi Petroleum Co (IPC).⁶²

3.3 The Turkish Petroleum Company (TPC)

The search for oil in Mesopotamia became an imminent matter. For the British government, oil was the only thing that could protect its hegemony over India and the Middle East.⁶³ Because of the competition between the Germans and the British, their earlier negotiations with the Ottoman Empire for oil concession in Mesopotamia were unsuccessful. Gulbenkian facilitated the cooperation between the British and the Germans to guarantee a successful oil concession agreement with the Turkish Sultan. Therefore, in October 1912 the Turkish Petroleum Company (TPC) was established to represent the interests of all parties in their negotiation with the Ottoman Empire for the oil concession in Mesopotamia. The National Bank of Turkey and the Deutsche Bank merged to make up the TPC.⁶⁴ The Anglo-Persian Oil Co entered the race for the Mesopotamia oil. A new agreement was required to protect everyone's interests. Therefore, in 1914 a conference was held at the British Foreign Office. The National Bank of Turkey, Deutsche Bank, D'Arcy group, Royal Dutch-Shell through the Anglo-Saxon Petroleum Co, and representatives of the British and German governments were all present. On 19 March 1914, an agreement was reached to re-structure the shares of TPC. Accordingly, the TPC was re-structured as follows: 50% shares for Anglo-Persian Oil Co, 22,5% for the Deutsche Bank, 22,5% for Anglo-Saxon Petroleum Co, and the other 5% for Gulbenkian.⁶⁵ The Anglo-Persian Oil Co represented British interests.

Following the TPC's shareholders agreement, dramatic progress was made in the negotiations with the Ottoman Empire for oil concession. On 18 May 1914,

⁶² Michael Quentin Morton. *History of oil in the Middle East. Once upon a red line-the Iraq Petroleum Company Story*. <https://www.geoexpro.com/articles/2013/06/once-upon-a-red-line-the-iraq-petroleum-company-story>

⁶³ David E. McNabb. *Oil and the creation of Iraq. Policy Failure and the 1914-1918 War in Mesopotamia*, (1st Edit 2016). <https://books.google.co.uk/books>

⁶⁴ Marian Kent. *Oil and Empire, British Policy and Mesopotamian Oil 1900-1920*, (1st Edit 1976). [https://books.google.co.uk/books?id=WA9aCwAAQBAJ&pg=PA222&lpg=PA222&dq=,+in+October+1912+the+Turkey+Petroleum+Company+\(TPC\)](https://books.google.co.uk/books?id=WA9aCwAAQBAJ&pg=PA222&lpg=PA222&dq=,+in+October+1912+the+Turkey+Petroleum+Company+(TPC))

⁶⁵ Daniel Yergin. *The prize, the epic quest for oil, money, and power*. Edition 1991. Chapter 10, p.187.

with support from the British and German ambassadors, a draft concession agreement for the oil rights in Mosul and Baghdad was submitted to the Ottoman Empire. On 28 June 1914, the Ottoman Empire agreed to grant oil concessions to TPC. Below is the confirmation of the grant.⁶⁶

The Minister of Finance, which has taken over from the civil list matters concerning petroleum deposits already discovered or to be discovered in the vilayets of Mosul and Bagdad (Provinces of Mosul and Baghdad), agrees to lease them to the Turkish Petroleum Co., and reserves the right later on to fix its own share as well as the general terms of the agreement.⁶⁷

The grant was not an oil concession, only a promise. The final agreement between the Ottoman Empire and the TPC over the Mesopotamia oil was not concluded. The parties were in negotiation to reach the final agreement, but it was disrupted by WWI. Therefore, the negotiation between the TPC and the Ottoman Empire was suspended during the period of the WWI.

3.4 Post WWI negotiation for oil concession in Iraq

WWI ended in 1918. The Ottoman Empire collapsed, and its territories were split between the British government and France under the Sykes-Picot Agreement in 1916.⁶⁸ In the beginning, there was a dispute between Britain and France over the division of the Mesopotamia territories. For British government, oil was crucial to promote its control in the Middle East and India. Therefore, the British government could not compromise over the Mesopotamia land. After a long negotiation between the British government and French, the dispute was resolved through the San Remo agreement in April 1920. The two governments agreed that the 25% shares of the Deutsche Bank in the TPC would be granted to France and in return, the Vilayet of Mosul would be given to the British government. The French also agreed to the construction of the pipelines through

⁶⁶ Demirci, Sevtap. "Turco-British diplomatic manoeuvres on the Mosul question in the Lausanne Conference, 1922–1923." *British Journal of Middle Eastern Studies*, vol. 37, no. 1, 2010, pp. 57–71., www.jstor.org/stable/25702898.

⁶⁷ *The International Petroleum Cartel*, Staff Report to the Federal Trade Commission, released through Subcommittee on Monopoly of Select Committee on Small Business, U.S. Senate, 83d Cong., 2nd sess (Washington, DC, 1952), Chapter 4, "Joint Control Through Common Ownership--The Iraq Petroleum Co., Ltd.," pp. 47-112. <https://www.mtholyoke.edu/acad/intrel/Petroleum/ftc4.htm>

⁶⁸ J. Russell, R. Cohn. *Sykes Picot Agreement* (1st edit) 2012.

French-controlled territories to transport oil from Mesopotamia to the Mediterranean.⁶⁹ Accordingly, after WWI, the British government was granted a class-A mandate over Mesopotamia territories. Following the settlement between France and the Britain, the Iraqi state was created in 1920 and a monarchy established as the political system in 1921.⁷⁰

The TPC resumed its negotiation for Mesopotamian oil with the newly established Iraqi government. The TPC relied on the promise from Grant Vizier, which was granted by the Ottoman Empire before WWI for its claims to Mesopotamian oil.⁷¹ The major controversial point in the new negotiation was the Iraqi government's request for a 20% share of the oil company's oil operation under the concession in Iraq. The TPC opposed this and did not want Iraq to be part of the TPC's management. Therefore, Iraq's request for 20% of TPC shares was rejected. The negotiation continued with the Iraqi government and finally the TPC was granted the oil concession in Mesopotamia in 1925. The most important terms of the first oil concession granted to the TPC by the Iraqi government are as follows:

1. *The oil concession was for 75 years.*
2. *The concession was granted in respect of only 24 plots which were selected for the TPC.*
3. *In return for the oil concession the Iraqi government was to receive royalties at a flat fee per ton to be paid in English pounds sterling. Royalty payments were linked to oil company profits. Royalties were to be paid from the profits. The Iraqi government would only receive the royalty payments twenty years from the date the concession was granted.*
4. *The Iraqi government also had the right to tax the oil production at the same rate levied on other industrial concerns.*

⁶⁹ Marian Kent. *Oil and empire, British policy and Mesopotamian oil 1990-1920*, (1st Edit 1976).

[https://books.google.co.uk/books?id=WA9aCwAAQBAJ&pg=PA222&lpg=PA222&dq=,+in+October+1912+the+Turkey+Petroleum+Company+\(TPC\)](https://books.google.co.uk/books?id=WA9aCwAAQBAJ&pg=PA222&lpg=PA222&dq=,+in+October+1912+the+Turkey+Petroleum+Company+(TPC))

⁷⁰ David E. McNabb. *Oil and the creation of Iraq. Policy failure and the 1914-1918 War in Mesopotamia*, (1st Edit 2016). <https://books.google.co.uk/books>

⁷¹ *Multinational Corporations and United States Foreign Policy*, Parts 8-11. By United States. Congress. Senate. Committee on Foreign Relations. Subcommittee on Multinational Corporations. <https://books.google.co.uk/books?id=DNZEAQAAMAAJ&pg=PA496&lpg=PA496&dq=TPC+negotiation+for+mesopotamia+oil+after+WWI&source>

5. *The TPC must build an oil refinery in Iraq to meet the domestic needs, and TPC also had to build pipelines to export the production oil to the international market.*
6. *The Iraqi government had a right to give the other plots, other than those selected by the TPC, to the other oil companies, and TPC was able to bid on those plots.*⁷²

The grant of the oil concession to the TPC was rectified by the Iraqi parliament. Following the grant of the oil concession, the TPC began searching and drilling for oil. The Kirkuk province was known for its oil possibility before 1925 when the oil concession was granted. Therefore, the TPC started drilling for oil in the north of Kirkuk. Two years after the grant of the concession on 25 October 1927, oil was discovered for the first time in Iraq. The produced oil was spilt for the first three days, which was estimated at 90,000 barrels per day (bpd) before the gusher was brought under control.⁷³ Exploration and development of oil continued by the TPC within the selected plots until 1929 when the TPC changed its name to the Iraqi Petroleum Company IPC. The picture in figure (4) shows the oil gusher when oil was first discovered in Kirkuk.

⁷² Helen Chapin Metz, ed. *Iraq: A country study*. Washington: GPO for the Library of Congress, 1988. Available online at <http://countrystudies.us/iraq/>

⁷³ David E. McNabb. *Oil and the creation of Iraq. Policy failure and the 1914-1918 war in Mesopotamia*, (1st Edit 2016). <https://books.google.co.uk/books>.



The famous gusher at Baba Gurgur with a river of oil in the foreground. (Source: IPC).⁷⁴

Figure (4)

⁷⁴ Michael Quentin Morton. "River of oil-early oil exploration in Iraq", *Geoexpro*. Available online at <https://www.geoexpro.com/category/history-of-oil>.

3.5 Dispute between the United States of America and the TPC shareholders over Iraqi oil

After WWI, the TPC faced a new rival in its claim for the oil in Iraq. The United States of America claimed that oil in the Middle East, including Iraq, should be shared between all WW1 allies who fought against the Ottoman Empire. The USA was one of the allied powers in WWI against the Ottoman Empire. Therefore, like the other TPC shareholders, the USA should have benefitted from the aftermath of WWI and US oil companies should have been given the right to participate in the oil operations in Iraq.

The USA demanded that the "Open-Door" policy should be used for US oil companies to participate in the Middle East oil, including Iraqi oil. Under the Open-Door policy, all interested parties should be able to participate equally in oil operations. US oil companies should not be discriminated against in participating in the oil operations in Iraq. The British Government and France, as two major shareholders of the TPC, had been in negotiation with the USA for about six years. Finally, in 1928, the dispute between the USA and other TPC shareholders was settled. The TPC shareholders agreed that US oil companies Standard Oil Co. (New Jersey) and Standard Oil Co. (New York) benefit from Iraqi oil through the TPC.⁷⁵

The TPC shareholders were involved in oil operations across the Middle East directly and indirectly through their subsidiaries. Therefore, there was a kind of indirect competition among the TPC shareholders in the region. The competition undermined the TPC's efforts to maximise profits from oil productions. Therefore, a new agreement was required between the TPC shareholders to eliminate all barriers, including any direct and indirect competition, in all oil operations within a defined area, which covered most of the former Ottoman Empire's territories. The Red Line agreement was concluded between the TPC shareholders in July 1928. Figure (5) below shows the territories covered by the Red Line agreement. The primary purpose of the Red Line agreement was to prevent the TPC's shareholders from competing with the TPC in oil operations,

⁷⁵ Daniel Yergin. *The prize, the epic quest for oil, money, and power*. Edition 1991. Chapter 10.

refining, and oil concessions within the area defined by the agreement, which covered all the Middle East.⁷⁶

Article 10 was considered as an important provision of the Red Line Agreement, which provided that:

All the parties hereto agree that the Turkish Company or a nominee of the Turkish Company shall, except as hereinafter mentioned, have the sole right to seek for or obtain oil concessions within the defined area, and each of the Groups hereby covenants and agrees with the Turkish Company and with the other Groups that excepting only as herein provided or authorized such Group will not nor will any of its Associated Companies either personally or through the intermediary of any person, firm, company, or corporation seek for or obtain or be interested, directly or indirectly, in any such oil concession or be interested, directly or indirectly, in the production of oil within the defined area or in the purchase of any such oil otherwise than through the Turkish Company or an Operating Company under the Turkish Company.

Article 10 restricted all partners of the TPC from participating in any kind of oil operations within the defined area except through the TPC. It granted the TPC the sole right to deal with oil operations, drilling, development, production, and obtaining new oil concessions in the defined area. The Red Line agreement finally cleared the road for the TPC's monopoly over Mesopotamian oil.

⁷⁶ William Stivers, "A note on the red line agreement", *Diplomatic History*, Volume 7, Issue 1, 1 January 1983, Pages 23–34, <https://doi.org/10.1111/j.1467-7709.1983.tb00380.x>



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Figure (5)

3.6 Iraq Petroleum Company (IPC)

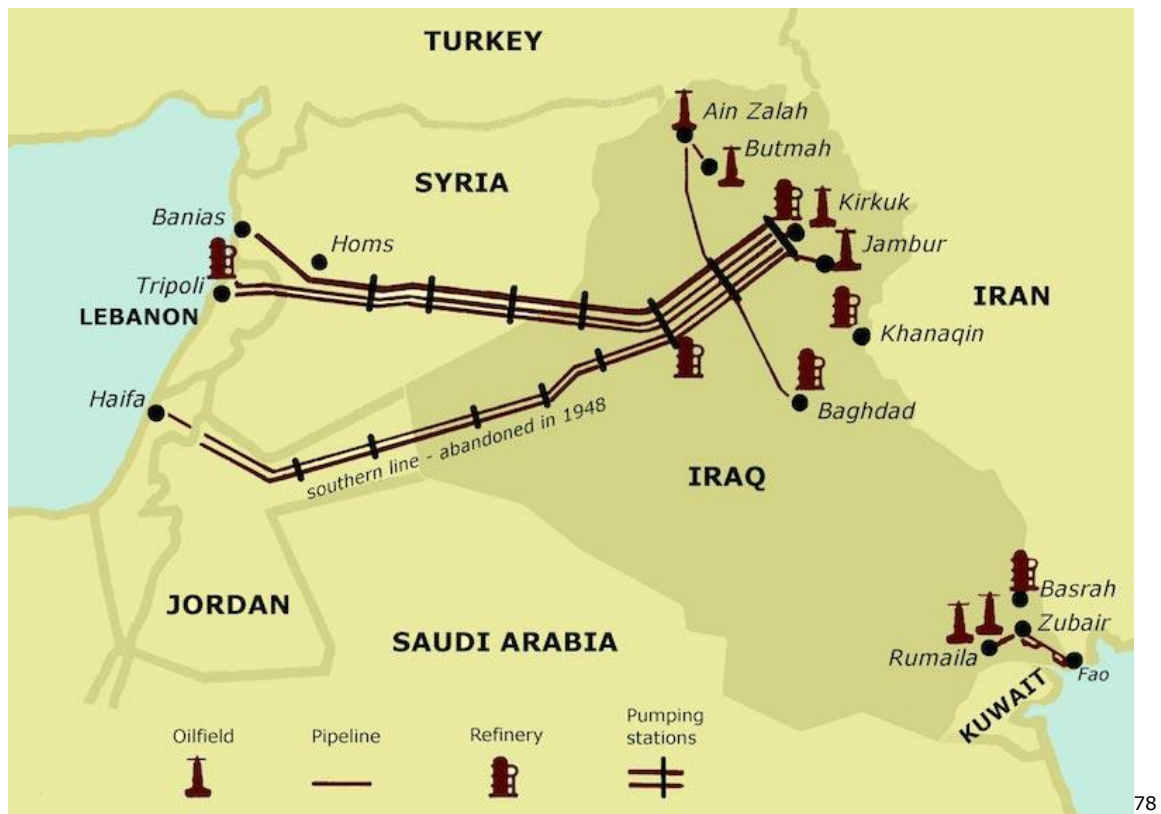
The TPC was replaced by the IPC and accordingly all assets, including the oil concession granted to the TPC in 1925, were transferred to the IPC. Due to the conflicting interests of its shareholders, the IPC failed to meet its obligations under the concession. The Anglo-Persian Oil Company and Standard Oil of New Jersey (also known as Esso and subsequently changed to Exxon) were involved in oil operations outside Iraq. Due to market competition, they deliberately delayed the development of Iraqi oil to increase oil production and maximise

⁷⁷[https://www.google.co.uk/imgres?imgurl=https://www.mtholyoke.edu/acad/intrel/Petroleum/Middle East](https://www.google.co.uk/imgres?imgurl=https://www.mtholyoke.edu/acad/intrel/Petroleum/Middle+East).

profits in other places. At the same time, other shareholders like the Compagnie Française des Pétroles (**CFP**) were working hard to adhere to the terms of the concession and complete the works on time to get the Iraqi oil to the international market as soon as possible, or at least within the timeframe stipulated in the oil concession. The IPC failed to complete the construction of pipelines and shipping terminals within the timeframe under the concession agreement. Therefore, in March 1931 the Iraqi government terminated the oil concession originally granted to the TPC in 1925 due to non-compliance with the terms of the oil concession.

In 1931, the IPC started a new round of negotiations with the Iraqi government for a new oil concession with new clauses and terms. The IPC successfully negotiated new terms and accordingly managed to obtain a new oil concession for 70 years which covered a larger area than the 1925 concession. The new oil concession covered 83,200-square-kilometers, all east of the Tigris River. In return, the IPC was required to build two oil pipelines to the Mediterranean by 1935. In addition, the IPC promised to pay an additional payment and advanced a loan to the Iraqi government.

The two pipelines that the IPC was required to build were a pipeline from Al Hadithah going through Syria to Tripoli (this pipeline was closed by the Syrian government in 1982) and a pipeline from Al Hadithah to Haifa in Palestine, which was closed in 1948 due to the Arab-Israeli war in 1947. These pipelines were crucial for exporting Iraqi oil to the international market. The map in Figure 6 below shows the two pipelines. In 1938, the IPC began exporting Iraqi oil to the international market. By 1936, the oil production in Iraq reached an average of 4 million tons per year and continued to produce the same level of oil until World War II, when oil production suffered sharp reduction due to the shipping restrictions in the Mediterranean.



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Figure (6)

3.7 British Oil Development Company (BODC)

The IPC's oil production level was not satisfactory for the Iraqi government. The IPC had the capacity to produce more than real production or the production that was stipulated in the concession agreement. The IPC performance in exporting crude oil to the international market was suspicious. The Iraqi government believed the poor performance was to protect the interests of the IPC parent company at the international level. The Iraqi government wanted maximum production of its oil. The low level of oil production pushed the Iraqi government to invite other oil companies to invest in Iraqi oil. The primary purpose was to create competition between IOCs to increase oil production.

⁷⁸<https://www.google.co.uk/search?q=maps+of+oil+concession+in+Iraq+By+British+Oil+Development+Company>

Accordingly, a new oil concession was granted to the British Oil Development Company (BODC) in 1932.⁷⁹

The BODC was created by a group representing Italian and British interests. The terms of the oil concession granted to the BODC were as follows: The concession was for 75 years and covered the area of 120,000 square kilometres west of the Tigris River and north of the 33rd parallel.⁸⁰ Subsequently, a new company called Mosul Oilfields Ltd was established to acquire the BODC shares. The BODC started drilling across the concession area, but little oil was found. The lack of the oil production was concerning because of the expenses spent in drilling. The BODC continued drilling in different locations of the concession area to increase oil production. The discovered oil levels across the concession area were too low compared to the expenditures incurred in the exploratory drilling. This caused Mosul Oilfields Ltd financial difficulties, therefore, it started selling its shares to the IPC. The IPC continued purchasing more shares from Mosul Oilfields Ltd and by 1937, the IPC had effective control of the BODC. By 1942, the IPC purchased 100% shares of the BODC through its subsidiary company, the Mosul Petroleum Company (MPC). The IPC then became the only company with an oil concession covering the Baghdad and Mosul provinces (Vilayets Baghdad and Mosul).⁸¹

In addition to the 1931 and 1932 concessions which covered Baghdad and Mosul provinces, a new oil concession was granted to the Basra Petroleum Company (BPC) in 1938, which was another subsidiary of the IPC. The terms of the 1938's oil concession granted to the BPC were like those of the 1932 concession. The concession was for 75 years and covered the rest of Iraq.⁸² By 1942, the IPC oil concession covered almost the whole of Iraq.

The terms of the concessions were hugely in the interest of the IPC. The Iraqis, especially nationalists, were unhappy with the IPC oil concessions. It was widely believed that the terms of the concession were not negotiated but imposed on Iraq. The Iraqis were also not satisfied with the performance of the IPC. Oil

⁷⁹ Dr. Ferruh Demirmen. *Oil in Iraq: The Byzantine Beginnings. Part II: The Reign of a Monopoly*. <https://www.globalpolicy.org/component/content/article/185/40550.html>

⁸⁰ www.IraqOilForum.com.

⁸¹ J. H. Bamberg. *The history of the British Petroleum Company*, Volume 2 The Anglo-Iranian Years, 1928-1954. 1994.

⁸² S. Benjamin. *Middle East oil crises since 1973* (1986).

production was low, the number of the refineries built were insufficient to meet domestic needs, the amount of royalties received by the Iraqis were too low, and the IPC did not meet its contractual obligation to provide training facilities to Iraqis in oil industries.⁸³ The above concerns put the pro-British Iraqi government under pressure to renegotiate the terms of the oil concession, especially after the daily oil production increased. Although the oil production was not satisfactory to the Iraqi government, it was higher than the daily production in the 1930s. In 1948, the Iraqi government and IPC began renegotiating the concession terms. The negotiation concluded with the IPC agreeing to increase the royalty payment from four to six shillings (gold) from November 1950.⁸⁴

3.8 The nationalist movement and its impact on oil agreements in Iraq

The increased demand for oil after WWII led to the development and improvement of the oil concession terms, which were more favourable to the hosting countries. The nationalist movement in Iran demanded the nationalisation of the Iranian oil in the late 1940s and beginning of the 1950s, and around the same time Saudi Arabia started discussions with the Arab-American oil company (ARAMCO) to re-negotiate the terms of the oil concession granted to ARAMCO in 1933, which resulted in increasing the royalty payment in the oil concession of 1933. The royalty payment terms were replaced with the 50-50 profit sharing agreement.⁸⁵ The improvement and developments in the neighbouring country's oil agreements and other developments in Venezuela persuaded the Iraqi government to re-negotiate the terms of the oil concession with the IPC. The terms of the oil concessions were negotiated and in early 1952 an agreement was reached between the IPC⁸⁶ and Iraqi government to amend the existing royalty payments to equal sharing of profits, requiring the IPC to

⁸³ Ibid

⁸⁴ C. Issawi and M. Yeganeh. *The economics of Middle Eastern Oil*. (1968).

⁸⁵ J.C. Hurewitz, ed., *Diplomacy in the near and Middle East: A documentary record*, vol. 2: 1914-1956 (Princeton: D. Van Nostrand, 1956), pp. 314-21.

⁸⁶ Silverfarb, Daniel. "The Revision of Iraq's Oil Concession, 1949-52." *Middle Eastern Studies* 32, no. 1 (1996): 69-95. <http://www.jstor.org/stable/4283776>.

build more oil refineries to meet the domestic consumption and the oil production was to be increased.⁸⁷

Even with the amendments to the IPC oil concessions, the terms of the concession were still more favourable to the IPC. The IPC still received huge profits from Iraqi oil production. Therefore, the tension continued, and Iraqis insisted that Iraq and Iraqi people should benefit more from the oil revenues. As expected, the situation was exploited by the nationalist movement in Iraq and finally led to a military coup against the monarchy in 1958. The removal of the monarchy reshaped oil contracts in Iraq and 95% of the oil concession area was taken back from the IPC.⁸⁸

3.9 Road to nationalisation

3.9.1 Abdul-Karim Qasim and the oil concession between 1958 and 1963

The first oil concession granted to the TPC in 1925 did not produce any significant revenues for Iraq. Iraq did not have any active participation in drafting the concession and its terms. Iraq was under the British mandate and did not enjoy full sovereignty over the state's affairs, including the oil concession. The British mandate over Iraq formally ended in 1932, but Iraq was still influenced by British government decisions. Therefore, it was not expected that the Iraqi government would act against British interests. The subsequent oil concessions were not very different from 1925 and their terms were still favourable to the IPC. The favourable terms to the IPC (formerly TPC) were successfully used by the nationalist groups against the royal family and monarchy system in Iraq and forced both the Iraqi government and the British government to amend the terms of the concession to make it more beneficial to the Iraqi government. Accordingly, the annual lump sum was replaced by royalty payments. Between 1931 and August 1950, the Iraqi government received royalty payments of four shillings per ton of produced crude oil.

⁸⁷ A. Alnasrawi. *The economy of Iraq: Oil, wars, destruction of development and prospects*.

⁸⁸ Saul, Samir. "Masterly inactivity as brinkmanship: The Iraq Petroleum Company's route to nationalization, 1958-1972." *The International History Review*, vol. 29, no. 4, 2007, pp. 746-792. JSTOR, JSTOR, www.jstor.org/stable/40110926.

Following the development in the oil industries and oil concession in Venezuela, Iran, and Saudi Arabia, Iraq and the IPC reached a new agreement in 1950, in which the royalty payments were increased to six shillings per ton of produced crude oil.⁸⁹ The new agreement was undermined by the nationalist movement claiming that the new amendments still did not protect Iraq's national interest. The nationalists demanded that Iraq must have full control over its oil and the terms of the oil concession must be more beneficial to Iraq. Therefore, nationalising Iraqi oil was the only means to achieve that goal. The situation further developed and led to a military coup in 1958, in which the monarchy was overthrown.

Abdul Karim Qasim masterminded the revolution and he later became the first president of the Republic of Iraq. At the beginning of the revolution, Qasim promised Iraqi people to give top priority to the nationalisation of Iraqi oil. However, this was not an easy task soon after the revolution because the reconstruction of Iraq, as promised by Qasim, would need extra funds. Oil revenue was the only source to provide the funds needed for reconstructing Iraq.⁹⁰ In addition, nationalisation required significant funds, expertise, and technology, which Iraq could not provide. Therefore, nationalisation was not in the interests of Iraq for the time being. Instead, Qasim chose to re-negotiate the terms of the concession with the IPC. The Qasim government demanded the relinquishment of the unexplored land of the oil concession. The IPC concession covered nearly 95% of the Iraqi territory. The IPC did not agree on the size of land to be relinquished. The negotiation continued for nearly three years; different options were discussed, but no agreement was reached.⁹¹ Saul Samir provides full details of the long negotiation between the Qasim regime and IPC in "*The Iraq Petroleum Company's route to nationalization*".⁹² The Iraqi government suspended the negotiation and instead passed Law No 80 of 1961,

⁸⁹ Saul, Samir. "Masterly inactivity as brinkmanship: The Iraq Petroleum Company's route to nationalization, 1958-1972." *The International History Review*, vol. 29, no. 4, 2007, pp. 746-792. JSTOR, JSTOR, www.jstor.org/stable/40110926.

⁹⁰ M Khadduri. *Republican Iraq: A study in 'Iraqi politics since the revolution of 1958*. New York: Oxford University Press, 1969.

⁹¹ Saul, Samir. "Masterly inactivity as brinkmanship: The Iraq Petroleum Company's route to nationalization, 1958-1972." *The International History Review*, vol. 29, no. 4, 2007, pp. 746-792. JSTOR, JSTOR, www.jstor.org/stable/40110926.

⁹² See footnote 33.

delimiting areas of exploitation for oil companies,⁹³ by which 99.5% of the IPC undeveloped concession area was relinquished. Almost all concession areas where exploration had not taken place were returned to Iraq. The IPC was allowed only to hold onto the areas where exploration and oil production were in operation, which was 0.05% of the IPC concession area. Qasim was not able to nationalise Iraqi oil, but he managed to reclaim 99,05% of the concession area from the IPC,⁹⁴ which was only one step away from nationalisation.

Oil operations were managed under concession agreements until 1963 when the Qasim regime was overthrown by a new military coup. During the Qasim era, the Iraqi government was in negotiation with the representatives of Kurdish people to settle the long political conflict between the Kurds and the Iraqi government, which had lasted for decades. The division of the oil revenue was one of the controversial issues in that negotiation. The Kurds demanded 35% of national oil revenue, which was rejected by the Iraqi government.⁹⁵ Oil and oil revenue has been a central issue of the historical conflict between the Kurds and Iraqi government for many decades and it remains unresolved. The current legal dispute between the central government and the KRG is a continuation of the long-rooted dispute throughout the history of Iraq, which may explain why settlement on the oil operations has been so complicated.

3.9.2 Nationalisation of Iraqi oil

Following the military coup over the Qasim regime in 1963, a new national government was formed. The new government promised to develop the oil operations within the areas relinquished from IPC. This was to increase oil production and to generate more funds for the reconstruction of Iraq. In doing so, Law No 11 was promulgated by the Iraqi government in February 1964, by which a new national oil company called the Iraqi National Oil Company (INOC)

⁹³ John M. Blair. "Iraq and the battle for oil. A historical insight". Excerpt from *The Control of Oil*. 1977. <https://www.globalresearch.ca/iraq-and-the-battle-for-oil-a-historical-insight/24810>

⁹⁴ Tariq Shafiq. "Iraq's oil history: Prospects and limitations". *Iraq Energy Outlook*, Istanbul, May 2012 available online at <http://www.iraqoilforum.com/wp-content/uploads/2012/05/Tariq-Shafiq-Iraqs-Oil-History-Prospects-Limitations1.pdf>

⁹⁵ M Khadduri. *Republican Iraq: A study in Iraqi politics since the revolution of 1958*. New York: Oxford University Press, 1969

was established,⁹⁶ for exploration and production, excluding refining and distribution, within the areas taken back from the IPC and its subsidiaries in accordance with Law No. 80 of 1961. The other state departments were engaging with refining and distribution activities. Subsequently, a new law was passed, Law No. 97 of September 1967,⁹⁷ which granted the INOC more areas for exploration and production. Under the new law, almost all concession areas were reclaimed from the IPC, which were previously granted to the INOC, including the current oilfield of North Rumaila, which is the biggest oilfield in Iraq. The new law granted INOC exclusive rights to carry out all types of oil operations from the exploration phase to extracting oil and exporting to the international market.

The INOC was newly established and lacked sufficient funds, oil infrastructure, technical development, and expertise to manage the oil operations within the large areas assigned to it. Therefore, it had to rely on local and international companies to carry out the oil operations, in the form of subsidiaries, partnerships, and use of contractors. Developing the industry was aimed at maximising oil production within the areas relinquished from the IPC. Iraq could not get any assistance from countries who were shareholders in the IPC because of the damages those countries sustained from the relinquishment of the concession areas. Therefore, Iraq turned to the Soviet Union, who had no shares in the IPC, for assistance. Iraq and the Soviet Union concluded several agreements concerning different aspects of the oil industry. In 1969, they concluded the Iraqi-Soviet Agreement on Economic and Technical Cooperation⁹⁸ by which the Soviet Union through the "Techno Export Company"⁹⁹ provided Iraq with technical expertise for the North Rumaila oilfield for exploitation, installation of pumping and degassing stations, gathering pipeline networks, and construction of the pipeline from the Rumaila oilfield to the terminal.

⁹⁶ Saul, Samir. "Masterly inactivity as brinkmanship: The Iraq Petroleum Company's route to nationalization, 1958-1972." *The International History Review*, vol. 29, no. 4, 2007, pp. 746-792. JSTOR, JSTOR, www.jstor.org/stable/40110926.

⁹⁷ The full text of Law No. 97 can be accessed at www.heinonline.org/HOL/LandingPage?handle=hein.journals

⁹⁸ Oles M. Smolansky & Bettie M Smolansky. *The USSR and Iraq. The Soviet quest for influence*, 1991 Duke University Press. P 52.

⁹⁹ "Chronology August 16, 1970-November 15, 1970." *Middle East Journal*, vol. 25, no. 1, 1971, pp. 58-78. JSTOR, JSTOR, www.jstor.org/stable/4324682.

The Iraqi government also concluded several agreements with other foreign companies, including the French company, Enterprise de Recherches et d'Activités Pétrolières (ERAP) and a service contract in 1968.¹⁰⁰ This was the first service contract Iraq concluded with a foreign oil company for oil operation, which was different from the concession agreement granted to the IPC previously.¹⁰¹ The terms of the service contract with the ERAP were as follows¹⁰²:

1. The service contract was for 20 years,
2. The contract covered four different areas, which were 8,520 SKM onshore and 2,280 SKM offshore. That area would be reduced by 50% by the end of the third year, and a further 25% would be reduced by the end of the fifth year, and then the contracted area would be reduced to only the proven area at the end of the sixth year.
3. The ERAP had to pay a royalty of 13.5% of posted prices and expenses and income tax, to pay bonuses of \$2,000,000 on commercial discoveries of oil a further \$2,000,000 every two years, to pay \$5,000,000 in bonuses after 10 years from the date the contract became effective.
4. The ERAP had to finance the exploration of the oil within the contracted area. The ERAP would not recover the exploration cost in the event the commercial discoveries were not found. The ERAP would recover the exploration cost if the commercial discoveries were found, the cost should be repaid as a free-interest loan by INOC at one-fifth of total yearly production or 10% a barrel.
5. ERAP had to meet the expenses for the development of oil through loans. The Iraqi had to repay the loans to the ERAP within five years from the date of the first shipment of the oil, the Iraqi government had to pay interest on the loans at a rate of 6%.
6. ERAP was acting as a contractor, to finance the exploration and development of oil, and to provide technical expertise. The INOC was to take over management of operations.

¹⁰⁰ copied "France and Iraq: Oil Agreement." *International Legal Materials*, vol. 7, no. 2, 1968, pp. 233–236. JSTOR, JSTOR, www.jstor.org/stable/20690327.

¹⁰¹ Claude Duval, Honore Le Leuch, Andre Pertuzio, and Jaqueline Lang Weaver. *International Petroleum Agreement-1: Politics, oil prices steer evolution of deal forms*. 2009. The full text is available online at <http://www.ogj.com/articles/print/volume-107/issue-33/general-interest/international-petroleum.html>

¹⁰² The full Arabic version of the agreement is available at <http://www.iraqlid.iq/LoadLawBook.aspx?SC=140320064856744>

7. The produced oil was to be owned by INOC. The ERAP was to develop only 50% of discovered oil and the other 50% would be considered as a national reserve and was not subject for development by ERAP, but only when the daily oil production reached 75,000 bpd.
8. The ERAP was entitled to buy 30% of the produced oil at a favourable price and conditions and the INOC was to sell the other 70% of the produced oil in the open market and at the market rate.
9. The ERAP was to be paid a fixed fee of half a cent per barrel for the first 100,000 bpd and one and a half cent per barrel above that.

The agreement was the first service contract between Iraq and an IOC, which was categorised by some commentators as a risk service agreement.¹⁰³ Concluding their first service contract was a big achievement for the Iraqi oil industry. In signing that contract the Iraqi government acted as a sovereign actor and had better control over of its oil than with the concession system or the 50/50 profit sharing agreement. Although, as some members of the INOC argued, the agreement was not in the best interests of Iraq financially,¹⁰⁴ Iraq acted as an oil owner and had full control over the management under the contract, while the ERAP was a contractor. This was a significant achievement and a historical development in the oil industries in Iraq or even in the Middle East, which brought the concessionary regime in Iraq to an end.¹⁰⁵

3.9.3 Law No. 69 of 1972: Nationalising the operations of the Iraq Petroleum Company Limited

The dispute between the IPC and the Iraqi government continued over the concession area relinquished by the IPC and specifically over the North Rumaila Oilfield. Following the relinquishment, the IPC made claims for financial loss against the Iraqi government. The IPC claims on North Rumaila oil created an unfriendly environment in the western oil market. Iraq managed to make significant developments in the Rumaila oilfield with financial and technical assistance from the Soviet Union. Iraq was heavily reliant on its own oil

¹⁰³ Brandon Wolfe-Hunnicut. *The end of the concessionary regime: oil and American power in Iraq 1958-1972*. Edition March 2011.

¹⁰⁴ Benjamin Shwadran. *Middle East oil crises since 1973*. 1986.

¹⁰⁵ Brandon Wolfe-Hunnicut. *The end of the concessionary regime: oil and American power in Iraq 1958-1972*. Edition March 2011.

production to generate sufficient funds to meet its needs, especially after the IPC failed to increase oil production from the Kirkuk and Basra oilfields.¹⁰⁶

The increase in oil production was crucial for the Iraqi economy to fulfil its promises to the Iraqi people of rebuilding Iraq. Therefore, in February 1971, the Iraqi government formally requested the IPC to maximise the oil productions from the Kirkuk and Basra oilfields. It was not in the IPC interest to increase oil production as requested by the Iraqi government. IPC reduced oil production to half from Kirkuk's Mediterranean in March and April 1971. The Iraqi government accused the IPC of the reduction in oil production as a plan to protect its partners interest in other countries where the IPC and its partners had oil concessions, such as Nigeria. The IPC denied the accusation and argued that the reason was the extra premium on Mediterranean liftings. The imposed premium made the exports of oil from Iraq more expensive than exporting oil from the Gulf to the European market.¹⁰⁷

The Iraqi government rejected the IPC's arguments and could not overlook the fact that oil production was reduced in the Kirkuk oilfield at the same Shell increased the oil production in Nigeria. Shell and IPC were partners. For the same reason, Iraq maintained its previous position and firmly insisted on its demand for the increase of the oil production to the same level as before March 1971, and Iraq also rejected the IPC's request for a 35-cent discount per barrel on the posted prices.¹⁰⁸

The dispute over the level of oil production between the IPC and Iraq continued until May 1971 when Iraq came up with a new suggestion to settle the problem. The Iraqi government suggested the following points to the IPC to settle the dispute over the production level:

- (1) The IPC must give production to INOC at cost,
- (2) The IPC submit non-producing activities to INOC, or
- (3) The IPC must hand over control of the Kirkuk fields to INOC.

¹⁰⁶ Joe Stork. *Middle East Oil and the Energy Crisis* (New York: Monthly Review Press, 1975). The Struggle for Iraqi Oil. Pp 102-108.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

The deadline for the IPC to response to the Iraqi government suggestion was the end of May 1971. The IPC did not agree with any of the three options and argued that they were contrary to the terms of the oil concessions the Iraqi government granted to the IPC in 1929 and 1931. However, the deadline passed without the IPC providing the Iraqi government with a satisfactory answer.¹⁰⁹

The failure of the IPC to increase the oil production and its failure to provide a satisfactory answer to the three options from the Iraqi government to settle the dispute was a good opportunity and the right time for the Iraqi government to pursue the nationalisation of oil operations within the IPC contracted area, which Iraq had been working for since the 1950s. As all efforts to settle the dispute with the IPC were exhausted, Iraq proceeded with the nationalisation process. Accordingly, Law No. 69, nationalising the operations of the Iraq Petroleum Company Limited, was passed on 1 June 1972.¹¹⁰

As a result of nationalising oil operations within the IPC's concessions area, Iraq gained full control of 75% of its crude oil. The nationalising process did not cover the American and Dutch holding shares and Gulbenkian shares in the Basra Petroleum Company (BPC)'s concession area. A new national company called the Iraqi Company for Oil Operations (ICOO) was established by Law No. 69 to take over the IPC's concession area and assets.¹¹¹

The IPC claimed that the nationalisation of the IPC concession area and its assets were in breach of the concession agreement Iraq concluded with the IPC in 1929 and 1931, therefore, nationalisation was not legal. Accordingly, the IPC claimed the loss it sustained as a result of the nationalisation. In response to the IPC's claim, Iraq made a counterclaim for the financial loss Iraq suffered due to the lack of oil production for the period when oil was first extracted until the nationalisation of oil operations started on 1 June 1972. After a long negotiation between the IPC and Iraq over the compensations they sought from each other, a settlement was finally reached in early 1973. Iraq agreed to pay the IPC \$300 million in compensation, payable in crude. However, the amount

¹⁰⁹ 1971(Stork, 1975:102-108).

¹¹⁰ "Iraq: Law nationalizing the Iraq Petroleum Company." *International Legal Materials*, vol. 11, no. 4, 1972, pp. 846–848. JSTOR, JSTOR, www.jstor.org/stable/20690956.

¹¹¹ Post-World War II through the 1970s. U.S Library of Congress. It is accessible at <http://countrystudies.us/iraq/54.htm>

of the compensation awarded to the IPC was nullified by an IPC payment of \$345 million in back claims. The \$345, or \$350 million, as some sources referred to, was compensation the IPC had to pay to the Iraqi government for the loss Iraq had sustained as a result of reduction of oil production by the IPC for the period mentioned above.

Nationalising oil operations continued and extended to all remaining interests of the US and Dutch in BPC. By 1975, Iraq had managed to nationalise all oil operations. By nationalising the remaining foreign interests in the BPC, Iraq gained full control of all Iraqi oil and declared complete sovereignty over its oil. The INOC was granted exclusive rights for exploration, development, and production of oil throughout Iraq. IOCs could only be involved in oil operations through service agreements. The concession era completely ended in Iraq.¹¹²

Nationalising Iraqi oil was a fundamental development in the oil industry. In 1976, a new Ministry of Oil (MoO) was established with the responsibility to direct the planning and construction in the oil and gas sector. The MoO established several subsidiary companies to deal with internal petroleum products such as oil refining, gas processing, and internal marketing of gas products. The INOC remained responsible for the oil production, exporting, and sale of oil and gas to the international market. The INOC carried out its operations through several state-owned organisations, each assigned with certain responsibilities. The State Organisation for Northern Oil (SONO) replaced ICOO and was responsible for the operation of the northern fields. The Northern Petroleum Organisation (NPO) and a Central Petroleum Organisation (CPO) were assigned the responsibility for the operation in the central oilfields. The Southern Petroleum Organisation (SPO) was responsible for the operation of the southern fields. The State Organization of Oil Projects (SOOP) was assigned the responsibility for infrastructure and the State Organization for Marketing Oil (SOMO) was responsible for selling oil and gas to the international market. The INOC also contracted out some of its operations to the IOCs as contractors.

The service contract was a model of agreement Iraq adopted in contracting out the oil development and production to IOCs. There are different types of service contracts which have been used in Iraq since the nationalisation of the oil in the

¹¹² Joe Stork. "Middle East oil and the energy Crisis" (New York: Monthly Review Press, 1975). *Nationalisation in Iraq*. Pp. 182-194.

1970s. Iraq continued to conclude service contracts with IOCs from the 1970s until the First Gulf War, when UN economic sanctions were imposed on Iraq by UN resolution No. 687 (1991), under which Iraq was forbidden from selling its oil to the international market. Therefore, IOCs stopped their operations in Iraq until after the invasion in 2003.¹¹³

After invasion, Iraq chose to continue concluding service contracts with IOCs, despite the security situation and economic downturn, undeveloped oil infrastructure, and some national and international suggestion for a more generous type of oil contract, such as a production sharing contract, which would be more appropriate for Iraq at that time to attract IOCs to invest in Iraqi oil. The oil contracts provided to IOCs after the invasion are discussed in more details in the later chapters, especially in chapter four.

3.10 Conclusion

The history of oil operations in Iraq demonstrates how the petroleum regimes and oil contracts have developed throughout the history of Iraq. It shows the impact of political developments on the oil industry and the role oil played in all the political movements and political systems in Iraq. Every political reform or change brought major petroleum reforms and affected oil operations, especially the model contract used for contracting oil operations. The legal aspect of petroleum operations was not stabilised until the end of the 1970s and beginning of 1980 because of the unfair terms of the oil concessions which had been so favourable to IOCs. There were existing disputes between the Iraqi government and IOCs over the oil operations in Iraq and the favourable terms have always been a major issue in the concession agreements. At the beginning of the oil operations in Iraq, the Iraqi government was under the mandate of the British government, and even after the British mandate its decisions were influenced heavily the British government. As a result, the Iraqi government did not actively participate in the oil concession. Its role in the oil concession was limited to some legal formality like signing the concession agreement. Iraq did not have real attendance in negotiations for an oil concession. Iraq was not a fully sovereign country and was not able to strike a fair deal with IOCs. The position

¹¹³ United Nation. Resolution 687 (1991) adopted by the Security Council at its 2981st meeting on 3 April 1991. <http://www.un.org/Depts/unmovic/documents/687.pdf>

of Iraq and its role in the oil concessions and oil contracts gradually strengthened. The Iraqi government has struggled to bring the oil operations under its control and to achieve the highest benefit for Iraq. After much difficulty and despite strong opposition from IOCs and their shareholders, Iraq finally managed to fully nationalise Iraqi oil in 1975. The petroleum regimes and oil contracts have been subjected to further developments and modernisation to ensure the best interests of Iraq and IOCs are protected.

CHAPTER 4 THE OWNERSHIP OF OIL AND GAS IN IRAQ

4.1 Introduction

The new Constitution of 2005 is starting point of the dispute between the Iraqi IFG and the KRG over the ownership of oil and gas. the current ownership dispute is unprecedented in the history of Iraq. There was ownership issue in the Oil concessions granted to the TPC (and later the IPC). Although no specific term or clause in the concession granted ownership rights to the IPC to oil and gas in Iraq, nor was there any constitutional provision or national legislation granting the IPC ownership rights, however, the terms and clauses of the oil concessions were so favourable to the extent that the rights granted to the IPC under the concession were akin to ownership rights.¹¹⁴ Iraq did not participate actively in drafting the terms and clauses of the oil concessions, and it had little control over the oil operations carried out by the IPC within its territories.¹¹⁵ Therefore, there were concerns by the Iraqis that the IPC's involvement in exploring, drilling, extracting, development, and selling the oil was that of owners rather than contractors. The unbalanced terms of the concessions were not in the interests of the Iraqi government, which led to the nationalisation of Iraqi oil in 1972.¹¹⁶ Under the new Constitution the ownership of oil and gas is legally complicated and controversial.

4.2 Dispute between the KRG and the IFG over oil and gas ownership

It must be made clear that there is absolute agreement between the IFG and the KRG that oil and gas in Iraq are owned by Iraqi people across Iraq. The

¹¹⁴ Benjamin Shwadran. *Middle East oil: Issues and problems*, 1977, pp 59-71

¹¹⁵ Greg Muttitt. "Nationalizing risk, privatizing reward: The prospects for oil production contracts in Iraq." *International Journal of Contemporary Iraqi Studies*. Vol 1, Number 2, 2007. Available at http://www.academia.edu/9315527/Nationalizing_risk_privatizing_reward_The_prospects_for_oil_production_contracts_in_Iraq

¹¹⁶ Brown, Michael E. "The nationalization of the Iraqi Petroleum Company." *International Journal of Middle East Studies*, vol. 10, no. 1, 1979, pp. 107-124. JSTOR, JSTOR, www.jstor.org/stable/162481.

dispute between these two governments is over who is entitled to exercise ownership rights over oil and gas operations on behalf of the Iraqi people. In other words, whether the Constitution vests the ownership of oil and gas in the IFG or in the KRG, or both, and whether Article 111 of the Constitution grants the KRG ownership rights to manage oil and gas on behalf of the Kurdish people within the KRG's territories. The current dispute between the IFG and KRG is unprecedented in the history of Iraq. The Iraqi government has always been the only entity with the constitutional authority to manage oil and gas on behalf of Iraqi people throughout the history of Iraq. However, since 1991, the KRG have been acting unilaterally in managing the region's affair, including oil and gas, without the co-operation of the IFG. The KRG was established in 1992 by two main political parties, the Kurdistan Democrat Party (KDP) and Patriot United Kurdistan (PUK). The KRG was not formally and expressly recognised by the Saddam Hussein regime and did not gain international recognition. The matter became more complicated when Iraq was invaded in 2003. The structure of the new Iraqi government was more complicated than ever before. The Constitution recognised it as a federal state for the first time in its history.¹¹⁷ The Constitution also recognised the KRG as a regional government with its own powers and authorities confirmed by constitutional provisions.¹¹⁸ The Constitution confirms that all legislation enacted by the KRG from 1992 remains in force, and all decisions issued by the KRG, including court decisions and all contracts should be considered valid unless they are amended or annulled by the KRG, provided they do not contradict the Constitution.¹¹⁹ Interpretation of the relevant articles concerning oil and gas management is disputed by the parties. The KRG argues that the Constitution grants exclusive rights to the KRG to manage oil and gas operations within its territories. This has been disputed by the federal government, who considers the KRG's PSC with the IOCs unconstitutional.

4.2.1 The Disputed Connotational Provisions

The IFG confirms that the KRG must manage oil and gas operations in co-operation with the IFG and the KRG's PSCs with IOCs must be approved in

¹¹⁷ https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en

¹¹⁸ Article 117 of the Iraqi Constitution. Available at <http://www.wipo.int/edocs/lexdocs/laws/en/iq/iq004en.pdf>

¹¹⁹ Article 141 of the Constitution. Available at <http://www.wipo.int/edocs/lexdocs/laws/en/iq/iq004en.pdf>

advance by the IFG. The centre of the dispute is the interpretation of article 112 of the Constitution. The arguments between the IFG and the KRG over the interpretation of article 112 and whether it grants the KRG an exclusive right to manage oil and gas, including signing PSCs with IOCs, without prior approval from the IFG. The dispute over oil and gas management under article 112 has triggered the issues of oil and gas ownership in Iraq and in the KRG. Article 111 of the Constitution is the starting point to establish who is the owner of oil and gas in Iraq and whether the KRG is entitled to rely on article 111 to exercise ownership rights over oil and gas within its territories. Article 111 of the Constitution states that "*Oil and gas are owned by all the people of Iraq in all the regions and governorates.*"¹²⁰ The article does not provide a definite answer to the question of "who owns oil and gas in Iraq and KRG". It states that the Iraqi people own oil and gas but does not directly vest the ownership of oil and gas in either the federal government or the KRG.

Article 111 has been interpreted differently by the IFG and the KRG. The Iraqi central government argues that Article 111 vests oil and gas ownership in the central government as a representative of all Iraqi people, including the KRG. The KRG argues that Article 111 does not deny the KRG ownership rights over oil and gas within its territories, rather the KRG is a constitutionally recognised regional government and represents the people within its territories. The KRG relies on the legal opinion of Professor Crawford in exercising its ownership rights in managing oil and gas operations under Article 111 of the Constitution.¹²¹

Oil and gas ownership is directly relevant to the management of oil and gas operations. Whoever owns oil and gas in Iraq has the right to manage oil and gas operations. To establish oil and gas ownership, the research explores the relevant constitutional provisions, federal and regional legislation, the Iraqi Civil Code No 40 of 1951 (the Civil Code), and the relevant provisions of Sharia Law. Confirmation of ownership is profoundly important for oil and gas management because under the Civil Code the owner of oil and gas could exercise a different

¹²⁰ https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en

¹²¹ Professor James Crawford. *The authority of the Kurdistan Regional Government over oil and gas under the Constitution of Iraq*, 2008. The full text is available at <http://mnr.krg.org/index.php/en/publications/57-the-crawford-opinion>

range of rights over oil and gas, including exploitation, exploration, drilling, development, production, and exporting. In other words, the owner has the exclusive right to manage oil and gas operations, including signing contracts with the IOCs.

Therefore, this chapter is dedicated to discussing the issue of oil and gas ownership in Iraq under the Constitution of 2005 and the relevant national law. It explores oil and gas ownership throughout the history of Iraq, from the time when oil was first discovered or when oil concession was first granted to the Turkish Petroleum Company (TPC) until now, in the light of constitutional provisions and relevant law and regulations.

4.3 Ownership of Oil and Gas in General

Different theories discuss the legal basis of the ownership of oil and gas beneath the land. The right to ownership of oil and gas varies from one country to another. In almost every oil-producing country, the ownership of oil and gas is vested in the state, regardless of which theory or theories are adopted by that state. The private ownership of oil and gas is still valid in some countries such as the USA. Oil and gas ownership theories have been developed over time. The political and legal concepts for the modern state are now more developed than ever before. States are now subject to international recognition and requirements. A recognised state has full sovereignty over its territories and its natural resources, including oil and gas, and can fully enjoy and exercise its ownership rights over oil and gas within its territory. This has been confirmed by the United Nation General Assembly (UNGA) Resolution 1803 (XVII) of 14 December 1962¹²² and was confirmed by Principle 2 of the Rio Declaration on Environment and Development of 1992.¹²³

¹²² Article 1 of the UNGA Resolution 1803 of 1962 states that "the right of the peoples and nations to the permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the wellbeing of the people of the state concerned". Available at <http://www.ohchr.org/Documents/ProfessionalInterest/resources.pdf>

¹²³ Principle 2 "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause

Historically, oil was first discovered in the 19th century in Pennsylvania, USA,¹²⁴ and then discovered in many countries in the 20th century.¹²⁵ Therefore, the theories framing the legal basis for oil and gas ownership vary from time to time and from one state to another. A summary of the most popular theories concerning oil and gas ownership is discussed briefly below for an understanding of the legal concept of oil and gas ownership.

4.3.1 Legal concept of oil and gas ownership

The Iraqi Constitution of 2005 vests the ownership of oil and gas in the Iraqi people as is provided by Article 111, which is the only constitutional provision regarding oil and gas ownership. The Civil Code regulates almost all civil matters, including ownership of property, in Iraq. The Civil Code is based on the ***Majallah Al- Ahkam Al- Adliyyah***,¹²⁶ the Ottoman civil law which was in force in Iraq prior to WWI, when Iraq was still part of the Ottoman Empire, until 1953. The ***Majallah Al- Ahkam Al- Adliyyah*** was based on Sharia Law. The Civil Code was codified by Abd el-Razzak el-Sanhuri or 'Abd al-Razzāq al-Sanhūrī, the Egyptian legal scholar¹²⁷. Accordingly, the Civil Code originates primarily from two sources; the Islamic Sharia law and the Egyptian Civil Code¹²⁸. The Egyptian Civil Code was codified by Abd el-Razzak el-Sanhuri, who studied law in France, and was based on Islamic Sharia law and western law. Therefore, the Iraqi Civil Code is also based on Sharia law and western law. Article 65 of the Civil Code states that "*property is every right having a material value*".¹²⁹ Article 125 of the Civil Code defines property as "(*Al Mulkiyya*) Ownership is that which is owned by a person be it commodities or benefits". In the explanation for

damage to the environment of other States or of areas beyond the limits of national jurisdiction". Available at http://www.unesco.org/education/pdf/RIO_E.PDF

¹²⁴ Halfdan Carstens. "The birth of the modern oil industry", *Geoexpro*, Vol. 6, No. 3-2009. Available at <https://www.geoexpro.com/articles/2009/03/the-birth-of-the-modern-oil-industry>

¹²⁵ "Oil is discovered in the Middle East." Science and its times: Understanding the social significance of scientific discovery. *Encyclopedia.com*. 2 Apr 2018. <<http://www.encyclopedia.com>>.

¹²⁶ Rahman, M. H., & Osmani, N. M. (2018). An Appraisal of Majallat al-Ahkam al-Adliyyah: A Legal Code of Islamic Civil Transactions by the Ottoman. *International Journal of Academic Research in Business and Social Sciences*, 8(9), 1381-1391

¹²⁷ GLOBAL JUSTICE PROJECT: IRAQ. Legal Reform in Iraq's Post-War Period (2008-2010). <http://gjpi.org/2009/05/12/civil-code-1951>

¹²⁸ GLOBAL JUSTICE PROJECT: IRAQ. Legal Reform in Iraq's Post-War Period (2008-2010). <http://gjpi.org/2009/05/12/civil-code-1951>

¹²⁹ Iraqi Civil Code No 40 of 1951. Article 65. The full text is available at <https://cyrilla.org/en/document/>

article 125 the Civil Code provides that "*Explanation: Commodities such as things, immovables, and animals and benefits such as dwelling (habitation). Benefits were ranked as ownership and not as property because the ownership is that which a person can dispose of in a specified manner and property is that which is saved (stored) to be enjoyed when the need arises (Radd Muhtar) that its benefits are commodities which expire (are consumed) and cannot be stored.*"¹³⁰

Article 126 defines property as ("Al Mal") "that which human nature tends to have and may be saved (stored) until it is needed, regardless of whether it is a movable or a (movable)". The Civil Code differentiates between property and ownership. In the explanation for article 126 it states that "*The difference between ownership and property is specific and general: every property is an ownership and not every ownership is property because benefits are owned as we have already said and are not property as they cannot be stored until needed.*"

Under the Civil Code the owner can exercise three rights: disposal, enjoyment, and exploitation.¹³¹ The Civil Code did not directly deal with oil and gas or natural resources ownership because at the time the Civil Code was drafted and came into force, the ownership of oil and gas, or petroleum ownership, was regulated by the Iraqi constitution. However, the Civil Code regulates private ownership in general. Further details of ownership under the Civil Code is provided in the later parts of this chapter.

4.3.2 The concept of ownership Under Islamic Sharia law

The Sharia distinguishes between ownership ("Malik" in Arabic) and property ("Mal" in Arabic). There are different schools in Sharia (Islamic law), mainly Sunna and Shia. Sunni's rely primarily on the Hanafi, Shafi'y, Maliky and Hanbali. The Shia relies on the Ja'fari school. The oil and gas contract and petroleum regime in Iran is based on the Ja'fari School.¹³² Saudi Arabia's oil and

¹³⁰ Iraqi Civil Code No 40 of 1951. Article 125. The full text is available at <https://cyrilla.org/en/document/>

¹³¹ Article 1048 of the Iraqi Civil Code No 40 of 1951.

¹³² Nazhad, Arash. "The link between Islamic Law and hydrocarbon agreements." *Journal of Islamic Law & Culture*, vol. 10, no. 2, July 2008, p. 166-175. *HeinOnline*, <https://heinonline-org.ezproxy.rgu.ac.uk/HOL/P?h=hein.journals/jilc10&i=179>.

gas contract and petroleum regime is based on Hanbali's school. Ownership in Sharia is an interest protected by law, which allows the owner of a thing to exercise a right to use, benefit, exploit and dispose of the thing in possession of the owner as permitted in Sharia law.¹³³ Accordingly, ownership applies to things or properties ("Mal") which could be possessed and have value.¹³⁴ However, Sharia law considers certain things or properties as public properties that cannot be privately owned. The Maliki school considers minerals *in situ* public properties, which are not available for private ownership. Public properties must be controlled and managed by the state or the head of the state ("Imam"). This means that public properties are not owned by the state or Imam, but that the Imam only manages public properties on behalf of the people. This means that the Sharia law vested the mineral ownership in the people. In other words, what the state exercises over minerals in the ground is a sovereign right to manage the minerals operations within its territory. The management of the minerals must be conducted in a way to achieve the best interests of the people. What the Imam exercises under Sharia law is sovereignty over the minerals within its territories. That concept is consistent with the concept of the permanent sovereignty of the state over its natural resources within its territories under United Nations resolution 1803 of 14 December 1962.

4.3.3 Absolute ownership

This theory has been developed through common law principles.¹³⁵ Under this theory, ownership of land extends to the deepest point of the earth beneath the land and on the surface to the sky. Accordingly, the landowner owns everything under the land to the deepest part of the earth, including oil and gas, and everything above the land up to the sky.¹³⁶ The landowner only could claim the ownership of oil and gas when they are extracted and possessed by the land

¹³³ El-Malik, Walied. "State ownership of minerals under Islamic Law." *Journal of Energy & Natural Resources Law*, vol. 14, no. 3, August 1996, p. 310-324. *HeinOnline*, <https://heinonline-org.ezproxy.rgu.ac.uk/HOL/P?h=hein.journals/jenrl14&i=324>

¹³⁴ *Ibid*

¹³⁵ Collins A.I Maidoh. An examination of the theories of ownership of oil and gas and the vesting of all mineral in the Nigerian State. The full text is available at https://www.academia.edu/32429270/an_examination_of_the_theories_of_ownership_of_oil_and_gas_and_the_vesting_of_all_mineral_in_the_nigerian_state.docx

¹³⁶ M. K. Woodward. "Ownership of interest in oil and gas". *Ohio State Law Journal*. Vol 26 of 1965. The full text is available at https://kb.osu.edu/bitstream/handle/1811/68773/OSLJ_V26N3_0353.pdf

owner.¹³⁷ Under this theory, the landowner cannot claim the ownership of oil and gas under his or her land. Accordingly, all petroleum beneath the land is owned by the landowner once they have been extracted. Nevertheless, oil and gas beneath the land captured by others would not be owned by the landowner.¹³⁸

However, under the absolute ownership theory, ownership of oil and gas could be lost by reasonable drainage. This theory is still valid in USA¹³⁹ and in the province of Alberta in Canada. Under this theory, private landowners are permitted to own oil and gas found on their lands, and have the right to sell, lease and use the land as the national law permits.¹⁴⁰

4.3.4 The rule of capture

Under the rule of capture, the ownership of oil and gas can be acquired only by capture. The land owner cannot claim the ownership of oil and gas under the land until it is extracted or captured.¹⁴¹ Therefore, whoever extracts or captures oil and gas acquires ownership of the extracted oil and gas, regardless of whether they are under his or her land or drained from neighbouring lands. If the extracted oil and gas originated from, or moved to adjacent land, the person who captured it will acquire ownership without being liable to the owner of the adjacent land.¹⁴² However, if oil and gas were drilled at a slant or horizontally penetrating from the property of another, the oil and gas belong to the owner of the land where the extracted oil and gas were bottomed. The rule of capture

¹³⁷ Olawuyi, Damilola. *Ownership and control of extractive resources*. 2018. The full text is available at https://www.researchgate.net/publication/327578146_Ownership_and_Control_of_Extractive_Resources

¹³⁸ C. Maidoh-Anene. *An examination of the theories of ownership of oil and gas and the vesting of all mineral in the Nigerian State*. Available at https://www.academia.edu/32429223/an_examination_of_the_theories_of_ownership_of_oil_and_gas_and_the_vesting_of_all_mineral_in_the_nigerian_state.docx

¹³⁹ James J. Haranzo, Bernard J. McGraw & James F. O'Rieley, "Oil and gas - the effect of theories of ownership upon the remedies of an oil and gas lessee", 27 *Notre Dame L. Rev.* 613 (1952). Available at: www.scholarship.law.nd.edu/ndlr/vol27/iss4/5

¹⁴⁰ *Property and the Law in Energy and Natural Resources*.

¹⁴¹ Terence Daintith. "Property and the Law in Energy and Natural Resources" in *The rule of capture: The least worst property rule for oil and gas*, Chapter 7, p.140. Oxford University Press. 2010.

¹⁴² Bruce M. Kramer and Owen L. Anderson. *The rule of capture - An oil and gas perspective*. Available At <https://ttu-ir.tdl.org/ttu-ir/bitstream/handle/10601/582/Kramer%2035%20Envtl.pdf?sequence=1>

is still valid in some parts of the USA. The rule of capture is also called the 'qualified interest theory'.¹⁴³ There are limitations to the rule of capture, i.e. interest limitations, the doctrine of correlative rights, and conservative laws.¹⁴⁴

4.3.5 Non-qualified ownership theory

This theory is also called the non-ownership theory.¹⁴⁵ The centre of this theory is that no-one owns oil and gas underground until it is extracted, and ownership of oil and gas is only acquired when they are extracted or captured. However, not everyone has the right to extract or capture them, only the owner of, or the person who has the right to drill, the land where oil and gas are available. This is because oil and gas are migratory, and they cannot be owned until they are extracted and reduced to possession.¹⁴⁶ The practice of this theory dates to the 19th century in the USA. The legal basis for this theory was the water ownership theory, which has a similar view. This theory has evolved, and it is now well-established in US jurisprudence.

4.3.6 State ownership theory

Under this theory the state owns oil and gas under its land, and only the state or persons, natural or legal, with permission from the state, can exercise ownership rights over oil and gas, including exploration, drilling, development, and selling or transferring to the international market, in the best interests of its people.¹⁴⁷ Due to the economic value and importance of oil and gas in people's lives, the state as a representative of the people owns oil and gas

¹⁴³ Woodward, M. K. "Ownership of interests in oil and gas". *Ohio State Law Journal*, vol. 26, no. 3 (1965), 353-369.

¹⁴⁴ John S. Lowe. *Oil and Gas Law in a nut shell*. West Nutshell series. 5th ed 2010. Pp 11-17.

¹⁴⁵ Lanre Aladeitan. "Ownership and control of oil, gas, and mineral resources in Nigeria: Between legality and legitimacy". *Thurgood Marshal Law Review*, (vol 38. 2013) Pp. 159-197

¹⁴⁶ Wm. E. Colby, "The law of oil and gas", 31 *Cal. L. Rev.* 357 (1943) vol31/iss4/ P 663. Available at: <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3629&context=californialawreview>

¹⁴⁷ C. Kerry Fields and Kevin C. Fields. *Contemporary real estate law*. 2nd Edit, 2018. The full text is available at <https://books.google.co.uk/books?id=KvdJDwAAQBAJ&pg=PA29&lpg=PA29&dq=state+ownership+theory+oil+and+gas&source=bl&ots=PC3caDY66i&sig=yCZwISd077YJnhAQCVUwj0HSuQU&hl=en&sa=X&ved=0ahUKEwjTjfWitILbAhUqAsAKHRjfAqM4FBD0AQhDMAQ#v=onepage&q=Oil%20and%20gas&f=false>

beneath its land. Currently, state ownership of oil and gas is common among oil-producing countries.¹⁴⁸

Under this theory, the state is permitted to expropriate privately-owned land for public use with or without fair compensation to the landowner. There are certain provisions in the constitutions of oil-producing countries on oil and gas ownership. There is also domestic legislation regulating oil and gas operations, including concessions, licenses, and contracts.

Since the discovery of oil and gas in the 20th century in certain countries, i.e. Iran, Iraq, Saudi Arabia, Kuwait, Nigeria, Indonesia, Norway, Venezuela etc. oil and gas law and agreements have been evolved in response to political and economic changes.¹⁴⁹ The political changes in the above countries are always followed by improvement in terms of the concession agreement or a change of the model contract. Iraq is a good example to explain how the concession agreements were affected by political developments. Accordingly, the management of petroleum resources has seen profoundly improved, including the legal aspect of the petroleum operations and the organization and the management of state ownership. The rights the IOCs exercised in managing the petroleum were akin to the ownership rights. As a result of the above developments the management as an owner changed to management as a contractor. In Saudi Arabia, Venezuela, and Iran, the model contract changed to a 50/50 profit sharing agreement in the 1950s. In Iraq, the concession agreement changed to a technical service contract in 1969.

4.3.7 Ownership of oil and gas under domanial regimes

This theory provides the legal basis for oil and gas ownership in states with a federal system, where there are central and local governments. The theory discusses who has the ownership right over petroleum *in situ* between the federal states and local governments in a federation.¹⁵⁰ The constitution or

¹⁴⁸ M. Adedayo Ayoade; "State petroleum ownership model - symbolism vs progress?" *OGE* 3 (2009), www.ogel.org.

¹⁴⁹ Ernest E. Smith, "From concessions to service contracts", 27 *Tulsa L.J.* 493 (2013). Available at <https://digitalcommons.law.utulsa.edu/cgi/viewcontent.cgi?article=1939&context=tlr>

¹⁵⁰ Yinka Omoroghe and Peter Oniemola. *Property and law in energy and natural resources*. [Property rights in oil and gas under dominal regimes] Ch 6. P.115.

petroleum law are the primary sources to determine who has the right to manage oil and gas. i.e. exploration, drilling, developments, sale, exploitation and other operations, or the right to grant local or international companies various petroleum licenses and leases, concessions, technical service contracts, production-sharing contracts, pure service contracts, joint ventures, and other petroleum agreements.¹⁵¹ Every state has regulated this matter through certain provisions in its constitution, natural resources or petroleum legislation, and case law. In stable countries, oil and gas ownership is settled by law, but in unestablished countries like Iraq, the issues of oil and gas ownership are not fully settled. The dispute over oil and gas ownership in Iraq and other countries where there is dispute over ownership is discussed further in this chapter.

4.4 Oil and gas ownership throughout the history of Iraq

Oil was first discovered in Iraq in 1927. The first oil concession agreement was to the TPC in 1925. Apart from the concession agreement, there was no other law regulating oil operations. There was no constitutional provision regarding oil ownership in Iraq and ownership in general was regulated by the Ottoman law called ***Majallah Al- Ahkam Al- Adliyyah***,¹⁵² which was valid in Iraq until the Civil Code came into force in 1953.¹⁵³ The valid and enforced law in Iraq was the Ottoman law until the 1940s and the early 1950s. Iraq was in a transitional period and the old laws were in force until replaced by a new one. Article 113 of the 1925 constitution stated that "*Ottoman laws that were published before 5th November 1914, and the laws published on or after that date remain applicable in Iraq until the publication of this law [Basic Law] and continue to be in force as far as circumstances permit, taking into account their latest*

¹⁵¹ Silvana Tordo, David Johnston and Daniel Johnston. *Petroleum exploration and production rights. Allocation Strategies and Design Issues*. World Bank Working Paper No 179. 2010. The full text is available at:

<https://books.google.co.uk/books?id=8XwUPWVAI74C&pg=PA9&lpg=PA9&dq=the+ownership+right+over+petroleum+in+situ&source=bl&ots=AiDDJOsk3O&sig=rU9NYpySXju1cQMzLnUacxABoHU&hl=en&sa=X&ved=0ahUKEwjwnLuXvoLbAhVKDMAKHeWxDgAQ6AEIQTAF#v=onepage&q=the%20ownership%20right%20over%20petroleum%20in%20situ&f=false>

¹⁵² Full English version available at

[http://legal.pipa.ps/files/server/ENG%20Ottoman%20Majalle%20\(Civil%20Law\).pdf](http://legal.pipa.ps/files/server/ENG%20Ottoman%20Majalle%20(Civil%20Law).pdf)

¹⁵³ Nor Amanda. *Shariah, Fiqh nnd Majalla Al-Ahkam Al-Adliyyah*. Available at http://www.academia.edu/10100376/SHARIAH_FIQH_AND_MAJALLA_AL-AHKAM_AL-ADLIYYAH

modification or cancellation relating to statements, orders and laws mentioned in the following article [Article 114]¹⁵⁴ until such time when they are replaced or repealed by the legislative authority or until a decision is issued by the Supreme Court¹⁵⁵ that makes them void in accordance with the provisions of Article 86". Therefore, Iraq did not have a specific oil and gas regime governing oil and gas ownership or oil and gas operations at the beginning of its existence. The terms and clauses of the concession agreement were the only sources of law concerning oil in Iraq. There were general provisions in the Constitution of 1925 regarding natural resources, but nothing specific regarding oil and gas. There was a presumption of state ownership of oil, which was based on the provisions for the *Majallah Al- Ahkam Al- Adliyyah*. The constitution as a supreme law and other domestic legislation must be explored to establish oil and gas ownership in Iraq.

4.4.1 The ownership of oil and gas in the Constitutions of Iraq from 1925 to 2005

Iraq was established in 1920 after WWI. Prior thereto, Iraq was part of the Ottoman Empire.¹⁵⁶ In the San Remo agreement,¹⁵⁷ the British government was granted a Class A mandate over Iraq. Although no oil and gas were found in Iraq before WWI, natural resources ownership and mineral ownership was regulated and organised by the *Majallah Al- Ahkam Al- Adliyyah*, which was based on the Islamic Sharia law. The first Iraqi government was established under the British mandate in 1921. Iraq had its first Monarchy constitution in 1925,¹⁵⁸ which entered into force when Iraq was still under the British mandate and remained in effect until 1958. In 1958, the monarchy system was overthrown in a military coup and a republican government was established.

¹⁵⁴ Article 114 of the Constitution stated "*All proclamations, regulations and laws issued by the Commander-in-chief of His Britannic Majesty's forces in Iraq, the Civil Commissioner, and the High Commissioner. and those issued by the Government of His Majesty King Faisal during the period between the 5th November 1914, and the date of the coming into force of this constitution, shall be considered to be valid as from the date on which they came into force. Any portion thereof still unrepealed by that date shall remain in force until changed or repealed by the legislative power, or until the High Court issues a decision rendering them null and void, in accordance with the provisions of article 86.*"

¹⁵⁵ It was translated in some texts as a "High Court".

¹⁵⁶ Iraq was called Mesopotamia when it was part of Ottoman Empire. Wikipedia. History of Iraq. https://en.wikipedia.org/wiki/History_of_Iraq

¹⁵⁷ Editors of Encyclopaedia Britannica. *Encyclopaedia Britannica*. Conference of San Remo, Italy 1920, last updated 18.04.2018. Available at: <https://www.britannica.com/event/Conference-of-San-Remo>

¹⁵⁸ The full text is available at <http://gipi.org/wp-content/uploads/iraqiconst19250321>.

Interim constitutions were adopted in 1958, 1963, 1964, 1968, and 1970. The Interim constitution of 1970 remained in effect *de jure* until 1990 when the Transitional Administrative Law was adopted. During this time, Iraq was in the process of drafting a new constitution. A draft constitution was prepared but never ratified by parliament due to the start of the first Gulf War. The Transitional Administrative Law remained in force until 2003 when Iraq was invaded by the Coalition forces. After the invasion, the Coalition Provisional Authority was adopted and applied in Iraq until the Law of Administration for the State of Iraq for the Transitional Period came into effect in 2004. Following a general election in 2005, the new Iraqi government was established, at the same time new constitution was ratified by the Iraqi people in a national referendum.¹⁵⁹

The Constitution of 1925 did not contain specific provisions concerning oil and gas. The Constitution was called the "Basic Law of Iraq" or "Fundamental Law of Iraq". It was comprised of 9 Parts and 122 Articles.¹⁶⁰ It was drafted in 1925 and amended in 1925 and 1943.¹⁶¹ The Constitution referred to property, rights of the property, and property safeguards in general, but there was no specific article in respect of oil and gas or oil and gas ownership, or natural resources ownership. The amendments were concerning the property and rights of property in general. Article 10 states that, *"All rights of ownership shall be safeguarded. No forced loans may be imposed, nor may any real or personal property be sequestered, nor any prohibited article confiscated, except in conformity with law. All unpaid forced labour and general confiscation of movable or immovable property are absolutely forbidden. There shall be no expropriation of the property of any person except in the public interest, and in such circumstances and in such manner as may be prescribed by law, and on condition that just compensation be paid"*¹⁶².

¹⁵⁹ Klaas Glenewinkel. *List of Iraq's Constitutions*. Niqash, 2006. Text available at <http://www.niqash.org/en/articles/society/477/>

¹⁶⁰ The Arabic version is uploaded by Jala Mistafa and available at https://www.academia.edu/13376362/First_Iraqi_constitution_1924 . The English version available at <http://gjpi.org/wp-content/uploads/iraqiconst19250321.htm>

¹⁶¹ Global Justice Project: Iraq. <http://gjpi.org/library/primary/iraqi-constitution/>

¹⁶² The full text is available at <http://gjpi.org/wp-content/uploads/iraqiconst19250321.>

This article provided general protection to the privately-owned properties of the people. The second part was impliedly relevant to oil and gas, *"There shall be no expropriation of the property of any person except in the public interest, and in such circumstances and in such manner as may be prescribed by law, and on condition that just compensation be paid"*. Although oil was not discovered at the date this article came into effect, people could rely on it after the discovery of oil. The Iraqi government had to pay fair compensation to people whose land were expropriated for oil exploration and oil development. This article did not confirm the state ownership of the petroleum.

Article 93 of the same Constitution stated that *"No property of the State may be sold, granted, leased or otherwise disposed of except in accordance with law"*. This article referred to the property of the state and how should be managed and that it can be exploited only in accordance with the law. The article made no reference to the state ownership of petroleum in any way.

Article 94 stated that *"No monopoly or concession shall be granted for dealing with or using any of the natural resources of the land, nor for any public service, nor shall the State revenues be farmed out, except in accordance with law, provided that where the period relating to them exceeds 8 years, they must in each case be the subject of a special law"*. This article referred to the grant of concession for natural resources. Although it did not specifically refer to oil and gas, it does cover oil and gas. It did not clearly confirm that oil and gas are owned by the state. The practical reality was that the Iraqi government, as a landowner, granted the concession to the TPC, which could not be ignored or overlooked. No matter how much influence the British government had over the IFG in granting favourable oil concessions to the TPC, the IFG was acting as a landowner in the concession agreement. One may argue that Iraq did not fully participate in drafting the terms of the oil concession. The concession was drafted and granted to the TPC under the British government's influence. This argument may undermine the legality of the concession agreement but did not change the reality of the Iraqi ownership of the conceded land.

Article 113 stated that *"Ottoman laws published before the 5th November 1914, and laws published on or after that date which remained in force in Iraq until the publication of this law, the Constitution, shall remain in force so far as*

circumstances permitted, subject to any modification or repeal in conformity with the proclamations, regulations and laws referred to in the for-mentioned articles, and until they are altered or repealed by the legislative power, or the High Court issues a decision rendering them null and void in accordance with the provisions of article 86" . Article 113 confirmed that all Ottoman laws which were in force before the constitution came into effect remained in force unless it was modified or repealed by a new law. Therefore, Iraq could rely on the Ottoman law regarding the state ownership of the petroleum resources within its territories. The Ottoman Land Code 1585 regulated land ownership.¹⁶³ The land was generally owned by the state and the individual. The state could expropriate the land owned by the individual for the public interest with fair compensation to be paid to the landowner.¹⁶⁴ Therefore, the Iraqi government could refer to the Ottoman Land Code of 1585 as evidence of the state ownership of petroleum resources. It was accepted that Iraq was not a sovereign state and did not have full sovereignty over its territories. Not having full sovereignty over its land may affect its ability and capacity to deal with the natural resources, including oil and gas. It would limit or restrict it from exercising its ownership right fully over the land.

This constitution was in force until 1958 when the monarchy was overthrown and replaced by a republican system. The 1925 constitution was repealed and replaced by a new interim constitution of the Republic of Iraq in 1958.

The 1958 constitution comprised of 30 articles, mostly dealing with the outcome of the revolution and the new Iraqi government. It did not contain provisions regarding oil and gas or petroleum.¹⁶⁵ Although the interim constitution of 1958 did not specifically deal with petroleum matters, a new national law was enacted to regulate oil operations. Law No 80 of 1961, delimiting areas of exploitation

¹⁶³ BEKI. *Ottoman land registration law as a contributing factor in the Israeli-Arab conflict*. Jon-Jay Tilsen 2003. Available at <http://www.beki.org/dvartorah/landlaw/>

¹⁶⁴ Cemal Biyik and Ayse Yavuz. *The importance of property ownership and management system in the Ottoman empire in point of today*. Available at https://www.fig.net/resources/proceedings/fig_proceedings/morocco/proceedings/TS10/TS10_4_biyik_yavuz.pdf

¹⁶⁵ Full text, English version, available at [http://confinder.richmond.edu/admin/docs/1958 Interim Constitution English .PDF](http://confinder.richmond.edu/admin/docs/1958%20Interim%20Constitution%20English.PDF)

for oil companies,¹⁶⁶ was passed, in terms of which 99.5% of the IPC undeveloped concession area was relinquished. Almost all concession areas where exploration had not taken place was returned to Iraq. This was discussed in detail in chapter two.

The 1958 constitution did not introduce new constitutional provisions concerning petroleum ownership in Iraq. Similar, the interim constitutions of 1963, 1964, 1968 brought no great changes and amendments to petroleum ownership in Iraq. The position regarding state ownership of petroleum remained unchanged, and no constitutional provisions were introduced in respect of same.

4.4.2 Interim Constitution of 1970¹⁶⁷

The interim constitution of 1970 was introduced after Iraq had been through many political, economic, and legal developments. These changes impacted positively on the oil concession agreements. Therefore, oil and gas ownership was significantly developed. The interim constitution of 1970 made petroleum ownership clear. Article 13 (**public property and planning**) stated "*National resources and basic means of production are owned by the People. They are directly invested by the Central Authority in the Iraqi Republic, according to exigencies of the general planning of the national economy*".

Article 13 clearly confirmed that petroleum ownership vested in the people, but directly managed by the central government as the people's representative. Article 16 provided protection for private ownership and the circumstances and conditions where private property could be expropriated. Article 16 (**ownership, private property**):

- (a) Ownership is a social function, to be exercised within the objectives of the Society and the plans of the State, according to stipulations of the law.
- (b) Private ownership and economic individual liberty are guaranteed

¹⁶⁶ John M. Blair. "Iraq and the battle for oil. A historical insight". Excerpt from *The Control of Oil*. 1977. <https://www.globalresearch.ca/iraq-and-the-battle-for-oil-a-historical-insight/24810>

¹⁶⁷ Full text in English is available at <https://web.archive.org/web/20070929101911/http://www.mallat.com/iraq%20const%201970.htm>

according to the law, and on the basis of not exercising them in a manner incompatible with the economic and general planning.

(c) Private property is not expropriated except for considerations of public interest and for just compensation in accordance with the law.

(d) The maximum limit of agricultural property is prescribed by the law; the surplus is owned by the people.

Under Article 16, private ownership was protected and could not be expropriated except when the public interests required so, and a fair and just compensation must be paid to the landowner and those who had sustained loss as a result of the expropriation. The interim constitution of 1970 is the first constitution which clearly referred to petroleum ownership in Iraq. From 1958 to 1970 domestic legislation was passed regarding oil concession and petroleum operations in Iraq. Chapter two provides further information regarding all legislation and the developments in the oil concession agreements between the Iraqi government and IPC and its subsidiaries.

Article 18 of the same constitution stated that “**[foreigners' property]** Immobile ownership is prohibited for non-Iraqi, except otherwise mentioned by a law”. This article was highly relevant to petroleum ownership as it prohibited foreign ownership of immovable properties,¹⁶⁸ lands, buildings, plant (ations), bridges, dams, mines, and other real estate things. The provision of this article impliedly prohibited the IOCs’ ownership of the oil concession area. In accordance with the provisions of the 1970 interim constitution, the ownership of oil and gas vested in the people of Iraq and all oil and gas operations were managed by the Iraqi government on behalf of the people. The legal state of the petroleum ownership remained unchanged until 1990 when a new draft of the interim constitution was prepared, but never enacted due to the first Gulf War. The 1990 interim constitution did not contain something different to the provisions in the 1970 interim constitution. The provisions of articles 13, 16, and 18 were repeated in articles 13, 16 and 18 in the draft interim constitution

¹⁶⁸ Chapter 3, Article 62 of the Iraqi Civil Code No 40 of 1951 has divided the properties in things into two categories, movable and immovable things. Immovable are lands and buildings, plant (ations), bridges, dams, mines, and other real estate things. The full English version text is available at <http://gjpi.org/wp-content/uploads/2009/01/civilcode1-197.pdf>

of 1990;¹⁶⁹ the wording was even the same. The 1990 interim constitution did not provide something different from the previous one. For the period from the First Gulf War in 1991 when the UN-imposed economic sanctions on Iraq until the invasion of Iraq in 2003, the state of petroleum ownership had not changed. In 2003 the Coalition Provisional Authorities were granted the legislative power to pass law regarding everything in Iraq.

4.4.3 Coalition Provisional Authority (CPA)

The CPA was established on 12 May 2003 to govern Iraq for an interim period until a national Iraqi government formed. It was headed by Paul Bremer, an American diplomat, who ran Iraq for over a year from 12 May 2003 to 28 June 2004.¹⁷⁰ Under the UN Security Council Resolution 1483 of (2003), CAP was vested with all three powers of the executive, legislature, and judiciary¹⁷¹ in Iraq from the time of its establishment until its dissolution on 28 June 2004. Between 1991 and 2003, Iraq was affected as a result of the war and UN economic sanctions for over 12 years. Reconstructing Iraq and reviving its economy were the top priorities of the CAP's reconstruction plan. For the plan to become a reality and become effective, foreign investments were needed, but the foreign investment environment was very poor and unattractive. New laws and regulations were needed to boost the investment sector to encourage foreign companies to participate in the reconstruction process.

The first step taken by the CPA was the adoption of several regulations and orders, by which many parts of the Iraqi laws concerning foreign companies or/and foreign investors were "suspended or replaced". Orders 37, 38, 39, 40 concerned foreign investments. The main purpose of those orders was to remove the existing barriers in the Iraqi legal system concerning foreign investment, which can be summarised here as follows:

¹⁶⁹ Full text, English version, is available at <http://www.servat.unibe.ch/icl/iz01000.html>

¹⁷⁰ James Dobbins, Seth G. Jones, BenJamin Runkle, Siddharth Mohandas. *Occupying Iraq: A History of The Coalition Provisional Authority*. The full text is available at https://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG847.pdf

¹⁷¹ CAP Regulation (1) Section 1(1) states that the CPA "shall exercise powers of government temporarily in order to provide for the effective administration of Iraq during the period of transitional administration . . ." and Section 1(2) states that "The CPA is vested with all executive, legislative and judicial authority necessary to achieve its objectives . . ."

1. The Iraqi Interim Constitution (1990) prohibited private ownership of natural resources and the "basic means of production."¹⁷² It also prohibits foreign ownership of immovable (real) property as well.¹⁷³
2. Article (12) of the Iraqi Company Law No. 21 of 1997 prohibited foreigners from becoming shareholders in Iraqi companies and prohibited them from investing. Only Iraqi citizens were permitted to become shareholders in a company. Arab national citizens were treated as Iraqi nationals.
3. Under the Commercial Agency Law No. 51 of (2000) the agent must be an Iraqi national and must be resident in Iraq.¹⁷⁴
4. Iraq did not have Western-style competition law.
5. Iraq was not a member of the WTO.

The above points were indirectly relevant to oil and gas operations in Iraq as IOCs were required to become involved with the reconstruction of the oil and gas sector.

Orders No. 37, 38, 39 and 40 were passed to provide certain legal protections which were essential elements to create a proper and safe environment for foreign investment. The said orders impacted foreign investment dramatically.

Order No. 37 provided the new tax regime which covered both individuals and corporations. It repealed most of the existing tax laws and replaced them.¹⁷⁵ This was to show that foreign investors or foreign companies were not treated less favourably than national companies as required by the WTO.

Order No. 39 of the CPA was promulgated on 20 September 2003 and replaced "all existing foreign investment law[s]",¹⁷⁶ and suspended Company Law No. 21

¹⁷² Article (13) of the Iraqi Interim Constitution (1990).

¹⁷³ Ibid Article (18).

¹⁷⁴ Article 4. (Commercial Agency)

(1) To grant the commercial agent a license he should be:

(a) Of Iraqi nationality and resident in Iraq. (Full text of the law available in English at <http://128.252.251.212/Library/cdroms/foreigntax/Iraq/iraq>

¹⁷⁵ CPA Order (37) Section (2) (a), (b) and (c). The full text of the order is available in English at http://www.iraqcoalition.org/regulations/20030919_CPAORD_37_Tax_Strategy_for_2003.pdf

¹⁷⁶ CPA Order (39) Section (3) (1) "This Order replaces all existing foreign investment law".

of 1997. The order abolished some existing Iraqi laws and regulations concerning foreign investment and suspended others. The order provided national treatment for foreign companies; foreign companies and Iraqi companies had to be treated alike unless the order provided otherwise.¹⁷⁷ This was the first time since the 1950s in Iraq that foreign companies enjoyed such legal protection.

Section (6) of the order revoked all legal restrictions concerning foreign participation in national companies and prohibited discriminatory treatment of foreign investors. Section (6) of the order did not affect “natural resources”, banking, and the insurance sector. The previous restrictions on foreign companies in respect of those three sectors remained unchanged. Article (16) of the Iraqi Interim Constitution (1990), which prohibited foreign companies from owning “real property” (land, houses, and buildings) was repealed by section (8) of Order 39, which repeated the same restriction and confirmed that foreign ownership of real property in Iraq is not permitted.

However, section (8) (2) of Order 39 allowed foreign companies to own land only for residential projects, such as buildings and houses.

Overall, Order 39 was the most developed company law in Iraq which provided foreign companies with national treatment in almost everything with certain exceptions as mentioned above, and increasing legal protection to the level that exempts CPA’s contractors and sub-contractors from being subject to any Iraqi law. Order 39 was superseded and replaced by the 2006 Iraqi national investment law, and the Constitution.

It is clear from the above that the provisions of the CPA orders did not change oil and gas ownership and the type of oil and gas contracts that the former Iraqi regime provided to IOCs. The oil and gas sector remained unaffected for unknown reasons.

4.4.4 Oil and Gas Ownership under the new Iraqi Federal Constitution

The KRG was formed following a general election in 1992. The former Iraqi regime had no direct constitutional control over the KRG area. The KRG had full effective control and acted like a sovereign state over all matters concerning the

¹⁷⁷ Ibid Section (4) (1) and (2).

KRG, including oil and gas. The KRG had its own government, parliament, and judiciary. The circumstances changed after the invasion. The KRG agreed to participate in the new Iraqi government and to establish a formal relationship between both governments regulated by the Constitution. An agreement was reached in principle and the Constitution was elected and became effective in 2006. Practically, the relationship between the KRG and central government has been through many difficulties due to disagreement over several issues. Oil and gas was the most controversial issue between them. The KRG had been exercising full control and managing oil and gas within its territories from 1991. Oil was first extracted in 1994 from Taq Taq oil field. Although the former Iraqi regime had no direct control over the KRG's affairs, the KRG was still part of Iraq and did not have formal recognition from the central government. The KRG extracted oil and sold it to the neighbouring countries between 1994 and 2003, which was not disputed by the former Iraqi regime. The silence of the former Iraqi regime on the KRG's oil operations at that time did not confirm the KRG's exclusive right to manage oil and gas, nor KRG's ownership of oil and gas within its territory.

The circumstances changed after 2005. The Constitution recognised the KRG as a regional government and Iraq as a federal state¹⁷⁸ for the first time since the establishment of Iraq in 1920. The KRG gained formal recognition and its relationship with the central government is now regulated by the Constitution.¹⁷⁹ The KRG and central government must act in accordance with the provisions of the Constitution. The central government claims that the KRG's PSCs with IOCs are not constitutional. The Constitution does not grant the KRG an exclusive right to manage oil and gas within its territories and claims the KRG does not have the constitutional right to form or enter or sign contracts with IOCs without prior approval from the central government. The KRG has denied any wrongdoing regarding its oil and gas contracts with IOCs and confirms its PSCs

¹⁷⁸ First Article of the Iraq Constitution of 2005 states "*The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq.*" Full text of the constitution available at http://www.wipo.int/wipolex/en/text.jsp?file_id=230000.

¹⁷⁹ First part of Article 117 of the 2005 constitution state "*First: This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region.*" Full text of the constitution available at http://www.wipo.int/wipolex/en/text.jsp?file_id=230000.

with IOCs comply with the Constitution. The centre of the legal arguments between both sides is Article 112 of the Constitution, concerning the management of natural resources, including oil and gas. The issues of the KRG's oil and gas contracts with IOCs, its legality in the light of Article 112, and domestic legislation are discussed in detail in the next chapter. One of the issues in dealing with the oil and gas dispute is the ownership of oil and gas. The question is who owns oil and gas within the KRG's territories. Oil and gas ownership is extremely important, and its directly relevant to the ongoing dispute between the central and KRG over the KRG's oil and gas contracts with IOCs. The ownership right is defined by the Civil Code as the right to use the property, the right to exploit it, and the right to dispose of it. No other person, natural or legal, can enjoy the ownership right over a property without the owner's permission. Therefore, establishing the ownership of oil and gas within the KRG's territories is a crucial first step'.

4.5 Constitutional provisions concerning Oil and Gas Ownership

Article (111) of the 2005 Constitution states that "Oil and gas are owned by all the people of Iraq in all the regions and governorates." This is compatible with the direction of international law on oil and gas ownership, which confirms that the natural wealth and resources are the property of the peoples. The state is only a tool for management, distribution, and development. The state has a duty to manage the natural resources in the best interests of the people. At the outset of this chapter, reference was made to the United Nations resolution 1803 of 14 December 1962, which confirms the right of people and nations to permanent sovereignty over their natural resources. The people and nation's rights to the natural wealth and resources must be respected by other nations and must be managed by their governments in the interest of their national development and the well-being of the people. People should not be deprived of their own means of subsistence and well-being under any circumstances.

Article 111 of the Iraq constitution clearly vests oil and gas ownership in the people of Iraq, regardless of their religion, ethnicity, and location. However,

there are two different interpretations or opinions among the jurisprudence for this article:¹⁸⁰

First: The ownership of oil and gas under the Constitution is the property of all the Iraqi people in all regions and governorates. Article 111 vests the ownership of oil and gas in all people in Iraq in all regions and governorates. The ownership in this sense cannot be divided between the Iraqi people. The ownership of oil and gas is similar to the "Waqf Property",¹⁸¹ which is property used for the benefit of people, and only its revenues may be used. The property itself cannot be sold or given to a third party. Therefore, the asset remains fixed and cannot be disposed of. The wording of the article does not restrict the ownership of oil and gas, in the sense that the text addresses all Iraqi people in all regions and governorates, in the sense that Oil and Gas are shared by all Iraqi people and the share of each partners is dispersed and uncontrolled or concentrated in a geographical location. Oil and gas in the Kurdistan region is the property of all people of Iraq, which means that people in Basra and Kurdistan have a common share in the oil of Iraq, from Basra province in the south to Kurdistan region in the north and vice versa. The people in the provinces of Muthanna and Qadisiyah have a common share in every barrel of oil produced in the land of Iraq, whether in the province of Basra or in the province of Dhi Qar or in the Kurdistan region. Therefore, this common property does not allow any region or any irregular province in the territory to be occupied, or the revenues of oil and gas within its geographical scope.

The supporters of the above interpretation opine that the competent authority to deal with the ownership of the people (wealth of oil and gas) as an agent for the owner (the people), or as a representative of all Iraqi people across Iraq is the federal legislative authority represented in the Federal Parliament as it represents all Iraqis in their provinces and regions. The Iraqi Parliament is a

¹⁸⁰ Ismail Alwan Al-Tamimi. "Ownership of oil in Iraqi civil law". *Modern Discussion*, 2016. The Article is in Arabic language and it is available at: <http://www.ahewar.org/debat/show.art.asp?aid=526956>

¹⁸¹ **Waqf:** (Pl: Awqaf/waqfs) Literally waqf means to stop, contain, or to preserve. In shari' ah, a **Waqf** is a voluntary, permanent, irrevocable dedication of a portion of one's wealth - in cash or kind - to Allah. Once a waqf, it never gets gifted, inherited, or sold. It belongs to Allah and the corpus of the waqf always remains intact. The fruits of the waqf may be utilised for any shari' ah compliant purpose. *What is Waqf - Awqaf SA*". [awqafsa.org.za](http://www.awqafsa.org.za). Retrieved 29 March 2018. <http://www.awqafsa.org.za/what-is-waqf/>

competent authority to enact legislation governing the subject of oil and gas and the IFG has the duty to implement the legislation in the best interests of Iraqi people. Oil and gas are from the "private domain". This means that all movable and real property, which are not directly allocated to be used for the public interest, is owned by the state or other public authority bodies. They need to meet only two conditions: that they are owned by the state or by other public authorities.

Oil and gas are classified as the "extractive domain", which includes all that is extracted from the ground of metals such as gold, coal and oil. Therefore, the ownership of oil and gas belongs to the state in all regions and provinces, but its revenue can be distributed in a fair manner commensurate with the distribution of the population in the regions and provinces throughout the country. There should be a fixed share for a fixed term for those regions and provinces were affected by the acts of the former Iraqi regime and were unfairly deprived and their territories were damaged by the former Iraqi regime. This is to ensure the balanced development of the different regions of the country. Justice and fairness in the distribution of oil and gas revenues cannot be a mechanism for sharing oil and gas revenues between regions and governorates without a regulator or inspector. The word "justice" is a vague term and varies from one person to another, therefore, achieving justice and fairness in oil and gas revenue distribution among all regions and provinces in Iraq requires an auditor or legal regulator. This legal regulator or auditor is embodied in Article 106 of the Constitution,¹⁸² which requires a public commission to be established with the participation of representatives from different regions and provinces across Iraq to audit or monitor the distribution of the federal revenues fairly, or equally between all the regions and provinces. The public commission has other tasks too, as stated in Article 106. The distribution of oil and gas revenue is now

¹⁸² Article 106 of the Iraqi Constitution states that "A public commission shall be established by a law to audit and appropriate federal revenues. The commission shall be comprised of experts from the federal government, the regions, the governorates, and its representatives, and shall assume the following responsibilities:
First: To verify the fair distribution of grants, aid, and international loans pursuant to the entitlement of the regions and governorates that are not organized in a region.
Second: To verify the ideal use and division of the federal financial resources.
Third: To guarantee transparency and justice in appropriating funds to the governments of the regions and governorates that are not organized in a region in accordance with the established percentages".

regulated by oil and gas revenue. The Iraqi government has an annual budget and the budget of each region and provinces are designated in the general budget and is subject to voting by the Iraqi Parliament.

Despite the agreement among the supporters of this view that the ownership of oil and gas vests in all the Iraqi people in all regions and provinces, there have been a number of criticisms, summarised as follows:

- (1) The right of ownership is a real right in property which must be transferred to a legal person. This can be a natural person, or juristic person such as a limited company, and since the Iraqi people do not enjoy juristic or legal personality, transferring the title or ownership of oil and gas to it is metaphorical. In that case, the Iraqi state is the real owner of oil and gas because the Iraqi state has juristic personality and therefore can act as a legal person under the provisions of Article 47 of the Civil Code.¹⁸³ Article 1048 of the Civil Code stipulates that "*Perfect Ownership vests onto the owner a right to dispose absolutely of that which he owns through use, enjoyment, and exploitation he shall enjoy.....*".¹⁸⁴
- (2) The state of the other natural wealth and resources, such as iron, sulphur, copper and mercury have been ignored by the provisions of Article 111. Article 111 should have been written as follows: "Natural resources including oil and gas are owned by all the Iraqi people" to cover the other mineral and natural resources.

¹⁸³ Article 47 of the Civil Code No 40 of 1951 states that "Juristic Persons are

- (a) The State
- (b) The administration and the public institutions which
- (c) The districts, municipalities, and villages which are
- (d) Religious sects
- (e) Dedications (Waqfs).
- (f) Commercial and civil companies except those of which have been excluded by a provision in the law.
- (g) Societies which have been incorporated in accordance with the provisions of the law.
- (h) Every group or persons or combination of property which is granted a juristic personality by the law.

¹⁸⁴ Full text of Article 1048 of the Civil Code No 40 of 1951 is available at https://s3.amazonaws.com/landesa_production/resource/871/Iraq_civil-code_1951_Part-4-of-4.pdf?AWSAccessKeyId=AKIAICR3ICC22CMP7DPA&Expires=1524483125&Signature=XdqfcYY9XPPAtwmFFSdNX78dpqU%3D

(3) There is a difference between the Arabic version¹⁸⁵ and the English version in the phrase "oil and gas is the property of". The word "هو", *hwa* is used after the word gas. The word "*hwa*" is used in Arabic to refer to a thing in singular. The English translation of the word "*hwa*" is "is" which is singular and only refers to one thing, if you refer to more than one thing the correct word is "are". In the Arabic version the word "*hwa*" refers to gas only. Therefore, if the Arabic version is translated to English the meaning would be "the gas is owned by all the people", which does not cover the oil which comes before the word 'gas' in Article 111. This linguistic problem should have been noticed and corrected by the Constitutional Amendment Committee. The wording of Article 111 should have been as follows: "Oil and gas are the property of ...". This problem does not appear in the English translation version as the English version correctly states that "oil and gas are". It should be noted that Iraq is an Arabic country and Arabic and Kurdish languages are the official languages in Iraq under Article 4¹⁸⁶ of the Constitution.

Second: This group interprets and analyses the provisions of Article 111 in light of the provisions of Article 112 of the Constitution. They agree with the first group that oil and gas are the property of all Iraqi people. However, they believe that there are two different groups of oilfields to which the Constitution refers in Article 112; the current or existing oilfields, at the time of drafting the constitution and or precisely the time it came into effect, and the future oilfields. This group agrees that the ownership of the existing fields is owned by all Iraqi people, but they disagree with the first group in respect of the future fields.¹⁸⁷ They argue that the ownership of future fields is different from the ownership of the current or existing fields in terms of the revenue distribution. In support of their position, the second group relies on the first part of Article 112, which only refers to the current or existing fields, and makes no reference to the future

¹⁸⁵ Arabic version of Article 111: النفط والغاز هو ملك كل الشعب العراقي في كل الاقاليم و المحافظات (المادة ١١١)

¹⁸⁶ Article 4: "First: The Arabic language and the Kurdish language are the two official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turkmen, Syriac, and Armenian shall be guaranteed in government educational institutions in accordance with educational guidelines, or in any other language in private educational institutions."

¹⁸⁷ Ismail Alwan Al-Tamimi. "Ownership of oil in Iraqi civil law". *Modern Discussion*, 2016. The Article is in Arabic language and it is available at: <http://www.ahewar.org/debat/show.art.asp?aid=526956>

fields. The first part of Article 112 states that *"The IFG, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law."* In accordance with Article 112, the IFG together with the producing governorates and regional governments undertakes the management of oil and gas extracted from the present fields. The management of the present fields must be conducted by the IFG and the producing governorates and regional governments and they must agree on the distribution of oil and gas revenue from the present fields.

Both arguments lack specification and legal authority to support their conclusions. The wording of Article 111 of the Constitution is vague and unclear as to who exactly owns oil and gas in Iraq. It states that oil and gas are owned by all Iraqi people in all regions and governorates. As identified above there is a difference between the Arabic version and its English translation. The Arabic version literally refers to gas only. It could be inferred that only the gas is owned by the all Iraqi people in all governorates. It may be argued that the intention of the draftsman was that oil and gas are owned by all Iraqi people, but then this must be clearly demonstrated by Article 111.

The KRG can rely on Article 111 in its argument that the KRG has the exclusive right to manage oil and gas within its territories. Under the Constitution, people within the KRG territory are Iraqi people and KRG is a regional government, therefore oil and gas within the KRG are owned by its people. Accordingly, the KRG as a representative of the people within its region has the exclusive right to manage oil and gas, including signing contracts with IOCs.¹⁸⁸ On the other hand, the IFG could argue that there is nothing in Article 111 to confirm that the KRG has the exclusive right to manage oil and gas within its territories. Article 111 vests the ownership of oil and gas in all Iraqi people but does not

¹⁸⁸ Richard Devine and Safwan Al-Amin. "Oil and gas regulation in Iraq: Overview". *Practical Law*. <https://uk.practicallaw.thomsonreuters.com/9-581->

specifically refer to the Kurdish people or people within the KRG's territories. Oil and gas historically have been managed by the central government as a representative of all Iraqi people, including Kurdish people, since the discovery of oil in Iraq. The Iraqi economy is primarily based on oil and gas revenue and it accounts for more than 90% of the IFG's budget. Therefore, it is impossible to imagine that the ownership of this wealth will be for the regions and governorates producing it, especially since the number of oil and gas producing governorates does not exceed one-third of the governorates who do not produce oil and gas. Depriving the non-producing region and governorates from oil revenues will create serious economic and social injustice and political division between the producing and non-producing governorates.

The KRG does not dispute the fair distribution of oil and gas revenue between all regions and governorates.¹⁸⁹ The KRG believes that they should have a right to deal with all oil and gas operations independently and should have a right to take their shares of the revenues and return what remains after handing their shares to the IFG. The IFG does not dispute the revenue sharing with the KRG, but they want to be involved in the revenue collection and redistribution.¹⁹⁰ There have been concerns about the lack of transparency and corruption in oil and gas sales and revenues. Corruption is a big problem currently in Iraq and in the KRG specifically over oil and gas deals and revenues.¹⁹¹ Corruption and lack of transparency are part of the dispute between the KRG and central government, and are barriers preventing the disputed parties from reaching a settlement on oil and gas issues.

It should be noted that during the UN economic sanctions on Iraq, the Kurdistan region received its shares from oil revenues achieved under the memorandum of understanding on oil for food programme adopted by the United Nations Security Council Resolution (UNSCR) 687 (1991). The Kurdistan region received

¹⁸⁹ Ari Mamshae. *Baghdad not sincere about KRG budget*, 2015. Rudow. <http://www.rudaw.net/english/middleeast/iraq/110320151>

¹⁹⁰ Michael Knights. *Baghdad-KRG negotiations: Closer than ever to a fair deal*. The Washington Institute for Near East Policy. 2014. www.washingtoninstitute.org/policy-analysis/pdf/baghdad-krq

¹⁹¹ Coralie Pring. *Iraq: Overview of corruption and anti-corruption. U4 Answer Expert*. Anti- Corruption Resource Centre. 2015 https://www.transparency.org/files/content/corruptionqas/Country_profile_Iraq_2015.pdf

17% shares from oil for food. This programme was not directly controlled by the former Iraqi regime and was not subject to the actual authority of central government in Baghdad.

4.6 Oil and Gas Ownership in the Iraqi Civil Code No 40 of 1951

The Civil Code has not dealt directly with the ownership of oil and gas but has dealt with the scope of ownership in general. The Civil Code does not limit the ownership right to the surface of the land but extends to what is above the land and what is beneath it, to the extent the landowner could fully enjoy the benefit of the land. Article 1049 of the Civil Code deals with the issue of the scope of land ownership in three sections. Section (1) states that *"The owner of a thing is also owns everything which is deemed by usage to constitute an essential element thereof such as it cannot be separated therefrom without the thing owned perishing, deteriorating or changing"*. This section deals with the ownership in general, the owner of the thing, and whether the thing is movable or immovable and tangible or intangible. The essential element cannot be separated from that thing without perishing, deteriorating, or changing. Under this section, the owner of land owns the dust, the stones, the plant and trees. The ownership right is not limited to the thing itself and the core elements that are part of its composition, but also extends to things which could be taken away from it and its accessories.

Section (2) of the same article states that *"The ownership of land includes that which is above and below as far as can be usefully enjoyed in height and in depth"*. The ownership right of a landowner is not limited to the surface of the land but is extended to what is above it to the sky and under the land to the depth of the earth. The landowner owns the space above it and is entitled to use the space above the land for planting, construction, or laying of wires. The owner of the land also owns the layers beneath it. The landowner has a right to dig wells or extend pipes or extract stones and others. The landowner's right is protected by law and others are not allowed to use or benefit from the space above the land and the depth under the land without landowner's permission.

A further section of the same article states that *"The ownership of the surface of the land may by agreement be separated from that which is above it and that*

which is below it". Section (3) permits that the ownership of the land could be separated from what is above or below it by agreement. It is permissible to agree to the possession of above the surface of the earth, the space above and the construction above the land could be owned by others as in the flat. The owner of the land can sell the underground to the other, or the ownership of the underground could be separated from the ownership of the surface such as the tunnels and warehouses.

Article 1050 of the Civil Code states that *"No one can be deprived of his ownership except in the cases and in the manner provided for by law and in consideration of a fair compensation payable in advance"*. This article prevents the owner from being deprived of his property except by law in exchange for a fair compensation paid in advance. It confirms that the property cannot be expropriated except in the cases and manner prescribed by law. The law regulating the expropriation is the Acquisition Law No. (12) of 1981,¹⁹² which requires the upfront payment of fair compensation to the owner whose property is expropriated under the provisions of the Acquisition Law. It is noted that the Acquisition Law did not distinguish between the amount of compensation to be paid for the land expropriated by the Ministry of Oil after oil and gas are found and the expropriation of the land which is used for other purposes.

It is clear from the above provision that the state can expropriate the privately-owned land for public use, including searching for oil and gas, or extracting oil and gas when they are found, in consideration of fair compensation payable to the landowner.

The Civil Code, as discussed above, is based on Sharia law. It is therefore important to discuss how the Sharia law regulates the ownership of oil and gas.

4.7 Ownership of oil and gas in Sharia law

Sharia jurisprudence deals with the ownership of oil and gas within the ownership of minerals. There are different definitions for ownership in Sharia, but they are all consistent with the primary elements of ownership. All

¹⁹² The full English translated version of the Acquisition Law No. (12) of 1981 is available at the Iraqi Local Governance Law Library at: <http://www.iraq-lg-law.org/en/content/acquisition-law-no-12-1981>

definitions agree that there must be possession of the thing owned and the owner can exercise the ownership right over the thing owned unless there is impediment preventing the owner from doing so. A unique character of the ownership in Sharia is the owner can prevent others from using, benefiting from, or disposing of the property owned except with the owner's permission and in a manner permitted by Sharia.¹⁹³

The concept of mineral ownership - as stated in the *Al-Muhit* dictionary (القاموس المحيط) – encompasses the jewels of the earth including gold, silver, copper, iron, and others.¹⁹⁴ The mineral means the things beneath the land, which is part of it and not treasure buried by man. The scholars of the *Hanafis*, the *Shaafa'is* and the *Hanbalis* agree that the mineral if discovered on land is the property of the landowner or belongs to the owner of the land. Land ownership includes minerals. This concept was adopted by the *Majallah Al- Ahkam Al- Adliyyah* in Article 1194 which stated that "*Whoever owns a piece of land in absolute ownership is likewise owner of what is above it and what is below it. That is to say, he may deal with it as by erecting buildings on a piece of land he owns in absolute ownership and raising it as high as he wishes. He may also dig the ground and make store-rooms therein and dig wells as deep as he wishes.*" The scholars of Maliki's have a different approach, arguing that the minerals belong to the Imam, the head of the state, as a representative of the people. The minerals do not belong to the land as they are beneath it; therefore, they are not the property of the landowner, but they belong to all Muslims. The Maliki's used a "*Maslahah-based, (the best interest of the people)*" approach based on compelling public interest.¹⁹⁵

Under the ancient Islamic jurisprudence, minerals mean everything that settles in and comes out of the earth. It includes gold, silver, copper, lead, mercury, tin, agate, sapphire, emerald, arsenic, sulphur and oil. The Imam, the head of the state, as a representative of all people has the exclusive right to manage

¹⁹³ Ismail Alwan Al-Tamimi. "Oil ownership in Sharia". *Modern Discussion*, 2016. The Article is in Arabic language and it is available at: <http://www.ahewar.org/debat/show.art.asp?aid=526452>

¹⁹⁴ Maji Alddin Al-Firoz Abadi. *Al-Muhit* dictionary (القاموس المحيط). It is in Arabic language and is available at: <https://islamhouse.com/ar/books/141373/>

¹⁹⁵ M. Ali Sadiqi. *Ownership of oil and gas in light of the Maqaasid Ash-Shari'a*. https://www.academia.edu/12313575/Ownership_of_Oil_and_Gas_Under_Islamic_Shariah_Law

the minerals in the best interest of the people.¹⁹⁶ Maliki's doctrine regarding mineral ownership is based on two points: first, the minerals that are in the depths of the earth are older than the landowner who owns them. Therefore, the landowner does not own them through the ownership of the land. The second is that minerals are necessary for humans and they would be improperly exploited if they were owned by individuals. If the minerals are only owned by a few individuals, there would be an unfair distribution of the nation's wealth.

The three historical scholars, the Hanafis, the Shaafa'is and the Hanbalis, support the private ownership of the minerals, including oil and gas, but the Maalikis support state ownership, based on the Muslahah, the best interest of the people. All Muslim countries have adopted the state ownership approach of the minerals, including oil and gas.

4.8 Conclusion

Iraq is one of the countries that adopted state ownership of oil and gas. This has been the case since the discovery of oil in the 1920s. Private ownership of oil and gas has not been recognised. The owner of the surface land does not have a right to oil and gas. The Constitution confirms that oil and gas are owned by all Iraqi people. This has been interpreted differently by the central and regional governments and caused practical difficulties. The central government argues that under the Constitution the state of Iraq, as represented by the IFG in Baghdad, is the only authority could act on behalf of all Iraqi people. Therefore, only the IFG should have the exclusive right to manage oil and gas including the right to explore, develop, extract, exploit and utilise. This includes the right to appoint contractors to assist with these activities.

The KRG takes the view that the federal regions and provinces have the right to explore, develop, extract, exploit and utilise oil and gas within their territories without consulting the IFG.

It is impliedly accepted by parties of the dispute that the relevant articles of the Constitution concerning oil and gas are vague and not clear on oil and gas

¹⁹⁶ Dr. Yusuf al-Qaradawi, *Figh az-Zakat: A comparative study. the rule, regulation and philosophy of Zakat in the light of the Qur'an and Sunna*. Translated by Dr. Monzer Kahf. 1999, p. 53.

ownership and who has the exclusive right to manage oil and gas within KRG territories. To resolve this problem, the parties agreed to enact a new law governing oil and gas. Therefore, the Federal Oil and Gas Law (2007)¹⁹⁷ was drafted and passed to the Iraqi Parliament for ratification. This law has not been yet ratified by Iraqi parliament due to disagreement between the Shia, Sunni, and Kurds over certain provisions in that law.¹⁹⁸

Despite the ongoing dispute between the IFG and the KRG, both sides have concluded many oil and gas contracts that grant IOCs right to explore, develop, extract, and sell oil and gas, although the character and extent of such rights are considerably different. The type of contract used by KRG is materially different from the one used by the IFG. KRG uses the production sharing contract, while the IFG uses the technical service contract. The characters of each type of contract and the differences between them is discussed in detail in the next chapter.

¹⁹⁷ The full English version of the law is available at http://cabinet.gov.krd/uploads/documents/Kurdistan%20Oil%20and%20Gas%20Law%20English_2007_09_06_h14m0s42.pdf

¹⁹⁸ Lionel Beehner and Greg Bruno. *Why Iraqis cannot agree on an oil law*. Council on Foreign Relations. <https://www.cfr.org/background/why-iraqis-cannot-agree-oil-law>

CHAPTER 5 AN EVALUATION OF THE KRG's PSC UNDER THE FEDERAL CONSTITUTION

5.1 Introduction

This chapter provides a comprehensive examination of the legality of the KRG's production sharing contracts (PSCs) with international oil companies (IOCs) and their effect on the relationship between the IFG and the KRG. The chapter examines the legal arguments forwarded by both sides concerning the legality of the KRG's PSCs. It further explores the relevant provisions of the Constitution and the domestic legislation and regulation concerning the management of oil and gas operations within the KRG's territories. It provides a comprehensive discussion and analysis of the disputed issues and the attempts to resolve them to finally settle the ongoing dispute between the governments in Erbil (KRG) and Baghdad (Central Iraq) since 2004.

The chapter examines the terms of the KRG's PSC¹⁹⁹ and highlights how its terms and clauses are different from those of the technical services contract (TSC),²⁰⁰ which has been used as a model contract in managing oil and gas operations by the Iraqi government since the nationalisation of petroleum in 1972.

This chapter examines the key legal issues of the constitutional dispute between the central government and KRG over the legality of the KRG's PSCs with IOCs, and the KRG's right to unilaterally manage oil and gas operations within KRG's territories and the disputed territories under Articles 111 and 112, as well as the relevant provisions of the Constitution and domestic legislation.

5.2 The dispute over KRG's production sharing contract

5.2.1 Background of the dispute between KRG and the Iraqi government

The KRG was formed in 1992 and functions as a semi-autonomous self-administration government. The region is well-endowed with oil and gas reserves but there have been some significant challenges in establishing an oil

¹⁹⁹ All KRG PSCs signed since 2002 are available on the KRG Ministry of Natural Resources at <http://previous.cabinet.gov.krd/p/page.aspx?l=12&p=1>

²⁰⁰ Iraqi Service Contract ..?details publication date, etc...

industry, including that the KRG lacked sufficient financial resources and technical knowledge to invest in oil and gas operations. The search for oil and gas within the KRG's territory required huge funds and developed infrastructure and expertise. The lack of information and data in respect of the quantity of oil and gas in KRG's territories makes the exploration for potential oil and gas within the KRG increasingly risky and time-consuming.

Following the invasion of Iraq in 2003, under the Coalition Provisional Authority (CPA) and thereafter the newly formed Iraqi government, a new Foreign Investment Law favourable to international companies was passed in 2006²⁰¹. The primary purpose of the investment law is to persuade foreign companies, including IOCs, to invest in Iraq amid the security concerns which caused huge hesitation among foreign companies and international oil companies interested in doing business in Iraq. Although the security situation in KRG was much better in comparison with other areas in Iraq, there were other challenges facing the IOCs investment in the KRG's oil sector. In addition to the lack of data and official reports regarding the quantity of oil and gas, the costs involved in extracting the potential petroleum and legal and political uncertainty were also concerning factors. The KRG, therefore, decided to introduce a better model contract to take into account the above issues.²⁰² The KRG had to create a more attractive oil and gas contract to persuade IOCs to invest in the KRG's oil and gas sector²⁰³. Accordingly, the KRG introduced the PSC model as the preferred framework to manage oil and gas operations. After the 'invasion', the Coalition Provisional Authority (CPA) suggested to Iraqis that the PSC be used as a model contract to persuade IOCs to invest in Iraq's oil and gas²⁰⁴. Due to the security concerns, which were at the highest level, IOCs were hesitating to invest in Iraq at that time. The Iraqi political parties did not approve the CPA's suggestion,

²⁰¹ The Investment Law No (13) of 2006. The full text of the law is available at <http://investpromo.gov.iq/wp-content/uploads/2013/06/Ammn-Invest-Law-En.pdf>

²⁰² Robin Mills. *Under the mountains: Kurdish oil and regional politics*. The Oxford Institute for Energy Study. 2016. The full text is available at <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2016/02/Kurdish-Oil-and-Regional-Politics-WPM-63.pdf>

²⁰³ Interview with Dr Yusef Mohammed Sadiq. Annex 2

²⁰⁴ Philip Thornton. Iraq's oil: The spoils of war. Independent. <https://www.independent.co.uk/news/world/middle-east/iraqs-oil-the-spoils-of-war-328526.html>

instead they believed that the TSC was still the preferred model by the Iraqi as it was in the best interests of Iraq.²⁰⁵

The following identifies the core issues of the dispute, and the rationale of PSCs and TCSs in the international oil and gas industry, before examining the contractual situation in the KRG.

5.2.2 The core of the disputed issues

The KRG adopted the PSC as a model contract with IOCs for oil and gas exploration and production²⁰⁶. In 2004, the KRG concluded the SC with the DNO (Norwegian oil company).²⁰⁷ Prior to that the KRG concluded a PSC with Genel Enerji in 2002.²⁰⁸ The PSC was concluded before the invasion of Iraq, when the former Iraqi regime had exclusive authority for oil and gas management. The KRG's PSC with DNO attracted media attention due to the strong opposition from the newly formed federal Iraqi government. The act of the KRG in signing the PSC with the IOC without prior approval from the IFG was considered by the IFG as an act of an independent government. The DNO's PSC was concluded amid the process of setting up a new Iraqi government that represented all Iraqi people, including the Kurds. Therefore, the KRG's act of signing PSC with IOCs without consultation and advance approval from the IFG received strong opposition from the IFG.

However, the favourable clauses of the KRG's PSC persuaded IOCs to race to invest in the KRG's oil and gas sector to the extent that it reduced their participation for the IFG's bid for a petroleum exploration and development contract. From 2005 to mid-2013, the KRG concluded 50 PSCs with IOCs. By contrast, Iraq's fourth licensing round showed a poor turn up by IOCs. The primary reason for the IOCs changes of direction towards the KRG was the

²⁰⁵ See Greg Muttitt. *Crude Designs: The Tip-Off of Iraq's Oil Wealth – PLATFORM with Global Policy Forum, Institute for Policy Studies (New Internationalism Project), New Economics Foundation, Oil Change International and War on Want - November 2005.* <https://www.business-humanrights.org/en/crude-designs-the-rip-off-of-iraqs-oil-wealth>

²⁰⁶ Estelle Rami. Oil Contracts and Policy in Iraq. 2014. <https://bsabh.com/wp-content/uploads/2014/12/DEC-TR-Oil-Contracts-Policy-in-Iraq.pdf>

²⁰⁷ Full text of the PSC between the KRG and DNO is available at <http://cabinet.gov.krd/p/p.aspx?l=12&r=296&h=1&s=030000&p=33>

²⁰⁸ Full text of the PSC between the KRG and Genel Enerji is available at <http://cabinet.gov.krd/p/p.aspx?l=12&r=296&h=1&s=030000&p=166>

difference in model contracts offered by the KRG. The IFG offered the TSC to the IOCs because it achieves the highest benefit for the Iraqi people. The terms and clauses of the KRG's PSC are more favourable to IOCs than the Iraqi's TSCs. The differences between both contractual models are discussed further in this chapter.

The IFG disputes the KRG's PSC for two main reasons. First, the KRG does not have the legal authority to conclude or sign oil contracts with IOCs without prior approval and consent from the IFG. Second, the PSC is incompatible with the provisions of the Constitution.

Since the establishment of the Iraqi Government in 2004, there has been an ongoing dispute between the IFG and the KRG on various matters. The disagreement over oil and gas operations is the centre of that dispute, which is the main hurdle to normalising relations between the IFG and the KRG. The dispute has escalated to the extent that the KRG attempted to separate from Iraq through a general referendum on the KRG's independence on 25 September 2017.²⁰⁹ More than 92% of the Kurdish people voted for independence.²¹⁰ However, the IFG strongly opposed the outcome of the referendum, arguing that it was unconstitutional.²¹¹ The disagreement between the IFG and KRG led to military confrontation, by which the IFG regained most of the territories, including Kirkuk, which it lost during its war with ISIS.

The long-standing dispute between the IFG and the KRG over oil and gas management is based on two main points:

1. The 2005 constitution does not grant the KRG an exclusive right to manage oil and gas operations, specifically granting or signing contracts with IOCs

²⁰⁹ <https://www.bbc.co.uk/news/world-middle-east-41382494> LISTING OF WEBSITES ONLY IS NOT PROFESSIONAL! [PLEASE MAKE SURE YOU CITE THESE FOOTNOTES FULLY – TITLE OF ARTICLE, AUTHOR, DATE, PUBLISHER.. THEN THE LINK – CHECK OSCOLA GUIDANCE

²¹⁰ <https://www.theguardian.com/world/2017/sep/27/over-92-of-iraqs-kurds-vote-for-independence>.

²¹¹ <https://www.aljazeera.com/news/2017/09/iraqi-kurds-vote-independence-referendum-170925032733525.html>

without prior approval or consent from the IFG. This has been repeatedly confirmed by the Iraqi government officials on different occasions.²¹²

2. The production sharing contract model is not compatible with the provisions of the 2005 constitution.²¹³

Analysing the terms and clauses of the KRG's PSC in connection with the relevant provisions of the Constitution is the starting point to understand the legal aspect of this dispute. Further examination is conducted in relation to the issues that the IFG considers in arguing the unconstitutionality of the KRG's PSC. The chapter explores why the PSC model has not been used since the discovery of oil by the Iraqi government, the differences between the PSC and the TSC, why the TSC is the acceptable model contract of the IFG and which is the only model used in Iraq since the nationalisation of oil, and finally which model of contract provides the highest benefit for the Iraqi people.

To answer the above questions and understand the issues in dispute, the terms and conditions of the PSC must be examined and then compared to those of the TSC used by the IFG. There are four common model contracts for oil and gas operations; technical service contracts, production sharing contract, concession agreements, and joint ventures. These are the most popular model contracts

²¹² In an interview with Ruba Husari on 1 April 2009, Mr Hussein Al-Shahristani, the former Iraqi Minister of Oil, argued that KRG should not sign oil and gas contracts unilaterally. The full text of the interview is available at <https://www.iraqoilforum.com/?p=21>. In an interview with Ruba Husari on 1 April 2009, Mr Nouri Al-Maliki, the former Iraqi Prime Minister, argued that KRG's PSCs do not comply with the law and constitution. The full text of the interview is available at <https://www.iraqoilforum.com/?p=53>. In an interview with Ruba Husari on 9 December 2011, Mr Abdul Karim Luaybi, the former Iraqi Minister of Oil, argued that it is not acceptable that KRG continues signing oil and gas contracts without the knowledge and approval of the central government, which represents everyone. The full text of the interview is available at <https://www.iraqoilforum.com/?p=264>.

²¹³ Mr Tariq Shafiq, in the interview with Ruba Husari on 30 December 2011, confirms that the KRG's unilateral management of the oil and gas is not consistent with the Iraqi Constitution of 2005. Mr Shafiq was described by the interviewer Ruba Husari as *"one of the founding fathers, former director, vice chairman and executive director of Iraq National Oil Company (INOC) founded in 1964. He was also a veteran of its predecessor, Iraq Petroleum Company (IPC) where he served in various technical capacities since 1954, including as head of petroleum engineering. In this candid interview with IOF editor Ruba Husari, he gives his expert take on the different versions of the Oil & Gas Law (Hydrocarbon Law) which he co-authored the first version in 2006, his interpretation of the disputes between Baghdad and Erbil and his vision of what the new INOC should look like."* The full text of the interview is available at <https://www.iraqoilforum.com/?p=2413>.

for petroleum operations. The research is confined to the TSC and PSC as the two model contracts used by both the IFG and the KRG in managing the petroleum operations in Iraq. Their terms and clauses will be examined separately in light of the Iraqi Constitution and the constitutional test “to achieve the highest benefit for the people of Iraq”.

5.3 International oil and gas contracts

There are different models of the oil and gas contract are in use by the oil and gas producing countries across globe. The following contracts are the main popular models of oil and gas contracts:

5.3.1 The rationale of production-sharing contracts

The PSC model was first used in Indonesia in 1966.²¹⁴ Following the revolutionary development of the oil and gas contract model across oil-producing countries, Iraq nationalised its oil during the 1960s and managed to sign its first TSC in 1969. In the 1960s, there was a strong nationalist movement across oil and gas producing countries, demanding that the national interest must be a priority in petroleum operations. In chapter three, reference was made to those countries where the petroleum regimes and oil model contracts were by the nationalist movement. The introduction of the new model oil contract was a result of the nationalist movement struggling against the unfairness of the concession agreement to the host country. Indonesia was one of the countries who refused to continue with the concession agreement contract,²¹⁵ believing that the PSC was a much better model oil contract to adopt. Unlike the concession agreement, under the PSC the host country can enjoy full sovereignty over its natural resources, exercise much more control in managing oil operations, and gain more profits from oil production and revenues. The PSC is a profit-sharing contract between a host country and the IOC. Under the PSC, the IOC must pay all expenses and costs for exploring and

²¹⁴ Brad Roach, Alistair Dunstan, “The Indonesian PSC: the end of an era”, *The Journal of World Energy Law & Business*, Volume 11, Issue 2, April 2018, Pages 116–135, <https://doi.org/10.1093/jwelb/jwy001>.

²¹⁵ Kristen Bindemann, *Production-sharing Agreements: An Economic Analysis*, Oxford Institute for Energy Studies (1999), 10. <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2010/11/WPM25-ProductionSharingAgreementsAnEconomicAnalysis-KBindemann-1999.pdf>.

developing oil and gas in exchange for an agreed portion of the oil production. The profit from the produced oil and gas is shared between the host country and the IOC as per the terms and clauses of the contract. Under the PSC, the IOC gains ownership of the produced oil. The ownership starts on the surface of the land when oil and gas are extracted. The PSC does not grant ownership of oil and gas under the land to the IOC. Under the concession agreement, the IOC owns the oil and gas under the land.²¹⁶ Although the clauses and terms of PSC have been developed, it was first introduced in response to the unfair terms of the oil concession agreement.

However, the PSC is not free of criticism. Professor Thomas Wälde, from the University of Dundee, described the PSC as a compromised solution to the concession agreement between the host country and the IOC which "gives to the government political and to the company commercial satisfaction. The government can be seen to be running the show – and the company can run it behind the camouflage of legal title symbolizing the assertion of national sovereignty."²¹⁷ Dr Peter Well made a comparison between the KRG PSC and the Iraqi IFG TSC, which shows that the TSC would provide more revenue than the PSC.²¹⁸ There has been strong criticism by nationalists and opposition parties in host countries over the use of the PSC for being too generous to IOCs compared to the profits the IOCs make under the TSC in the form of a fixed fee per barrel from the produced oil. Another serious criticism against the PSC is the duration of the contract, which would lock the host country into long-term contracts with unfair terms.²¹⁹ Therefore, the critics see little difference between the PSC and the concession agreement, they describe it as a modern form of

²¹⁶ Kristen Bindemann, *Production-sharing agreements: An economic analysis*, Oxford Institute for Energy Studies (1999), 10. <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2010/11/WPM25-ProductionSharingAgreementsAnEconomicAnalysis-KBindemann-1999.pdf>.

²¹⁷ Thomas W. Wälde, "The current status of international petroleum investment: Regulating, licensing, taxing and contracting", *CEPMLP Journal*, University of Dundee, Vol. 1, No. 5 (July 1995).

²¹⁸ Peter Well. *Iraq's technical service contracts - a good deal for Iraq*. The full text is available at <http://www.iraqoilforum.com/wp-content/uploads/2009/12/Iraqs-Technical-Service-Contracts.pdf>.

²¹⁹ Ian Rutledge, "The Sakhalin II PSC – A production "non-sharing" agreement: Analysis of revenue distribution", *Sheffield Energy & Resources Information Services* (Nov. 2004), 3.

the traditional concession agreement.²²⁰ The PSC model is now used by countries lacking the financial ability and technical expertise,²²¹ and where there is uncertainty about the volume of oil underground. Under the PSC, IOCs must pay all costs for exploring, extracting, developing, and exporting oil to the international market. IOCs will recover the expenditure only when the discovered oilfield is commercially productive.²²² The IOC bears most of the financial risk in searching and exploring for oil. Therefore, the terms and clauses of the PSC must provide IOCs with satisfactory financial gain to weight out that financial risk. Under the PSC, the oil resources technically and legally remain with the state, but IOCs directly manage oil and gas operations in the contracted area. On the other hand, the PSC model is used only by countries who do not have financial resources and technical expertise to carry out the oil operations efficiently (i.e. developing countries). Therefore, the PSC will benefit both the host country and the IOC. Countries where oil reserves are known or where the oil underground is perfectly surveyed such Iraq, Saudi Arabia, Iran etc, will only use the TSC model, in which the IOC conducts all oil operations in return for a fixed fee per barrel. Under the PSC, IOCs will start searching for oil, and then develop the oilfields if the discovery is commercial.²²³ This process usually requires IOCs to spend large capital over a long period in searching for oil and developing it. Once oil is discovered and is financially commercial, in some cases if the oilfield could produce 5000 barrel per day or more, then the project will proceed to the production phase. If the produced oil is less than 5000 barrels per day, in other words if the production is not financially commercial, then the project will not continue and will not enter the production phase. In that case, the IOC will lose all costs incurred in the exploration and search for oil. The IOC

²²⁰ Greg Muttitt, *Crude designs: The rip-off of Iraq's oil wealth*. 2005. GPF.

<https://www.globalpolicy.org/component/content/article/185/40632.html>

²²¹ D. Babusiaux et al., "Oil and gas exploration and production: Reserves, costs, contracts, editions" *Technip* (2004), 199.

²²² Kristen Bindemann, "Production-sharing agreements: An economic analysis", *Oxford Institute for Energy Studies* (1999), 10.
<https://www.oxfordenergy.org/wpcms/wp-content/uploads/2010/11/WPM25-ProductionSharingAgreementsAnEconomicAnalysis-KBindemann-1999.pdf>.

²²³ King & Spalding LLP; "An introduction to upstream government petroleum contracts: Their evolution and current use, January 2005." *OGEL* 1 (2005), www.ogel.org. <https://www.ogel.org/article.asp?key=1730>

is entitled to recover the cost oil, the expenditure incurred in searching for oil, and the cost the IOC spent in oil operations when the project is commercially productive. There are two kinds of cost oil; capital cost oil and operating cost oil.²²⁴ Capital cost oil is the expense that the IOC spends for oil exploration and development. The operation cost oil is the capital that the IOC spends after the discovery of oil for extracting, transferring, and selling the produced oil and gas in the international market. The percentage the IOC can recover from the produced oil, or oil revenue, for the capital cost oil is subject to the terms of the PSC between the host country and the IOC, but it is usually between 30 and 60%.²²⁵ The IOC is entitled to recover the full operation cost oil from the total production. The royalties and bonuses must be paid to the host country from oil production. The remainder of the oil production is the profit oil, which will be shared between the IOC and the host country in accordance with the terms and clauses of the PSC. This could be 60% for the host government and 40% for the IOC, or any other rates the parties to the PSC agreed on.²²⁶ The share the host government takes is always higher than the share the IOC takes from the whole oil production. In addition to its share from the profit oil, the host government takes the income tax, royalty and bonuses.²²⁷ Royalties are usually between 10 to 20% of the total oil production and they are paid at all phases of production. It is common under the PSC that the IOC must pay bonuses to the host country. The IOC must pay income tax at the rate specified by the host country's tax regime.²²⁸ The total percentage the host government can take from oil production is between 75% and 90% of the project's total revenue.²²⁹ Therefore,

²²⁴ Daniel Behn. *Sharing Iraq's oil: Analysing production-sharing contracts under the final draft petroleum law*.

https://www.academia.edu/28303354/Sharing_Iraqs_Oil_Analyzing_Production-Sharing_Contracts_Under_the_Final_Draft_Petroleum_Law

²²⁵ D. Babusiaux et al. *Oil and Gas exploration and production: reserves, costs, contracts*. Paris. 2007

²²⁶ Nutavoot Pongsiri, "Partnerships in oil and gas production-sharing contracts", *International Journal of Public Sector Management*, Vol. 17 Issue: 5,(2004) pp.431-442, <https://doi.org/10.1108/09513550410546606>

²²⁷ Svetlana Tsalik & Anya Schiffrin, *Covering Oil: A Reporter's Guide to Energy and Development*. Open Society Institute.
https://www.opensocietyfoundations.org/sites/default/files/osicoveringoil_20050803.pdf

²²⁸ D. Babusiaux et al., *Oil and gas exploration and production: Reserves, costs, contracts*, Paris. 2007

²²⁹ Kristen Bindemann, "Production-sharing agreements: An economic analysis", *Oxford Institute for Energy Studies* (1999), 10.

the profit the IOC can take from oil production depends on the market price. If the oil price increases the IOC's share or profits the oil production will increase, but if the oil price dropped the income the IOC can take from the oil production will decrease. This would adversely affect the IOC's participation in the oil operations, as happened in Kurdistan. When the oil price was above \$100 per barrel, there was a big competition among the IOCs to invest in Kurdistan's petroleum. When the oil price dropped sharply, the oil operations, including exploration and production, were badly affected to the extent that many IOCs ceased investment in the Kurdistan. This was due to the low profit the IOCs made when the oil price was low.²³⁰

The main aim both parties want to achieve from the PSC is maximum income or profit from oil production. In doing so, the host country will use its legal authorities to create a legal regime that allows the state the flexibility to modify the terms of the PSC. This is an important term of the PSC, which will allow the host country to modify the terms of the PSC to reflect the economic and political developments affecting the oil price and oil production.²³¹ For the IOC, maximum access to oil reserves will guarantee the maximum profit, along with the reducing risk through stabilising clause. The parties desire to maximise profit will create difficulties during the negotiation phase. However, fairness in the oil production division between the host country and the IOC can be achieved through so-called R-factor ratios. The R-factor protects the host country's interest when the oil price is high, by reducing the possibility of windfall profits going to the IOC. At the same time, it protects the IOC's interest by providing a greater profit oil percentage to the IOC when the oil price is low.²³² Therefore,

<https://www.oxfordenergy.org/wpcms/wp-content/uploads/2010/11/WPM25-ProductionSharingAgreementsAnEconomicAnalysis-KBindemann-1999.pdf>.

²³⁰ C. Frappi. "Oil and state building in Iraqi Kurdistan". 2016. *ResearchGate*.
https://www.researchgate.net/profile/Carlo_Frappi/publication/308777708_Oil_and_State_building_in_Iraqi_Kurdistan/links/57ef78cd08ae280dd0ad7477/Oil-and-State-building-in-Iraqi-Kurdistan.pdf?origin=publication_detail

²³¹ Bede Nwete, "To what extent can renegotiation clauses achieve stability and flexibility in petroleum development contracts", 2 *I.E.L.T.R.* (2006), 56, 57.

²³² Kristen Bindemann, "Production-sharing agreements: An economic analysis", *Oxford Institute for Energy Studies* (1999), 10.

<https://www.oxfordenergy.org/wpcms/wp-content/uploads/2010/11/WPM25-ProductionSharingAgreementsAnEconomicAnalysis-KBindemann-1999.pdf>.

R-factor provision in a PSC is crucial in protecting the parties' interests considering that the oil market is volatile and oil price could change dramatically.

The duration of the PSC is another important provision of the PSC. The period of the contract is divided based on the exploration, development, and production phases. The duration of the PSC is criticised as being lengthy.²³³ It ranges from 25 to 40 years for the whole process, from the exploration phase to the production and selling oil and gas in the international market. The exploration period is normally three to five years, and in certain circumstance will be extended for a further two years. The development period could last for 10 years. The production period is the longest period of the contract, ranging from 10 to 20 years, with the possibility of extension for a further five years based on the production circumstances. The lengthy duration of the PSC has been criticised for imposing certain restrictions by the IOC on the host government for a long period. However, the criticisms are mitigated by the fact that the PSC requires the IOC to carry out enormous work throughout the exploration, development, and production process, which requires the IOC to spend huge capital to build and/or develop massive oil and gas infrastructure.²³⁴

Given the high risk that the IOC takes in using large capital to invest in PSC, legal protection against the host country in modifying the terms and clauses of the PSC throughout the PSC in response to the economic, legal, and political developments during the contract is essential. IOCs insist on the stabilisation clause,²³⁵ which protects the IOC's interest against any unfair changes to the terms and conditions of the contract. Therefore, stabilisation clauses are key for protecting the IOC's interests.²³⁶ However, restricting the host country from modifying the terms and clauses of the PSC in response to the oil and gas market

²³³ Greg Muttitt, *Crude designs: The rip-off of Iraq's oil wealth*. 2005. GPF. <https://www.globalpolicy.org/component/content/article/185/40632.html>

²³⁴ Kristen Bindemann, "Production-sharing agreements: An economic analysis", *Oxford Institute for Energy Studies* (1999), 10. <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2010/11/WPM25-ProductionSharingAgreementsAnEconomicAnalysis-KBindemann-1999.pdf>.

²³⁵ Dr Tade Oyewunmi. "Stabilisation and renegotiation clauses in production sharing contracts: Examining the problems and key issues". *OGEL*. Vol 9-issue 6. 2011.

²³⁶ J. Nna Emeka. *Anchoring stabilization clauses in international petroleum contracts*. 2008. <https://scholar.smu.edu/cgi/viewcontent.cgi?article=1227&context=til>

development would be detrimental to its interests. Therefore, the renegotiation clause provides some flexibility for the host country to protect itself in circumstances where the terms and clauses of PSC go against the host country's legal regime or where the IOC's profit margins become too great.²³⁷ The parties to the PSC use its terms and clauses as effective tools in mitigating many of the risks.

5.3.2 The rationale of technical service contracts

The TSC was first used in Argentina between 1958 and 1961 for exploration, drilling, and development.²³⁸ It is defined as an agreement between the host country and IOC for oil operations, by which the IOC conducts oil and gas operations, explorations, drilling and productions, in return for a fixed fee per barrel for the produced oil.²³⁹ Unlike the PSC, under the TSC the host country has more control over the oil operations. The IOC works as a contractor to carry out the works contracted for a fixed fee paid to the IOC as a reward of its capital and operational expenses. Under the TSC, the IOC does not get a share in the produced oil, rather the fixed fee per barrel is paid to the IOC in return for using its resources and capital in oil operations. There are different types of TSC, the most popular types are the risk service contract, pure service contract, technical assistance contract, and buyback service contract.

1. Under risk service contracts, the IOC uses its own resources to conduct oil operations, exploration, drilling and production. The cost incurred in the exploration for oil will only be recovered if the discovery of oil is commercial.
2. Under pure service contracts, the IOC is contracted to conduct oil operations within the contracted area. The difference between this model

²³⁷ Daniel Behn. *Sharing Iraq's oil: Analyzing production-sharing contracts under the final draft petroleum law*.

https://www.academia.edu/28303354/Sharing_Iraqs_Oil_Analyzing_Production-Sharing_Contracts_Under_the_Final_Draft_Petroleum_Law

²³⁸ Yi. Jonseog. *Merits and demerits of the different types of petroleum contracts*. Published by Jasmin Singleton. The full text is available at <http://slideplayer.com/slide/10349319/>

²³⁹ Michael Likosky. *Contracting and regulatory issues in the oil and gas and metallic minerals industries*. 2009 The text is available at <https://pdfs.semanticscholar.org/5c9d/b917dc224810bd83c57cab4a74be5fb6f592.pdf>

and the risk service contract is the IOC will recover the oil cost incurred in searching for oil regardless of whether oil discovery is commercial. The host government will take the risk of searching for oil. The IOC will also acquire an interest in the produced oil.

3. The technical assistance contract is slightly different from the other types of TSCs. Under the technical assistance contracts the IOC gets a fixed fee to carry out the task assigned to it but does not acquire an interest in the produced oil if the discovery is commercial.²⁴⁰
4. Buyback service contract. Under this contract the IOC conducts petroleum developments for a fixed fee. The IOC will recover the expenditure from the petroleum revenue, but it would not get a share in the produced oil. The IOC would hand over the petroleum operation to the host country when production started. This type of contract is used by Iran.²⁴¹

Under the standard PSC, the host government, directly or through a national oil company, and the IOC work together much like a joint venture. The PSC allows IOC to gain ownership for the share of the produced oil. The IOC first recovers the expenditure incurred in oil and gas operations from the produced oil revenues. Once the oil cost is recovered the profit is shared between the host government and the IOC in accordance with the terms and clauses of the PSC. Under the TSC, however, the relationship between the host government and the IOC is fundamentally different. The host government directly, or through a state-owned national oil company (NOC), will have absolute control of the oil operations. The IOC participates in oil operations as a contractor in return for a fixed fee per barrel, known as a remuneration fee per barrel (RFB). The TSC does not grant shared ownership of the produced oil, although in certain circumstances the IOC has priority to buy a certain amount of the produced oil. Although the IOC bears all capital expenditure and financial risk, like under the PSCs, all operating costs are compensated only by the remuneration fees per barrel (RFB). The IOC must pay tax over the RFB at the standard tax rate of

²⁴⁰ Michael Likosky. *Contracting and regulatory issues in the oil and gas and metallic minerals industries*. 2009 The text is available at

<https://pdfs.semanticscholar.org/5c9d/b917dc224810bd83c57cab4a74be5fb6f592.pdf>

²⁴¹ van Groenendaal, Willem and Mazraati, Mohammad. "A critical review of Iran's buyback contract". *Energy Policy*. 34 (18)3709-3718-2006.

https://www.researchgate.net/publication/4947536_A_critical_review_of_Iran's_buyback_contract

35%. This could be less or more, based on the terms of the contract. All revenues from the produced oil and gas apart from the RFB return to the host government.

The above comparison between the PSC and TSC is based on the terms and clauses of both models in general. To pay close attention to the differences between the terms and clauses of the KRG's PSC and the IFG's TSC, an examination of the terms and clause of the KRG's PSC and IFG's TSC is required. This provides a core contrast between these two types of the model contracts for oil and gas and how the legal dispute originated between these two governments

Oil and gas operations are regulated by the constitution, domestic legislation, and the type of contract concluded between the host government and the IOC. The model contract is used by the host government with the IOC must be compatible with the national constitution and domestic legislation.

5.4 The KRG Production Sharing Contract

Generally, in most oil producing-countries, oil and gas operations are regulated by the constitution, domestic legislation, and the type of contract (PSC, TSC, lease or licence) entered into between the host government and the IOC over petroleum operations. It follows that the model contract concluded by the host government with the IOC should be consistent with both the national constitution and domestic legislation. The KRG adopted the PSC as a model contract in managing their petroleum operations and has concluded over 50 PSCs with IOCs during the last 15 years.²⁴² The IFG strongly opposes the KRG management of petroleum operations within its territories and its PSC. The IFG argues that its objection over the KRG's PSC is based on the Iraqi Constitution provisions in term of the KRG's PSC legality and revenue's productivities.²⁴³ The

²⁴² A list of all the PSCs that have been signed by the KRG is provided in the appendix.

²⁴³ in the interview with Ruba Husari on the 01 April 2009 Mr Hussein Al-Shahristani, the former Iraqi Minister of Oil, argued that KRG should not sign oil and gas contracts unilaterally. The full text of the interview is available at <https://www.iraqoilforum.com/?p=21>.²⁴³ In the interview with Ruba Husari on the 01 April 2009 Mr Nouri Al-Maliki, the former Iraqi Prime Minister, argued that KRG' PSC do not comply with the law and constitution. The full text of the interview is available at <https://www.iraqoilforum.com/?p=53>. In the interview with Ruba Husari on the 09 December 2011 Mr Abdul Karim Luaybi, the former Iraqi Minister of Oil, argued that it

Iraqi government claims that its TSC generates more revenue for the Iraqi people than the KRG's PSC. This is so only if the oil price is high, because in certain circumstance the PSC may provide more revenue to the host government than the TSC, especially when the oil price is low. There are other differences between the PSC and TSC, which are the only two model contracts are now used in Iraq. Tariq Shafiq argues that centralisation of oil and gas management will strengthen Iraq's position and provide the highest benefit for the Iraqi people, while managing oil and gas by two different authorities in Iraq undermines the federal centralisation of oil and gas management.²⁴⁴ The KRG's Minister of Natural Resources, Dr Ashti Hawrami, argues that the PSC is the best model of contract to be used in Kurdistan. Given that there is a high risk in searching for oil in Kurdistan, the petroleum sector is not developed in Kurdistan and large funds, expertise, and technology are required to manage oil operations. Therefore, the PSC is the only model which could persuade IOCs to invest in the Kurdistan petroleum sector.²⁴⁵

Under the standard terms of the KRG's PSC, the period of the exploration phase is for a maximum of seven years. This begins with an initial period of three years and is extendable for seven years.²⁴⁶ Even at the end of that seven years, the contractor is entitled to request a further extension in accordance with Article 6.7. The development phase is initially for 20 years. The IOC has an automatic right to extend the period for a further five years. The IOC is entitled to request a further extension of the production period and such request should be made at least a year before the end of the production period.²⁴⁷

is not acceptable that KRG continues signing oil and gas contracts without the knowledge and approval of the central government which represents everyone. The full text of the interview is available at <https://www.iraqoilforum.com/?p=264>

²⁴⁴ Tariq Shafiq in an interview with Ruba Husari on 30 December 2011.

<https://www.iraqoilforum.com/?p=2413>

²⁴⁵ An interview conducted by Ruba Husari with Dr Ashti Hawrami on 10 August 2010. The full text of the interview is available at <https://www.iraqoilforum.com/?p=1979>

²⁴⁶ *Model production sharing contract for exploration and production in Kurdistan*, Article 6.2. The full text is available at http://cabinet.gov.krd/pdf/MODEL_PRODUCTION_SHARING_AND_EXPLORATION_PRODUCTION_IN_KURDISTAN.pdf **The full text of the interview is available at** <https://www.iraqoilforum.com/?p=2413>

²⁴⁷ *Model production sharing contract for exploration and production in Kurdistan*, Article 6. 10, 6.11 and 6.12.

5.4.1 The PSCs KRG has signed with IOCs between 2002 and present:

The KRG has signed over 50 PSCs with the IOCs during the last 17 years. All PSCs have been signed by the KRG are provided in annex 3.²⁴⁸

5.4.2 Critical review of the PSC in the KRG

The KRG concluded five PSCs in 2002, 2003 and 2004, with IOCs. The first PSC was concluded with Genel Enerji in 2002 and 2004, a PSC was concluded with Pet Oil Petroleum and Petroleum Products International Exploration of Production Inc in 2003, and two PSCs were concluded with the DNO in 2004. These contracts were signed before the invasion of Iraq and before the Constitution came into force in 2006. All those contracts except Pet Oil Petroleum and Petroleum Products International Exploration of Production Inc, state "*WHEREAS, the people of the Kurdistan Region own the natural resources of the Kurdistan Region, and the Government of the Kurdistan Region therefore has the power to exploit those resources for the benefit of the people of the Kurdistan Region*". While the KRG vests the ownership of oil and gas in the people of Kurdistan, there are no clear legal authorities, constitutional provisions, or national legislation confirming that statement. When those contracts were granted to IOCs, the KRG did not have its own constitution, nor domestic legislation granting ownership of the natural resources to the people of Kurdistan. There was no Iraqi legal provision confirming same. It is not clear on what basis the KRG inserted the ownership provision in the PSC. The legal issue here is whether the KRG concluded those contracts with IOCs as a representative of the people of Kurdistan on the basis that oil and gas are owned by the people of Kurdistan. In the absence of a clear legal provision confirming that oil and gas in the KRG's territories are owned by the people of Kurdistan, those contracts lack a legal basis. Accordingly, the legality of those contracts could be disputed simply because there is no KRG or Iraq legal provision granting the people of Kurdistan the right of ownership over the natural resources within the KRG territories prior to the enforcement of the Constitution.

²⁴⁸ The full texts of all the contracts are available at <http://cabinet.gov.krd/p/p.aspx?l=12&p=1> .

However, the concerns over the legality of the said contracts may be mitigated by the KRG's Oil and Gas Law of Kurdistan Region- Iraq Law No (22) 2007.²⁴⁹ Gas Law No (26) 2007 came into effect in 2007. Article (3) of the Law No (22) 2007 states *"First: Petroleum in the region is owned in a manner consistent with Article 111 of the Federal Constitution. The Regional Government is entitled to a share from the revenues from producing fields, consistent with the share of all Iraqi people, in accordance with this law and Article 112 of the Federal Constitution"*. Article (3) is drafted to mirror Articles 111 and 112 of the Constitution, the two main articles dealing with oil and gas ownership and operations by the IFG and the regional government and the governates. Accordingly, the KRG has removed the ownership clause in all PSCs concluded from the date the Constitution came into effect in 2006 and replaced the ownership clause with *"The Government enters into this Contract pursuant to the Government's rights and authorities under the Constitution of Iraq and the Kurdistan Oil and Gas Law 2007. In accordance with the Constitution of Iraq, the prevailing Laws of the Kurdistan Region comprise the Kurdistan Region Law and, with regard to a matter wholly within the exclusive jurisdiction of the Government of Iraq, the federal Laws of Iraq"*. The wording of the above provision may not be the same in all PSCs, but the meaning is the same. In all PSCs, the KRG refers to the Constitution and the Kurdistan Region Oil and Gas Law 2007 as a legal basis for its PSCs.

Secondly, Article 54 states *"First: All agreements related to Production Sharing Contracts entered into by the Regional Government prior to the entry into force of this Law, shall be subject to review by the Regional Council to make them consistent with the provisions of this Law, taking into consideration the prevailing conditions when these agreements were entered into. The decisions of the Regional Council in this regard shall be final and may be published."*

Second: All authorisations and memoranda of understanding related to oil and gas which were signed by the Regional Government prior to the entry into force of this Law shall be null and void unless they are approved by the Regional Council."

²⁴⁹ The full text of the law is available at <http://cabinet.gov.krd/uploads/documents/Kurdistan.>

The Kurdistan Regional Oil and Gas Law 2007 was passed to accommodate the legal and economic changes the Constitution imposed on oil and gas operations. Following the enforcement of the Constitution, the Kurdistan parliament passed an oil and gas law for the KRG to show that all oil and gas operations, including its PSCs, are conducted in accordance with the provisions of the Constitution²⁵⁰, which has always been disputed by the IFG. To clarify the disputed points between the KRG and the IFG over the KRG's PSC, the relevant provisions of the Constitution and the KRG Oil and Gas Law 2007 need to be analysed and the terms of the KRG PSC need to be fully examined in light of the constitutional provisions. The starting point is the Constitution and the articles concerning the KRG legal system and legislation regulating oil and gas operations and finally the KRG PSC²⁵¹.

5.5 The KRG's right to Manage Oil and Gas Operations under the Constitution

The Constitution is the supreme law in Iraq. The citizens of Iraq voted for a new constitution in 2005 and it came into force in 2006. Article 1 of the Constitution states that Iraq is a federal government.²⁵² This is the first ever legal provision in the history of Iraq recognising Iraq as a federal state. There has been no similar provision in any of the previous constitutions from the establishment of Iraq in 1920 until 2005. The first part of Article 117 of the Constitution recognised the Kurdistan Regional Government as a regional government for the first time in the history of Iraq.²⁵³

The Constitution identifies the matters over which the IFG has exclusive authority, the matters over which the KRG has exclusive authority, and the matters in which they have shared authority. The Constitution refers to the

²⁵⁰ Interview with Dr Bayazid Hassan available at Annex 2.

²⁵¹ Interview with Dr Bayazid Hassan available at Annex 2.

²⁵² Iraqi Constitution, Article 1 "The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq".

²⁵³ Article 117: First: This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region.

situations where the Federal and Regional authorities are conflicted. Sections four and five of the Constitution deals with these.

Article 110 states that:

The federal government shall have exclusive authorities in the following matters:

First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing, and ratifying debt policies and formulating foreign sovereign economic and trade policy.

Second: Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq's borders and to defend Iraq.

Third: Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank.

Fourth: Regulating standards, weights, and measures.

Fifth: Regulating issues of citizenship, naturalization, residency, and the right to apply for political asylum.

Sixth: Regulating the policies of broadcast frequencies and mail.

Seventh: Drawing up the general and investment budget bill.

Eighth: Planning policies relating to water sources from outside Iraq and guaranteeing the rate of water flow to Iraq and its just distribution inside Iraq in accordance with international laws and conventions.

Ninth: General population statistics and census.

Article 110 does not specifically refer to oil and gas operations as one of the matters over which the IFG has exclusive authority. It may be argued that oil and gas contracts could be categorised under international agreement or commercial policy under the first and third points. Therefore, oil and gas operations could fall within the scope of the matters over which the IFG has exclusive authority. In the absence of a specific provision concerning oil and gas operations, this argument has weight. The difficulties in accepting the above argument are that, in addition to the lack of a specific provision in Article 110 in relation to oil and gas operations, the Constitution contains separate articles, specifically Articles 111 and 112, regulating oil and gas operations. Therefore, it would be premature to assume that Article 110 covers petroleum operations.

Article 121 grants the regional government executive, legislative, and judicial powers in accordance with the Constitution. The regional government can exercise these powers over all matters concerning the region, except the matters in the exclusive authority of the IFG. The first and second parts of Article 121 state:

First: The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government.

Second: In case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region."

Accordingly, the KRG can exercise executive, legislative and judicial powers over all matters within its authority and within its territories. The second part of Article 121 grants KRG priority in the event of conflict between regional and federal laws and legislations in matters outside the scope of Article 110 and matters regulated by a specific constitutional provision. Accordingly, in the

event of conflict between the regional and federal legislation in matters in the exclusive authority of the regional Government, the regional legislation will prevail. Article 121 came into effect in 2006 and it does not address any contradictions in legislation passed by the KRG between 1992 and 2006. Therefore, Article 141 of the Constitution was designed to deal with any contradiction caused by the KRG's legislation, court and government decisions, and contracts concluded by the KRG, including oil and gas contracts the KRG with the IOC, from 1992 until the effective date of the Constitution²⁵⁴. Article 141 states: *Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution."*

Therefore, the Constitution recognises all legislation, decisions (including court decisions) issued by the KRG, and contracts concluded by the KRG between 1992 and 2006, as long as they do not contradict constitutional provisions. In the event contradiction occurs, the KRG's legislation, decisions and contracts must be amended or modified to conform with the Constitution. The KRG has made amendments to oil and gas contracts concluded before the Constitution came into effect, specifically to the part of the contracts related to the legal basis of the KRG's authority to grant and sign oil and gas contracts. This was confirmed by Dr Ashti Hawrami.²⁵⁵

Articles 111 and 112 deal directly with the ownership and management of oil and gas operations in Iraq. The interpretation of these articles is the main cause for the legal dispute between the IFG and the KRG. Article 111 vests the ownership of oil and gas in the Iraqi people. This causes practical difficulties; it is not clear how the Iraqi people could exercise the ownership rights over oil and gas. The Constitution does not grant ownership rights to a specific authority in Iraq. It may be argued that Article 112 provides the federal and regional

²⁵⁴ Interview with Dr Bayazid Hasan available at Annex 2.

²⁵⁵ An interview conducted by Ruba Husari with Dr Ashti Hawrami on 10 August 2010. The full text of the interview is available at <https://www.iraqoilforum.com/?p=1979>.

authorities with oil and gas ownership. This cannot be right, because article 112 concerns the management of oil and gas, not ownership rights. The concept of ownership is wider than mere management. Article 112 states that:

First: The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law.

Second: The federal government, with the producing regional and governorate governments, shall together formulate the necessary strategic policies to develop oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encouraging investment.

The first part of Article 112 is about the management of oil and gas by the federal government, the producing governorate, and the regional government, the KRG. The article does not provide the mechanism nor manner in which the management would be undertaken. In addition, the article was drafted vaguely, therefore the federal and regional government have not been able to agree on one interpretation. The article has been interpreted differently by both governments and academics. Therefore, the management of oil and gas under Article 112 is a complex subject which requires further examination.

5.5.1 Constitutional Provisions over the Management of Oil and Gas Operations

Following the invasion of Iraq in 2003, the first Iraqi government was established. Almost all Iraqi people, Shia, Sunni and Kurds, agree on the decentralisation of the power. Therefore, the IFG's power has been curbed over different matters, including oil and gas management.

The first part of Article 13 of the Constitution confirms that it is the supreme law in all parts of Iraq. The second part confirms no laws or any legal text that contradicts the provisions of the Constitution should be enacted. The Constitution is the highest legal statute in all Iraq, including the KRG, and any legislation inconsistent with the provisions thereof is void.²⁵⁶ Accordingly, neither the IFG nor the KRG should enact any legislation contradicting the Constitution.

Article 110 provides the details of the matters over which the IFG has exclusive authority and Article 114 identifies shared authority. Neither article 110 nor 114 clearly categorise petroleum policy and petroleum operations within the exclusive authorities of the IFG or KRG. Instead, oil and gas management and operations are dealt with by two separate articles in the Constitution, Articles 111 and 112. These Articles were designed primarily to deal with petroleum operations, therefore, neither the IFG nor the KRG could claim to have exclusive authority over the management of petroleum operations without legal justification in accordance with Articles 111 and 112. It is argued that the wording of Articles 111 and 112 are deliberately vaguely drafted in order to curb the IFG's power over oil and gas operations within the regional government, so the IFG could not unilaterally manage oil and gas operations and formulate petroleum policies alone in Iraq.²⁵⁷ This weaknesses of Articles 111 and 112 have been exploited by the disputed parties to interpret them differently.²⁵⁸ The two articles were originally designed to strike the balance of power in respect of the management of petroleum operations between central and regional government. They have now become the main points of a long-standing dispute between the IFG and the KRG.

It is now clear that there is a constitutional crisis over oil and gas management in Iraq. The previous experience between the two rivals shows that the

²⁵⁶ Iraqi Constitution of 2005. Article 13: First: This Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception. Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.

²⁵⁷ Anna E Richer. *Oil in Iraq: How to overcome the resource curse*. 2014.

²⁵⁸ Ellen Scholl. "Shaping Iraq's oil and gas future". *Global Energy Centre, Atlantic Council*. 2018

The full article can be accessed at https://www.atlanticcouncil.org/images/Shaping_Iraqs_Oil_and_Gas_Future_web_0108.pdf

constitutional provisions are part of the problem, not the solution. Some scholars claim Article 114 should not have granted the regional government priority in the event of a contradiction between federal and regional laws.²⁵⁹ However, it would be difficult to look for similar situations in other federal systems in the world. This is because Iraq has been through many political and legal crises prior to adopting the federal system. It should be noted that the KRG was formed before the formation of the current Iraqi government. The federal system was introduced, and the constitution enacted at a time when Iraq was politically and legally unstable. The KRG concluded PSCs with IOCs prior to the enforcement of the Constitution and before the formation of the Iraqi Government. This issue and its effect on the ongoing legal dispute between the IFG and the KRG over who has the exclusive right to manage the petroleum operations in Iraq is discussed in the later parts of this chapter and the later chapters. There were two governments inside Iraq, including the IFG and the KRG, before the enactment of the Constitution.

5.5.2 The wording of Articles 111 and 112 of the Constitution

The constitutional provisions were purposely drafted in a way to curb the IFG's power over the governorates and regions, specifically in respect of petroleum operations. The people of Iraq did not want to experience the same situation they had under the dictatorship of the former regime. The decentralisation of power would guarantee a democratic and stabilise society in Iraq and therefore, the balance of power between the IFG and the KRG was one of the objectives the Kurdish political parties actively struggled to achieve through the Constitution.

It should be noted at the outset that in addition to the external factors, the neighbouring countries and global powers have been playing negative roles in this long-standing dispute between the IFG and the KRG to protect their interest in Iraq.²⁶⁰ External factors must be considered when analysing the obstacles preventing the disputed parties in reaching an agreement on the management

²⁵⁹ Moradi, J., Saie, A., "Energy strategy of a study of obstacles on the way of federalism in Iraq". *J. Am. Sci.* 2013. 7. The full text is available at http://www.jofamericanscience.org/journals/am-sci/am0907/050_9407am0907_407_409.pdf

²⁶⁰ Quan, H., 2012. *Growth against democracy: Savage developmentalism in the modern world*. Lexington Books.

of petroleum operations. However, the constitutional issue over the management of petroleum operations is the main factor.

Articles 111 and 112 are the first constitutional provisions in the history of Iraq to legally oblige the IFG to share the management of the natural resources with the regional government. There is no equivalent to Article 112 in previous constitutions. In previous chapters, reference was made to all previous constitutions in Iraq between 1921 and 2005, all constitutions emphasised public ownership of natural resources. Oil and gas operations have traditionally been managed by the central government.

The wording structure and ambiguity of Article 111 allows the disputed parties to come up with different interpretations and various arguments regarding the ownership of oil and gas. Article 111 states "Oil and gas are owned by all the people of Iraq in all the regions and governorates". The KRG argues that Article 111 grants the ownership rights of natural resources within the KRG's territories to the Kurdish people. Therefore, the KRG as a representative of the Kurdish people has an exclusive right to manage oil and gas operations. On the other hand, the IFG argues that Article 111 vests the ownership in the people of Iraq and the IFG, as a representative of all Iraqi people in all regions and governorates, should manage the petroleum operation in Iraq. Therefore, no regional government or governorates could manage oil and gas operations unilaterally without prior approval from the IFG.

The arguments over the wording of Articles 111 and 112 and their correct interpretation has attracted international writers and authors. Zedalis believes Articles 111 and 112 grant priority to the IFG. He believes the purpose of these constitutional provisions is to maximise the economic benefit for all Iraqi people across Iraq regardless of ethnicity and religion.²⁶¹ It is also argued that the Iraqi government, in rejecting the KRG's claim of having the exclusive right over oil and gas operations within its territories, primarily relies on these two articles. Article 111 grants ownership to the Iraq people in all parts of Iraq and the IFG is the only entity representing all Iraqi people. The ownership of the petroleum

²⁶¹ R, J, Zedalis. "The role provincial governmental units can play regarding oil and gas development agreements in the Kurdish North: Allocation of Iraqi constitutional power", *The Journal of World Energy Law & Business*, 6(4), 2013.

belongs to the Iraqi government and the KRG's PSCs do not have a constitutional basis.²⁶²

Crawford has a different view on the KRG's right to manage petroleum operations in the light of the constitutional provision. He argues that the KRG's PSCs are constitutional under Article 112.²⁶³ The KRG refers to Crawford's finding in defending the legality of its PSC. The KRG published Crawford's legal opinion on its formal website as a legal authority to confirm that it has an exclusive right in managing the petroleum operations, stating:

*In 2008, the KRG received an **expert independent legal opinion (PDF)** that confirms the KRG's constitutional authority to manage the Kurdistan Region's oil and gas resources. The KRG asked for a formal independent legal opinion from Professor James R. Crawford, a professor of international law, through Clifford Chance, a multinational legal firm. Professor Crawford concluded, "The Kurdistan Region oil and gas Law is consistent with the Constitution of Iraq".²⁶⁴*

Dr Yousif, speaker of the Kurdistan Parliament, also referred to Crawford's legal opinion as a legal basis of the KRG's right of managing the petroleum operations and the legality of its PSCs.²⁶⁵ Prof Peter Cameron looks at the constitutional conflict between the KRG and the IFG over oil and gas management from a different angle. He believes the conflict is for political and economic gain. Law and legal arguments in this dispute are nothing but politics by other means.²⁶⁶

There is no consensus between the scholars and authors over the interpretation of Articles 111 and 112. The crucial issue here is that Article 111 and 112 are

²⁶² Ben Holland, CMS Cameron McKenna. "Are Kurdistan's oil contracts constitutional?", *Energy in the Middle East* 2012, www.cms-cmck.com/Hubbard.FileSystem/files/Publication/63538de4-c6c3-47ee-aea9-c58e03f60e57/Presentation/PublicationAttachment/de7979f5-590b-44a9-ae76-c5d5fc52b686/ADIPEC%20BH%20Kurdistan%20copy.pdf

²⁶³ Professor James Crawford. *The authority of the Kurdistan Regional Government over oil and gas under the Constitution of Iraq*, 2008. The full text is available at <http://mnr.krg.org/index.php/en/publications/57-the-crawford-opinion>

²⁶⁴ The full text is available at <http://mnr.krg.org/index.php/en/the-ministry/legal-framework/laws>

²⁶⁵ Interview of Yousif Mohammed Sadiq, the Speaker of the Kurdistan Parliament. Available at Annex Two.

²⁶⁶ Peter D. Cameron. "Contracts and constitutions: The Kurdish factor in the development of oil in Iraq". *International Journal of Contemporary Iraqi Studies*, Vol 5, Number 1, July 2011, pp. 81-99.

two separate articles concerning two different matters. The former concerns ownership of oil and gas in Iraq and the latter is about the management of oil and gas in Iraq. There is clear language distinction between these two articles. While the language of Article 111 vests the ownership of oil and gas in the people of Iraq across the country, article 112 regulates the management of oil and gas in a way that guarantees the maximum profits for the Iraqi people. It also emphasises the fair distribution of oil and gas revenue among the Iraqi people. Article 112 is the most complicated and controversial legal provision concerning the management of oil and gas in Iraq, which has been interpreted, and analysed differently by the KRG, IFG, and domestic and international writers.

Article 112 provides that *"The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country"*. This is about the management of oil and gas between the IFG, producing governorates, and regional government, the KRG. However, it is not clear how the management of oil and gas should be conducted under Article 112. Zedalis believes that there should be consultation and cooperation between the KRG and the IFG over oil and gas management within the KRG's territories.²⁶⁷ However, the argument here is the cooperation between the KRG and IFG in managing oil and gas is confined to the current producing field²⁶⁸. It does not encompass future fields²⁶⁹. This would grant the regional government, i.e. the KRG, greater power in managing the future fields within its territories. This argument is considered as a contradiction between Article 111 and 112.²⁷⁰ Crawford believes the current fields under Article 112 are those fields that were in operation and producing oil and gas prior to the enforcement of the Constitution. Therefore, the fields discovered after the enforcement of the Constitution are not covered by Article 112²⁷¹. The fields discovered after the

²⁶⁷ Zedalis. Rex J. *Oil and gas in the disputed Kurdish territories: Jurisprudence, regional minorities and natural resources in a federal system*. (1st edition), Routledge, 2012.

²⁶⁸ Interview with Dr Yusef Mohammed Sadiq available at Annex 2.

²⁶⁹ Interview with Dr Yusef Mohammed Sadiq available at Annex 2.

²⁷⁰ Deeks, Ashley and Burton, Matthew, "Iraq's constitution: A drafting history" (2007). *Cornell International Law Journal*, Vol. 40, p. 1, 2007. Available at SSRN: <https://ssrn.com/abstract=3068137>

²⁷¹ Interview with Dr Yusef Mohammed Sadiq available at Annex 2.

enforcement of the Constitution are called "future fields". The KRG strongly defends its right to manage the petroleum resources within its territories under the definition of the "present fields" in Article 112.²⁷² Therefore, the KRG has exclusive rights to manage petroleum operations from the "future fields".

The distinction between the "present fields" and "future fields" is the most significant point in interpreting Article 112. Crawford argues that there is no conflict between Articles 111 and 112, and the KRG's claim of its right to managing petroleum operations within its territories. He argues that the management of petroleum operations by the IFG or the KRG are both the management by the Iraqi people in terms of Article 111. The IFG is required by Article 112(1) to cooperate with the producing regions and governorates across Iraq in managing the petroleum operations and distributing oil and gas revenue in a fair manner among all Iraqi people.²⁷³

The distinction between the present fields and future fields is confirmed by Dr Yousif,²⁷⁴ Dr Baizid, the member of oil and gas committee of the Iraqi parliament from 2006 to 2014,²⁷⁵ and Dr Sherko Jawdat, the current chair of oil and gas committee of the Kurdistan Parliament.²⁷⁶ They all believe that the KRG has a right to manage oil and gas operations from the fields which have been discovered after the enforcement of the Constitution without the co-operation of the IFG.

It is important to note that Article 112 does not grant an exclusive right to the IFG to manage the petroleum operations within the producing regions and governorates. The second part of Article 112 imposes on the IFG to cooperate and work together with the producing regions and governorates in managing oil and gas extracted from the "present fields" only. The language of Article 112 cannot be overlooked. It must be accepted that the wording of Article 111 and

²⁷² Mills R. "Under the mountains: Kurdish oil and regional politics". *Oxford Institute for Energy Studies* (2016). The full text is available at <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2016/02/Kurdish-Oil-and-Regional-Politics-WPM-63.pdf>

²⁷³ Professor James Crawford. *The authority of the Kurdistan Regional Government over oil and gas under the Constitution of Iraq*. The full text is available at http://www.ekrg.org/files/pdf/Crawford_Opinion.pdf

²⁷⁴ Interview with Dr Yousif Mohammed Sadiq. The full text is contained in Annex 2.

²⁷⁵ Interview with the Dr Bayazid Hassan. The full text is contained in Annex 2.

²⁷⁶ Interview with Dr Sherko Jawdat. The full text is contained in Annex 2.

112 are vaguely drafted, which has caused legal difficulties in interpreting these articles on how oil and gas operations should be managed in the producing regions and governorates. The current legal dispute between the KRG and the IFG stems from the language defects in these articles.²⁷⁷ It is clear from the all literature that there is no single or definite interpretation of Articles 111 and 112.

Secondly, these articles should be interpreted in conjunction with the other relevant constitutional provisions and legislations. Further consideration should be given to the practical difficulties in implementing the current interpretations of these two articles by both the IFG and the KRG. In situations like this when the disputed parties could not agree on one interpretation for these articles, the matter should be referred to the competent authority for settlement over the interpretation of these two articles. In this case, the Iraqi Federal Court is the only competent authority to interpret the Constitution. Further discussion is provided later in this chapter on the Iraqi Federal Court and its constitutional power of interpreting constitutional provisions and domestic legislation.

Decentralisation of the power over petroleum operations was one of the principles affirmed by the Constitution. Significant consideration should be given to the point that the IFG has not claimed exclusive right over oil and gas operations within the regional governments and producing governorates. It is the KRG who claims that the Constitution grants it an exclusive right to manage oil and gas within its territories. This distinction should be made first. What the IFG argues is the KRG does not have a constitutional right in managing the petroleum operations, including granting the PSC to IOCs unilaterally without cooperation with, and prior approval from, the IFG. intensive arguments have been forwarded by different writers and petroleum and constitutional analysts. It is argued that the relevant articles in the constitution grants regional governments and producing governorates the right to manage the petroleum operations over oil and gas produced from the fields discovered after the enforcement of the Constitution, and the fields that will be discovered in the

²⁷⁷ David Romano. *The Iraqi Kurdish view on federalism: Not just for the Kurd. Conflict, democratization, and the Kurd in the middle east*. Pp 189-209.
https://link.springer.com/chapter/10.1057/9781137409997_10

future within their territories.²⁷⁸ The Constitution grants more power to the regional governments than those granted to the IFG in terms of managing petroleum operations. In accordance with Articles 115 and 121, in the event of contradiction between the regional and federal and legislation, the regional law will prevail. The legislation of the regional government has “legal supremacy” over federal governments in petroleum matters.²⁷⁹ This is assuming that petroleum matters are not one of the matters in the exclusive authority of the IFG as stated in Article 110 of the Constitution, and accordingly the IFG does not have exclusive authority over oil and gas management. Articles 112, 115, and 121 clearly restrict the IFG’s authority to oil and gas in the regional governments and producing governorates. These articles force the IFG to cooperate with the governorates and regional government in managing the petroleum operations from the “present fields” only and in the case of contradiction between the federal laws and the regional laws, priority should be given to the latter.²⁸⁰

The KRG’s distinction between the “present fields” and “future fields” is a valid point and it cannot be overlooked. In the absence of a clear legal provision preventing KRG from managing oil and gas operations from future fields, it would be unlikely for the IFG to be successful in its bid to deny the KRG’s right to manage the petroleum operations based on the constitutional provisions.²⁸¹

To demonstrate that its oil and gas law and PSCs are compliant with the Constitution, the KRG has always referred to the Constitution in its PSCs with IOCs. Following the enforcement of the Constitution, the KRG amended, modified or removed the paragraphs in oil and gas contracts concluded with

²⁷⁸ Philippe Le Billon. “Oil, secession and the future of Iraqi federalism”. *Middle East Policy*. Vol XXII, No 1. 2015.

<https://onlinelibrary.wiley.com/doi/abs/10.1111/mepo.12113>

²⁷⁹ S. Choudhry. *Constitutional Design for divided societies: integration or accommodation*. 2008.

https://books.google.co.uk/books?hl=en&lr=&id=_5d68hpH4hcC&oi=fnd&pg=PR7&ots=9V88pgzzu6&sig=-tXj0Sujn2tEqJLtlEFBtU79Ro&redir_esc=y#v=onepage&q&f=false

²⁸⁰ S. Choudhry. *Constitutional Design for divided societies: integration or accommodation*. 2008.

https://books.google.co.uk/books?hl=en&lr=&id=_5d68hpH4hcC&oi=fnd&pg=PR7&ots=9V88pgzzu6&sig=-tXj0Sujn2tEqJLtlEFBtU79Ro&redir_esc=y#v=onepage&q&f=false

²⁸¹ Yaniv Voller. “Kurdish oil politics in Iraq: Contested sovereignty and unilateralism”. *Middle East Policy*. Vol, XX, No 1, 2013.

<https://onlinelibrary.wiley.com/doi/abs/10.1111/mepo.12004>

IOCs prior to the enactment of the Constitution. After the enforcement of the Constitution, the KRG enacted its own oil and gas law, the Oil and Gas of Kurdistan Region-Iraq, Law No. (22)- 2007. The KRG oil and gas law provides the directives by which the KRG manages the petroleum operations, including signing the PSC with IOCs, within its territories. The KRG made it clear that its oil and gas law is based on the Constitution and it is compatible with the relevant provisions thereof. The KRG's argument has been disputed by the IFG and it argues that neither the KRG's PSC, nor its oil and gas law constitutional.

The KRG oil and gas law recognises the PSC as a model contract to be used by the KRG in managing oil and gas operations. The IFG expressed serious concerns over the KRG's PSC and its terms. The IFG claims the terms of the KRG's PSC are so generous to IOCs and they do not achieve the highest benefit for the Iraqi people as is stipulated by the Constitution. The provisions of the oil and gas law and the terms of the KRG's PSC are critically examined in light of the relevant articles of the Constitution later in this chapter. All oil and gas operations within the KRG's territories are conducted in accordance with the KRG's PSC. The KRG's oil and gas production constitutes 20% of the Iraqi oil and gas production. A comparison will be made between the PSC and the TSC model which is used by the Iraqi government. Both model contracts are evaluated legally and economically to show which model protects the Iraqi national interest and which one is best suited the KRG's petroleum sector.

5.5.3. Oil and Gas Law of the Kurdistan Region Law No. (22) 2007

Following the formation of the KRG in 1992, the KRG started searching for oil and gas on the basis that the petroleum revenues would make a reliable contribution to the KRG's economy. There was information confirming the KRG territories were rich with petroleum resources. There were oilfields discovered by the former Iraqi regime before 1990, but they were left undeveloped. The KRG started developing those oilfields first and exporting the produced oil to the neighbouring countries by tankers.²⁸² The extracted oil, although not satisfactory, helped to boost the KRG's economy. To maximise oil and gas production, the KRG continued searching for oil and developing discovered

²⁸² Bijan Khajepour. "Iran's pipeline politics reaches Iraqi Kurdistan". *Al-Monitor*. 2016. <https://www.al-monitor.com/pulse/iw/originals/2016/06/iran-kurdistan-regional-government-pipeline-energy-deal.html>

fields. Due to the financial and technical difficulties, the KRG was not able to make substantial developments or increases in oil production from the existing fields and could not carry out proper explorations for further discovery. Foreign funds, expertise, and technology were required to assist the KRG in developing the present petroleum resources, and to carry out further exploration for more discoveries. The KRG managed to persuade only a small number of IOCs to invest in searching for oil and gas and developing the existing fields for the period up to 2003. In doing so, the KRG adopted the PSC as a model contract with clauses favourable to IOCs.²⁸³ After the invasion of Iraq in 2003, the political and securities situation in Iraq was helpful for the KRG to develop its own petroleum policy. Iraq was under UN economic sanctions; IOCs were restricted from investing in Iraqi petroleum by the UN Security Council's Resolution 661.²⁸⁴ Following the formation of the Coalition Provision Authority (CPA) in 2003,²⁸⁵ the UN economic sanction was lifted on Iraq²⁸⁶ and Iraq passed a new foreign investment law.²⁸⁷ The new foreign investment law contained favourable clauses and legal protection to foreign investors to persuade foreign companies to actively participate in rebuilding Iraq, specifically in the petroleum sector, which was badly damaged by war and UN economic sanctions.²⁸⁸ The better security situation in Kurdistan coupled with the weakness of the new Iraqi government was a good opportunity for the KRG to persuade IOCs to invest in KRG's petroleum resources. The PSC was a new model contract in Iraq, as the TSC was the only model contract has been used by the Iraqi government after the concession agreements were terminated in the 1960s.²⁸⁹ The KRG was successful in its attempts to attract IOCs to engage in the KRG's petroleum resources. Due to the favourable clauses of the KRG's PSC, IOCs were racing to

²⁸³ Stephen A. Elliott and Louis B. Beryl. "Natural gas development in Kurdistan: A financial assessment". *Harvard Kennedy School*. 2012.

<https://www.belfercenter.org/sites/default/files/files/publication/PAE%20Kurdistan.pdf>

²⁸⁴ <https://www.gov.uk/guidance/arms-embargo-on-iraq>

²⁸⁵ L. Elaine Halchin. *The Coalition Provision Authority (CPA): Origin, characteristics, institutional authorities*. 2005. <https://fas.org/sqp/crs/mideast/RL32370.pdf>

²⁸⁶ UN lifts sanctions against Iraq. 2010. BBC NEWS.

<https://www.bbc.co.uk/news/world-middle-east-12004115>

²⁸⁷ *Foreign investment in Iraq*. IBBC. <https://www.iraqbritainbusiness.org/doing-business-with-iraq/foreign-investment-iraq>

²⁸⁸ Krishnadev Calamur. *Oil Was supposed to rebuild Iraq*. 2018.

<https://www.theatlantic.com/international/archive/2018/03/iraq-oil/555827/>

²⁸⁹ Muttitt, Greg. "Production sharing agreements - mortgaging Iraq's oil wealth." *Arab Studies Quarterly*, vol. 28, no. 3/4, 2006, pp. 1-17. *JSTOR*, www.jstor.org/stable/41858532.

invest in the KRG's oil and gas resources to the extent that the KRG managed to sign over 50 PSCs with IOCs between 2004 and 2015.²⁹⁰

After the invasion of Iraq in 2003, the first PSC was granted to a Norwegian company DNO, which triggered the IFG's strong opposition. The KRG's determination to pursue its own petroleum policy and independently sign PSCs with IOCs pushed the IFG to openly express its objection to the KRG's right to manage the petroleum resources within the KRG's territories. The Constitution contains certain articles concerning the management of petroleum operations as discussed above, and in response thereto, the KRG enacted its own oil and law in 2007 which provides the regulatory framework for oil and gas management. That was to confirm that the KRG's unilateral management of oil and gas within its territories is consistent with the Constitution. However, the IFG does not have an oil and gas law for regulating oil and gas operations within its territories.

By passing its own oil and gas law, the KRG shows that it complies with the constitutional provisions and confirming that it is only implementing its constitutional obligation and its acts of managing the petroleum operations within the KRG's territories are conforming with the constitutional provisions.²⁹¹ The KRG's Oil and Gas Law No (22) contains 17 chapters and 61 articles. At the end of the KRG's Oil and Gas Law, it confirms that all acts of the KRG concerning the petroleum operations within its territories are compliant with Articles 111, 112 and 115 of the Constitution. Article 2 (2) of the KRG Oil and Gas Law refers to Article 115 paragraphs (1) and (2) and Article 121 of the Constitution that *"no federal legislation, and no agreement, contract, memorandum of understanding or other federal instrument that relates to Petroleum Operations shall have application except with the express agreement of the relevant authority of the Region"*.²⁹² In Article 3, 1- 7 of the KRG's Oil and Gas Law, the KRG provides the full legal basis for its exclusive rights to carry out petroleum

²⁹⁰ Florian Amereller & Dahlia Zamel. "Iraqi Kurdistan". *The Oil and Gas Review*. Edition 6. 2018. <https://thelawreviews.co.uk/edition/the-oil-and-gas-law-review-edition-6/1175819/iraqi-kurdistan>

²⁹¹ Meurs, Pedro H. van. "Comparative analysis of ministry of oil and Kurdistan fiscal terms as applied to Kurdistan region". *Oil Gas Energy Law*. 2008. <https://www.ogel.org/article.asp?key=2794>

²⁹² Article 2: Second: of the Oil and Gas Law of Kurdistan Region Iraq. Law No. (22) - 2007. Full text is available at www.cabinet.gov.krd/uploads/documents/Kurdistan%20Oil%20and%20Gas%20Law%20English__2007_09_06_h14m0s42.pdf

operations in accordance with Articles 111, 112 and 115 of the Constitution.²⁹³ Article 1 (16) and (17) define both “current field” and “future field” to show that the KRG is compliant with Article 112 of the Constitution. Article 1 (16) states that “**Current Field:** a Petroleum Field that has been in Commercial Production prior to 15 August 2005;”, while Article 1 (17) states that “**Future Field:** a Petroleum Field that was not in Commercial Production prior to 15 August 2005, and any other Petroleum Field that may have been, or may be, discovered as a result of subsequent exploration.”²⁹⁴ The KRG argues that there is no legal provision preventing it from acting unilaterally in managing the “future field”, providing that the Constitution only refers to the “current field” and there is no any other federal law or legislation after or prior to the enforcement of the Constitution regarding the “future field”.²⁹⁵ The KRG makes a valid legal point here. The lack of federal oil and gas law undermines the IFG’s position to confront the KRG with a valid legal argument over the “future field”. It must be accepted the constitutional provisions have not been adequately drafted in respect of the management of the petroleum operations. The legal dispute over the management of the petroleum resources and who has authorities to do so stems partly from the vaguely drafted relevant constitutional provisions. Therefore, an amendment to the relevant articles of the Constitution would provide a successful solution to part of the problem, such as adding the term “future field” after the term “current field” to Article 112 and amending Article 111 in a way to make it clear who has the ownership rights over oil and gas in Iraq or whether ownership is shared between them. Another solution would be passing a new federal oil and gas law that provides a full legal framework for managing the petroleum operations in Iraq. The potential Federal Oil and Gas Law should provide an adequate response to all the problems associated with Article 111, 112, 115 and 121 of the Constitution.

²⁹³ Article 3 of the Oil and Gas Law of Kurdistan Region of Iraq. Law No. (22) -2007. Full text is available at www.cabinet.gov.krd/uploads/documents/Kurdistan%20Oil%20and%20Gas%20Law%20English_2007_09_06_h14m0s42.pdf

²⁹⁴ Article 1 (16) and (17) of the Oil and Gas Law of Kurdistan Region-Iraq Law No. (22)-2007

²⁹⁵ Scott R. Anderson. *The Constitutional context for Iraq’s latest crises*. 2007. Markaz. For text available at <https://www.brookings.edu/blog/markaz/2017/11/07/the-constitutional-context-for-iraqs-latest-crisis/>

The disputing parties accept that there are legal challenges in reaching a compromise over oil and gas management. Although this has not expressly been confirmed by the IFG, attempts at passing a federal oil and gas law 2007 (amended 2011) would confirm that the IFG impliedly accepted there are legal challenges that must be resolved before an acceptable solution could be reached over this long-standing dispute. The Federal Oil and Gas Law 2007 (amended 2011) was drafted as a solution to the ongoing dispute between the IFG and the KRG. 12 years have passed, and the law has not been ratified by the Iraqi Parliament. The necessity of the Federal Oil and Gas Law 2007 and the reasons this law has not been ratified by the Iraqi parliament are discussed later in this chapter.

Articles 115 and 121 are profoundly important legal provisions for the KRG to challenge any objection from the IFG to that the KRG's Oil and Gas Law 2007 would contradict the relevant constitutional provisions or current practice of the petroleum operations in Iraq. These two articles have high legal value for the KRG in the event regional law contradicts the federal law. Articles 115 and 121 grant the KRG a right to enact laws and legislations on any matters concerning the region, except the matters in the exclusive authorities of the IFG. These two articles provide legal immunity and protection to the KRG from any legal actions or challenges from the IFG against KRG's laws and legislations. Therefore, the IFG confines its challenges to the KRG's ability to manage oil and gas operations within the constitutional provisions that the Constitution does not grant the KRG exclusive right to manage petroleum operations within its territories without cooperation and advance approval from the IFG, and that the KRG's PSCs are not consistent with the Constitution.

Thus, Article 121 specifically undermines the federal legal supremacy over the regions. The second part of Article 121 empowers the KRG with legal supremacy to reject the federal laws and legislation that contradicts the KRG's laws and legislations. Priority is for the regional laws and legislations in the matters which are outside the IFG's exclusive authorities. Article 121 restricts the federal authorities over the regional governments, and regional laws and legislation will prevail in the event of a conflict. Accordingly, the KRG is able to limit the

application of the federal laws and legislations within its territories.²⁹⁶ The question arises as to what extent the KRG is permitted to act against the federal's direction in the matters outside the federal's exclusive authorities. Is there any constitutional limitation on the KRG to exercise its right to enact laws and legislations in contradiction to the national laws and legislation? Full consideration must be given to the legal implication of Article 121 in terms of the KRG's ability to manage the petroleum operations within its territories. If it is accepted that the KRG has exclusive right to manage its oil and gas, or to manage the so-called the "future field". Are there any constitutional limitations on how this right should be exercised? Providing that KRG uses the PSC as a model contract, which has not been used in Iraq at any times since the discovery of oil in Iraq, and it has always been a matter of argument whether the terms of the PSC are constitutional or not. Given that Article 112 of the constitution requires petroleum operations to be carried out to provide maximum profits to the Iraqi people, and any acts or omissions of the IFG and the KRG should not undermine the sovereignty of Iraq. Answering these questions requires practical measurements and an evaluation of the economic gain of the KRG's PSC, specifically petroleum revenues and profits, and then comparing the KRG's petroleum profits to those from the IFG's TSC. This would be an extremely difficult task in the absence of accurate data and lack of transparency in petroleum operations, considering that Iraq was ranked 168/180 by Transparency International for 2018.²⁹⁷ There is no accurate data about the KRG oil and gas revenues. There are concerns about the transparency of the KRG's PSC and oil and gas revenues.²⁹⁸

Article 3 of the Oil and Gas Law only refers to the producing fields in accordance with Article 112 (1) of the Constitution. The KRG differentiated between "producing fields" as of 15 August 2005 and "future fields" which would be discovered and developed after the enforcement of the Constitution. This is to confirm that the constitutional provisions only apply to the producing fields in terms of Article 112 of the Constitution. The fields discovered or developed after

²⁹⁶ Haider Ala Hamoudi, "Notes in defense of the Iraq Constitution", 32 *U. Pa. J. Int'l L.* 1277 (2011).

Available at:

<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1109&context=jil>

²⁹⁷ <https://www.transparency.org/country/IRQ>

²⁹⁸ Interview with Dr Yousif Mohammed Sadiq. The full text is available at Annex 2.

that date are in the sole responsibility of the KRG. The KRG is the only authority with exclusive rights to unilaterally manage the petroleum operations from the “future field” without cooperation with the IFG.

The Oil and Gas Law provides further details on the establishment of the regional council and other relevant authorities and organisations to manage the petroleum operations within the KRG’s territories from the first point, exploration and searching for oil and gas, to the final point of exporting the KRG’s produced oil and gas in the international market and return its revenues to the KRG.²⁹⁹ It provides the details of how different entities and organisations, responsible for oil and gas management, should be established, as well as their authorities and functions in carrying out the petroleum operations at different stages and levels. An important feature of the KRG Oil and Gas Law is its formal adoption of the PSC as the oil and gas model contract with IOCs in managing petroleum operations. Chapter 10, Article 37 of the Oil and Gas Law provides general terms of the KRG’s PSC.³⁰⁰ Article 37. A (1) states that *“An initial exploration term of a maximum of five (5) years, divided into two subperiods, of three (3) years and two (2) years, extendable on a yearly basis for up to a maximum total of seven (7) years.”*

The maximum 7 year period is extendable for a further two years, subject to the fulfilment of minimum work obligations and making such request in writing 30 days prior to the end of the current extension period, as stated in Article 6 of the KRG’s model production sharing contract.³⁰¹ Accordingly, the maximum period of exploration period is nine years, while the development period is for an initial period of 20 years. This could be extended automatically for a further five years. The contractor, the IOC, has a right to request an extension in writing

²⁹⁹ Articles 4 to 17 of the Oil and Gas Law of Kurdistan Region-Iraq Law No. (22)-2007.

http://cabinet.gov.krd/uploads/documents/Kurdistan%20Oil%20and%20Gas%20Law%20English_2007_09_06_h14m0s42.pdf

³⁰⁰ Chapter 10 of the Oil and Gas Law of Kurdistan Region-Iraq Law No. (22)-2007.

http://cabinet.gov.krd/uploads/documents/Kurdistan%20Oil%20and%20Gas%20Law%20English_2007_09_06_h14m0s42.pdf

³⁰¹ Kurdistan Regional Government model production sharing contract, Article 6 (2), (3), (4), (5), (6), (7), (8) and (9). The full text is available at

http://mnr.krg.org/images/pdfs/KRG_Model_PSC_production_sharing_contract_2007112.pdf

for a further five years.³⁰² The development period is for a maximum of 30 years. This has been confirmed in Article 37 (4) of the KRG Oil and Gas Law No. (22)-2007. The duration of the KRG's PSC is longer than that of Iraq's STC which is for a maximum period of 25 years.³⁰³

Article 37 (6) grants the IOC the right to recover the oil cost from the produced oil and gas after deduction of royalties, to a maximum not exceeding 45% for crude oil and not exceeding 60% for natural gas. After the recovery of the petroleum cost, the remainder of the produced oil and gas will be shared between the IOC and the KRG.³⁰⁴ The IOC is liable for the applicable tax in accordance with Article 40, which includes surface tax, personal income tax, corporate income tax, customs duties and any other similar taxes, windfall profits or additional profits tax, and any other tax, levy, or charge expressly included in its petroleum contract. That notwithstanding, the second part of Article 40 allows the KRG to exempt the IOC from tax if the KRG and IOC agreed on that in the contract.

In the event of a dispute arising between the KRG and the IOC over the interpretation and application of terms of the PSC, the second part of Article 50 provides dispute resolution methods. The parties should first attempt to resolve the dispute through negotiation. If an agreement cannot be reached between the parties, the dispute should be referred to international arbitration. Article 43 grants the KRG Minister of Natural Resources significant power to waive sovereign immunity in relation to "legal proceedings and the enforcement of judgment" in petroleum contracts.³⁰⁵

³⁰² Kurdistan Regional Government model production sharing contract, Article 6 (10), (11), (12) and (13). The full text is available at http://mnr.krg.org/images/pdfs/KRG_Model_PSC_production_sharing_contract_20071112.pdf

³⁰³ Peter Wells. *Iraq's technical service contracts - A good deal for Iraq*. <https://www.extractiveshub.org/servefile/getFile/id/34>

³⁰⁴ Article 37 (7) of the KRG Oil and Gas Law No. (22)-2007 states that "Production sharing from remaining production after Royalty and allowable cost recovery according to a formula which takes into account cumulative revenues and cumulative petroleum costs and provides the Contractor with reasonable returns".

³⁰⁵ Article 43 states "The Minister may, in a Petroleum Contract, waive on behalf of the Region any claim on to sovereign immunity with regard to legal proceedings and the enforcement of judgments."

The KRG Oil and Gas Law No. (22) -2007 grants more powers to the Minister of Natural Resources in regulating the PSC and its terms and clauses.³⁰⁶ The above articles confirm the IFG's claim that the KRG Oil and Gas Law is so favourable to IOCs that it undermines Iraqi sovereignty. Articles 43 and 50 provide IOCs with significant legal protection in a dispute between the KRG and IOC. If the dispute cannot be settled internally, it should be referred to Arbitration outside Iraq. Secondly, the Minister of Natural Resources, on behalf of the KRG, may waive sovereign immunity in the legal proceedings and enforcement of judgements in petroleum contract.³⁰⁷ This is a profoundly important legal provision for the IOC to take advantage of in negotiation with the KRG on the terms and clauses of the PSC. Waiving sovereign immunity by the KRG's Minister of Natural Resources is not consistent with Article 109 of the Constitution.³⁰⁸ Sovereignty is reserved for the federal authority. Implementing Article 43 of the KRG Oil and Gas Law will constitute a clear breach of Article 109 of the Constitution. The absence of Article 43 may affect the IOCs' desire to invest in the KRG's petroleum resources. Removing or amending Article 43 will risk the legal protection IOCs enjoy under the current KRG oil and gas contracts in any potential dispute that may arise.³⁰⁹

Petroleum operations within the KRG are regulated by oil and gas Law of Kurdistan Region-Iraq Law No. (22)-2007 and KRG's PSCs. The KRG has repeatedly referred to constitutional provisions as the basis of its Oil and Gas Law of 2007 and its PSCs with IOCs. All the KRG oil and gas contracts are PSCs with one exception, which is the service-type contract signed for the Khor Mor and Chemchemal fields which the KRG signed with Dana Gas and Crescent

³⁰⁶ Rex J Zedalis, "Remedial actions against oil sourced from the Kurdistan Region of Iraq: issues of concern for companies claiming breach of a PSC", *The Journal of World Energy Law & Business*, Volume 10, Issue 6, December 2017, Pages 505-519, <https://doi.org/10.1093/jwelb/jwx029>

³⁰⁷ Kelly, Michael J., "The Kurdish regional constitution within the framework of the Iraqi Federal Constitution: A struggle for sovereignty, oil, ethnic identity, and the prospects for a reverse supremacy clause" (May 15, 2010). *Penn State Law Review*, Vol. 114, No. 3, pp. 707-808, 2010. Available at SSRN: <https://ssrn.com/abstract=1608334>

³⁰⁸ Article 109: "The federal authorities shall preserve the unity, integrity, independence, and sovereignty of Iraq and its federal democratic system".

³⁰⁹ Samarth Sagar, "Waiver of sovereign immunity' clauses in contracts'. *Journal of International Arbitration*, Vol 31, Issue 5, pp. 609-649. 2014. <https://www.kluwerlawonline.com/abstract.php?area=Journals&id=JOIA2014029>

Petroleum.³¹⁰ The IFG argues that the PSC is not consistent with the principle of “achieving the highest benefit for the Iraqi people” as stated in the second part of Article 112 of the Constitution, compared to the benefit achieved by the TSC used by the IFG. This argument has been supported by Iraqi analysts, stating that the IFG’s long-term service contract achieves higher benefit for the Iraqi people than the KRG’s PSC.³¹¹ The KRG strongly rejects the IFG’s argument and confirms that its PSC achieves “the highest benefit” for the people of the region as stipulated by Article 112. The KRG refers to the report prepared by Dr Pedro Van Meurs. The report compares the KRG’s PSC to the IFG’s TSC and argues that the KRG’s PSC achieves a higher benefit for the Iraqi people.³¹² In assessing the KRG’s PSC to “achieve the highest benefit to the people of Iraq”, there are a number of factors to consider. The lack of official data regarding oil and gas reserves, the hostile environments of oil and gas business in KRG, and the cost of searching and developing oil are major concerns for IOCs. Therefore, investing in the KRG’s petroleum operations is riskier, more time-consuming, and requires more funds than those within the IFG.³¹³ The oilfields within the IFG area are already developed and most of them are in operation.³¹⁴ IOCs would take a greater risk by spending huge funds in searching for oil, and in oil and gas development in the event the discovery was commercial, in the KRG’s petroleum operations. Moreover, the KRG would gain technical expertise, economic and employment benefits, and petroleum infrastructure. In addition to the above reasons, the legal uncertainty which is caused by the long-standing dispute with the IFG has weakened the KRG’s position in contractual negotiations. Therefore, investing in the KRG oil and gas operations involves potential legal challenges and is economically risky. If the KRG offers the same terms and clauses as the IFG offers to IOCs, the KRG’s PSC would not outweigh

³¹⁰ Robin Mills. *Under the mountains: Kurdish oil and regional politics*. The Oxford Institute for Energy Study. 2016. The full text is available at <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2016/02/Kurdish-Oil-and-Regional-Politics-WPM-63.pdf>

³¹¹ *Dialogue on contentious oil issues in Iraq*, Iraq Energy Institute, 19 August 2013, www.iraqenergy.org/library/interviews.php?detailof=120&content=Dialogue-on-Contentious-Oil-Issues-in-Iraq.

³¹² Pedro Van Meurs. *Comparative analysis of Ministry of Oil and Kurdistan fiscal terms as applied to the Kurdistan Region*. 15 June 2008. Full text is available at http://mnr.krg.org/images/pdfs/Pedro_Van_Meurs_report_Iraq_KRG_oil_fiscal_regime_s_comparative_analysis_15_June_2008.pdf

³¹³ Interview with Dr Bayazid Hassan. The full text is available at Annex 2.

³¹⁴ Interview with Dr Bayazid Hassan. The full text is available at Annex 2.

the above difficulties for IOCs, and it would not be attractive to foreign investment. Therefore, oil revenue or the monetary gain cannot be used as the sole measurement in assessing the measure of “to achieve the highest benefit” in petroleum operations. Even the returned revenue from petroleum production will vary from time to time based on oil and gas prices.³¹⁵ Nevertheless, it is undeniable that the KRG’s PSC is more favourable to IOCs than the IFG’s TSC.

The legal issues with the KRG’s PSC and the constitutional interpretations of the relevant petroleum articles confirm that the long-standing legal dispute between these two governments cannot be ignored. At the same time, the political factors behind the scene are acknowledged.³¹⁶ The real concern for the IFG, as was the case with the former Iraqi regimes, is the KRG’s independent petroleum policies and management, which is considered a road towards Kurdish independence. Nevertheless, the political element does not undermine the legal issues in this dispute. Therefore, any future agreement on the petroleum management in the KRG will require a detailed legal solution. On that basis, the disputed parties agreed that passing a new petroleum law to cure the legal defects in the constitutional provisions and domestic laws regulating petroleum operations is required. Accordingly, the draft Federal Oil and Gas Law was prepared at the end of 2006 and was sent to the Iraqi Parliament in February 2007 with the intention of ending the long-standing legal dispute in Iraq over the management of oil and gas operations.

5.5.4 The IFG’s draft Oil and Gas Law

(a) *Background*

In response to the constitutional issues regarding the ownership and management of the petroleum resource between the KRG and the IFG, to manage petroleum operations in a manner that achieves the highest benefit for the people of Iraq, and to provide an acceptable solution to the disagreement between the IFG and the KRG over who has the exclusive rights to manage petroleum operations (including signing petroleum contracts with IOCs), the

³¹⁵ Peter Wells. *Iraq’s technical service contracts- A good deal for Iraq*.
<https://www.extractiveshub.org/servefile/getFile/id/34>

³¹⁶ The political issues in the dispute between the KRG and the IFG are confirmed by all interviewees, in annex 2.

prime minister at that time, Noori Al-Malik, set up a commission of three Iraqi oil experts, Tariq Shafiq, Thamir Ghadban, and Farouq al Kassem, to prepare a draft Federal Oil and Gas Law. The draft was completed and submitted to the Council of Ministers for approval in August 2006.³¹⁷ The draft was approved by the Council of Ministers and submitted to the Iraqi parliament for approval in February 2007.³¹⁸ The primary purpose of drafting the Federal Oil and Gas Law (FOGL) "*was to optimise Iraq's oil and gas exploitation, maximise return for the nation and to unite the country*",³¹⁹ with the aim of finding a compromised solution and common grounds between the IFG and the KRG to ensure the efficiency of petroleum operations across Iraq and increasing the petroleum production for the highest benefit for the people of Iraq. There was pressure from the USA on the disputed parties to reach an agreement regarding passing a federal law governing petroleum operations in Iraq. General Petraeus, in an interview with the New York Times, stated that "*The hydrocarbon law is of enormous importance, and I think it is reasonably doable as well*".³²⁰ The KRG's primary concern in the said FOGL was protection of its rights to manage petroleum operations, including signing oil and gas contracts with IOCs. The draft FOGL did not grant the KRG the same level of independence and authority in concluding oil and gas contracts with IOCs. Article 10 (C) of the FOGL states that "*The initial contract mentioned in Article 10B must be submitted to the Federal Oil and Gas Council within thirty (30) days from the day of the initial signing or it is considered cancelled*". This caused the KRG real concern regarding its right to sign agreements with IOCs. Under Article 10 (C), all oil and gas contracts were subject to the Federal Oil and Gas Council approval, which

³¹⁷ Tariq Shafiq. *Iraq's petroleum law: Problematic issues and its fate*. Presented to the Economic Forum 2013-Beirut, Iraq Economic Forum 2013 Beirut. Full text is available at <http://iraqieconomists.net/en/2013/04/05/iraqs-petroleum-law-problematic-issues-its-fate-by-tariq-shafiq/>

³¹⁸ Christopher M. Blanchard. *Iraq: Oil and gas legislation, revenue sharing, and U.S. policy*. 2009. Congressional Research Service. <https://fas.org/sqp/crs/mideast/RL34064.pdf>

³¹⁹ Tariq Shafiq. *Iraq's petroleum law: Problematic issues and its fate*. Presented to the Economic Forum 2013-Beirut, Iraq Economic Forum 2013 Beirut. The full text is available at <http://iraqieconomists.net/en/2013/04/05/iraqs-petroleum-law-problematic-issues-its-fate-by-tariq-shafiq/>.

³²⁰ "General says Iraq pullback would increase violence". New York Times. 27 April 2007. The full text is available at <https://law.stanford.edu/wp-content/uploads/2018/04/ILEI-Oil-and-Gas-Law.pdf>

was the only authority with exclusive right to regulate the petroleum policy and management in Iraq.³²¹

(b) Key provisions of the draft Federal Oil and Gas Law 2007

Article 1 confirms that oil and gas are owned by the Iraqi people in all regions and governorates.³²² It restates the same language of Article 111 of the Constitution over oil and gas ownership in Iraq.

Article 2 confirms that the Iraq Oil and Gas Law No. ___ 2007 applies to all Petroleum Operation across Iraq. This means the law also applies to the petroleum operations within the KRG's territories. Under Article 2, no other federal or regional laws or legislation, including Oil and Gas Law of Kurdistan Region. Law No. (22) 2007, would regulate oil and gas operations. Iraq would have one unified federal law regulating all oil and gas activities in all regions and governorates. Article 2 (B) limits the application of this law and states the said law does not apply to the refining of petroleum, its industrial use, nor the storage, transport, and distribution of petroleum products.

Article 5 makes the Iraqi Council of Representative the only competent authority to enact all federal legislation on crude oil and natural gas. It grants the Council of Ministers the right to formulate petroleum policies and to propose the legislation regarding petroleum operations to the Council of Representatives. The Federal Council for Oil and Gas (FCOG), Ministry of Oil (MoO), and the Iraqi National Oil Company (INOC), together with the Council of Ministers are responsible for regulating petroleum policies, plans, and managing all petroleum operations in Iraq. The FCOG is responsible for reviewing and approving exploration and production contracts and the model contract to be used in Iraq. Article 5 grants more authorities to the FCOG and the MoO in regulating the petroleum policies and petroleum operations in Iraq with participation from the regional authorities. Under Article 10, all petroleum contracts are signed by the

³²¹ Greg Muttitt. *Fuel on the fire: Oil and politics in occupied Iraq*. 2011.
https://books.google.co.uk/books?hl=en&lr=&id=xRVj0g82jNUC&oi=fnd&pg=PR13&ots=3WsTMQnwz_&sig=6ZYrjKREx3sn7WW2wjSu_l6VIog&redir_esc=y#v=onepage&q&f=false

³²² Article 1 of the Draft Iraq Oil and Gas Law OF 2007. The full text is available at
http://cabinet.gov.krd/uploads/documents/Draft%20Iraq%20Oil%20and%20Gas%20Law%20English_2007_03_10_h23m31s47.pdf

Ministry of Oil, INOC and the regional authorities, the KRG, contracts, including the contracts previously signed by the KRG, must be submitted to the FCOG within 30 days from the date initially signed for approval.³²³ The FCOG has authority to reject the contract if its terms and clauses do not meet the requirements specified in Article 9 (B),

All model contracts shall be formulated to honour the following objectives and criteria:

- 1- National control;*
- 2- Ownership of the resources;*
- 3- Optimum economic return to the country;*
- 4- An appropriate return on investment to the investor; and*
- 5- Reasonable incentives to the investor for ensuring solutions which are optimal to the country in the long-term related to*
 - a- improved and enhanced recovery,*
 - b- technology transfer, c- training and development of Iraqi personnel, d- optimal utilisation of the infrastructure, and e- environmentally friendly solutions and plans."*

The most serious change the FOGL introduced was the model contract to be used by the IFG and regional authorities with IOCs, which is the exploration and production contract under Article 9 of the draft. This has been confirmed again in Article 12. This would seriously affect the KRG's petroleum operations as all its contracts are the PSC.

The draft was submitted to the Iraqi Parliament in May 2007 for approval, but received strong opposition from academics, oil experts, Iraqi oil federation unions, and Arab Sunni and Kurdish political parties for various reasons. Academics and oil experts criticised the draft because their opinions and views were not taken into consideration by the drafting committee. The unions

³²³ Article 10 (C) of the Draft Iraq Oil and Gas Law No. ____ 2007. *"The initial contract mentioned in Article 10B must be submitted to the Federal Oil and Gas Council within thirty (30) days from the day of the initial signing or it is considered cancelled."*

strongly opposed because they believe the Draft would undermine the nationalisation of Iraqi petroleum because it did not clearly deny the use of the PSC, which grants IOCs too much control over Iraqi oil and gas.³²⁴

The FOGL granted the KRG a right to sign a petroleum contract only in respect of the fields in Annex 3. The draft divided the oil fields in Iraq into four areas, Annex 1, Annex 2, Annex 3 and Annex 4. The INOC was granted authority over the fields in Annex 1 and 2. The KRG was given contracting authority over the fields in Annex 3. The Draft was silent on Annex 4. It is estimated the fields in Annex 3 consist of 7% of the Iraqi oil fields. The Annexes were not published with the draft, but by the KRG on its website in 2007.³²⁵

The FOGL granted significant control to the federal authorities, the FCOG chaired by the Prime Minister, the MoO, and the INOC who were in control over petroleum policy and petroleum operations. The FCOG had responsibility for deciding federal petroleum policies, exploration plans, field development, and pipeline plans. All petroleum contracts, including the previous contracts signed by the KRG and the contracts that will be signed by the KRG, must be referred to the FCOG for approval within 30 days from the date initially signed.

It appears from the presentation of Tariq Shafiq at the Economic Forum 2013-Beirut that he was strongly in favour of centralised petroleum operations. He argues that Article 111 and 112 of the Constitution must be interpreted in light of Article 2, 49, 109 and 110 of the Constitution, which all confirm that the IFG is the only authority competent to represent the people of Iraq in all regions and governorates, and therefore it should have the exclusive right to manage the petroleum operations in Iraq.³²⁶ He confirmed his view in support of the centralisation of oil and gas management in Iraq in the interview in 2011.³²⁷

³²⁴ *Introduction to the laws of Kurdistan*, Iraq Working Paper Series. Iraq Legal Education Initiative (ILEI), Stanford Law School. American University of Iraq, Sulaimani. 2013. Available at <https://law.stanford.edu/wp-content/uploads/2018/04/ILEI-Oil-and-Gas-Law.pdf>

³²⁵ <https://law.stanford.edu/wp-content/uploads/2018/04/ILEI-Oil-and-Gas-Law.pdf>

³²⁶ Tariq Shafiq. *Iraq's petroleum law: Problematic issues and its fate*. Presented to the Economic Forum 2013-Beirut, Iraq Economic Forum 2013 Beirut. Full text is available at <http://iraqieconomists.net/en/2013/04/05/iraqs-petroleum-law-problematic-issues-its-fate-by-tariq-shafiq/>

³²⁷ Mr Tariq Shafiq in the interview with Ruba Husari on the 30 December 2011. <https://www.iraqoilforum.com/?p=2413>

Shafiq strongly criticised the 2007 version to the extent that it did not reflect the original version of 2006 which was prepared by him and his colleagues. Shafiq argued that:

*The final negotiated draft was announced on 15 March 2007 (often referred to as April 2007 Draft), by unanimous agreement within the ministerial committee, which was chaired by Kurdish Deputy Prime Minister, Dr Barham Saleh. Regretfully, the original first Petroleum Law 2006 which we drafted has been modified to such an extent that I and my colleague Farouk al-Kasim believe that it no longer provides for the standards of optimisation, efficiency, accountability and transparency, nor is it any longer in keeping with maintaining the unity of the nation nor securing the broader national interest for generations to come.*³²⁸

The 2006 draft was available for the public at the time of drafting the 2007 one, and copies were provided to the federal and regional authorities for their review and consideration. The 2006 draft was published by Shafiq at the time of his presentation at the Economic Forum 2013 in Beirut.³²⁹ The drafters of the 2006 version listed all the petroleum laws and legislation in the preamble of 2006 draft and confirmed that all Iraqi petroleum laws and legislation from 1943 to 2006 were considered. Comparing the 2006 version with the 2007 version confirms Shafiq's above statement. Comparing Article 1 of the 2006 draft to article 1 of the 2007 version will illustrate the differences. Article 1 of 2006 states that "*Ownership of all Iraqi Petroleum resources in situ, including oil and natural gas, is vested in the entire Iraqi people. The authority to take decisions relating to exploration, development, production and disposal of oil and natural gas, on behalf of the sovereign people of Iraq, has been and remains vested in the Federal Government of Iraq. All such decisions shall be made on the basis of Iraqi Federal laws*", while Article 1 of the 2007 version states "*Oil and gas are owned by all the people of Iraq in all the Regions and Governorates*". Article 1

³²⁸ Tariq Shafiq. *Iraq's petroleum law: Problematic issues and its fate*. Presented to the Economic Forum 2013-Beirut, Iraq Economic Forum 2013 Beirut. Full text is available at <http://iraqieconomists.net/en/2013/04/05/iraqs-petroleum-law-problematic-issues-its-fate-by-tariq-shafiq/>

³²⁹ The full text of the original version 2006 draft is available at <http://iraqieconomists.net/eng/wp-content/uploads/sites/7/2013/04/PL-draft-bill-2006-Iraq-engl.-version.pdf>

of the 2007 version is the exact wording of Article 111 of the Constitution. By contrast, Article 1 of the 2006 provides further information about the concept of the ownership and interpretation of Article 111 of the Constitution. Article 1 of the 2006 version is more like the drafter's interpretation of Article 111 of the Constitution, which vests petroleum ownership in the IFG as the only representative of the people of Iraq. This concept is strongly disputed by the KRG. The KRG representative, in the conference held in 2007 in Dubai regarding the draft petroleum law prepared by Mr Shafiq and his colleagues, rejected the draft because it was influenced by the nationalist and "Baatthy's ideology", the former Iraqi regime ideology.³³⁰

The 2006 draft was drafted by three Iraqi experts who had been working in the Iraqi petroleum industry for a considerably long time. They were involved in the former Iraqi regimes oil and gas policies and operations. The centralisation of the petroleum policies and management is reflected in the 2006 draft. They were very much in favour of federal management of petroleum operations through the MoO and the INOC, with the participation of the regional government only in respect of the petroleum within Annex 3, the oilfields within the KRG's territories. The 2006 draft was based on the author's interpretation of Article 111 and 112, and other relevant articles of the Constitution. The authors relied on the Joseph C. Bell's analysis for the concept of petroleum ownership and management in accordance with Articles 111 and 112 of the Constitution.³³¹ The 2006 Draft, with the consent from the MoO, is solely based on the Bell and Saunders' memorandum. Shafiq stated that *"In the absence of an official legal interpretation of these articles, the authors, with the MoO's consent, based their draft on a constitutional interpretation given in a study published in May 2006 by the Iraq Revenue Watch*

³³⁰ Tariq Shafiq. *Iraq's petroleum law: Problematic issues and its fate*. The full text is available at <http://iraqieconomists.net/eng/wp-content/uploads/sites/7/2013/04/Tariq-paper-Iraq's-Petroleum-Law-revised-for-IEN-Website.pdf>

³³¹ Joseph C. Bell, Hogan and Hartson LLP. Professor Cheryl Saunders, University of Melbourne Australia. Memorandum, *Iraqi oil policy-constitutional issues regarding federal and regional authorities*. Hogan and Hartson LLP. Professor Cheryl Saunders, University of Melbourne Australia. The full text is available at http://iraqieconomists.net/eng/wp-content/uploads/sites/7/2013/04/PL-Bell-Saunders-07_06.pdf

(www.iraqrevenuewatch.org), *"Iraqi Oil Policy-Constitutional Issues Regarding Federal and Regional Authority"*, authored by Joseph C. Bell, Hogan and Hartson LLP, and Professor Cheryl Saunders, University of Melbourne Australia". The KRG's interpretation, as mentioned earlier in this chapter, was based on the legal opinion of Professor Crawford. The issue here is not whether Professor Crawford or Bell and Saunders have authority to interpret the Iraqi Constitution. These interpretations of the relevant articles of the Constitution concerning petroleum policies and management lack legal authority. The Constitution grants the Federal Supreme Court in Iraq sole authority to interpret constitutional provisions³³². Article 93 of the Constitution states that *"The Federal Supreme Court shall have jurisdiction over the following: Second: Interpreting the provisions of the Constitution."*

Any other international and national interpretation of the constitutional provisions would have no legal authority in the absence of the formal interpretation from the Federal Supreme Court of Iraq. What has been noted in this long-standing dispute between the IFG and the KRG is the absence of the Federal Supreme Court role in settling this matter or the reluctance of the disputed parties to refer this matter to the Federal Supreme Court for settlement³³³. The disputed parties prefer to settle the dispute without the Federal Court's involvement. Following the formation of a new Iraqi government after the general election in May 2018, and a new KRG following the general election in September 2018, there have been attempts to settle the difference between the KRG and the IFG.³³⁴ The role of the Federal Supreme Court and its authority is discussed further in this chapter.

5.5.5 Draft Federal Oil and Gas Draft 2011

Due to the huge criticism against the 2007 draft from KRG, Sunni Arab, academics and others, it was amended in 2011. The 2011 draft is not substantially different from the 2007 version. The amendments are limited to re-drafting some articles and changing places of several articles, but it did not bring any substantial changes to the matters in dispute between the IFG and the KRG. Under the 2011 draft, petroleum policies and management are the

³³² Interview with Dr Yusef Mohammed Sadiq available at Annex 2.

³³³ Interview with Dr Bayazid Hassan available at Annex 2

³³⁴ Interview with Dr Sherko Jawdat, the Head of the Oil and Gas Committee at the Kurdistan Parliament. The full text of the interview is available at Annex 2.

responsibility of the Minister of Council, MoO, FOGC and INOC, and the KRG only has the right to conclude petroleum contracts for the fields from Annex 3, subject to approval from the FOGC. The 2011 draft grants the MoO an authority to conclude service contracts as the model contract to achieve the highest benefit for the people of Iraq. The 2011 draft re-states that all oil and gas contracts must be submitted to the FCOG within 30 days from the date initially signed by the federal and regional authorities. The MoO and the Council of Ministers continue to enjoy the same powers granted to them by the 2007 draft.

In summary, the three drafts in 2006, 2007, and 2011 did not obtain consensus from all Iraqi people, specifically not the Sunni and Kurds. The federal hydrocarbon, or oil and gas law, has been revised twice. In 2011, the Oil and Energy Committee of the Iraqi Parliament published an amended version of the draft under the Federal Oil and Gas Law 2011.³³⁵ This has not been ratified by the Iraqi parliament. Although the draft did not contain any clear provisions to make oil and gas as one of the matters under the exclusive authority of the IFG as in Article 110 of the Constitution, the management structures provided by the draft would make the IFG the only authority responsible for all petroleum operations. The KRG is not restricted from concluding petroleum contracts but is limited to the fields within the Annex 3 territories, and subject to federal approval. The FCOG must approve the model contract and its terms signed by the KRG within 30 days from the date initially signed. The KRG would not have exclusive authority under the 2011 draft as it does now in signing the petroleum contracts. One of the matters the Draft insisting on is reviewing all petroleum contracts which have been concluded previously between the KRG and IOCs. Article 47 states:

The competent body in the Kurdistan Region shall within not more than three months from the enactment of this law review all exploration and Production contracts concluded with all entities prior to the enforcement of this law to conform said contracts to the objectives and the general provisions of this law to achieve the highest economic benefit for the Iraqi People, taking into consideration the objective circumstances in which

³³⁵ The English version is available at <http://www.eisourcebook.org/cms/December%202015/Iraq%20Federal%20Oil%20and%20Gas%20Draft%20Law%202011.pdf>

said contracts were concluded. The Bureau of Independent Advisors shall assess the contracts herein referred to in this article and its opinion as to the handling of said contracts shall be binding.

The contracts concluded between the KRG and IOCs must be consistent with the provisions of Federal Oil and Gas Draft Law 2011 to “achieve the highest economic benefit for the Iraqi people”. Reviewing the KRG’s existing oil and gas contracts is a complicated process, involves legal challenges, and is subject to potential claims by the IOC against the KRG for remedies if the reviewing process leads to annulment or amendments to the KRG’s previous contracts or as a result, the IOC sustains a financial loss.

Maliki's cabinet was unsuccessful in its attempt to have the federal petroleum law ratified by the Iraqi parliament. The KRG continues to manage the petroleum operations within its territories in accordance with the Kurdistan Oil and Gas Law 2007, and the IFG still depends on the legislation of the former Iraqi regime in managing federal oil and gas operations. To date, Iraq has no unified federal petroleum law for managing petroleum operations across Iraq.

5.6 The Federal Supreme Court and the dispute between the IFG and the KRG

The Federal Supreme Court is the only authority in Iraq authorised to settle constitutional disputes. The normal process of settling any dispute between the federal and regional governments over constitutional issues is that the parties must first attempt to resolve the dispute through negotiation. If agreement was not reached, then the matter must be taken to the Federal Supreme Court for determination. The dispute over the management of oil and gas operations between the KRG and the IFG is one such dispute involving serious constitutional issues, which has been going on for nearly 15 years and has adversely affected the relationship between the IFG and the KRG and the stability of the political system in Iraq. Given the seriousness of this matter and directly affects the country’s economy, it should have been referred to the Federal Supreme Court for determination.

Article 93 of the Constitution states:

The Federal Supreme Court shall have jurisdiction over the following:

First: Overseeing the constitutionality of laws and regulations in effect.

Second: Interpreting the provisions of the Constitution.

Third: Settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law shall guarantee the right of direct appeal to the Court to the Council of Ministers, those concerned individuals, and others.

Fourth: Settling disputes that arise between the federal government and the governments of the regions and governorates, municipalities, and local administrations.

Fifth: Settling disputes that arise between the governments of the regions and governments of the governorates.

Sixth: Settling accusations directed against the President, the Prime Minister and the Ministers, and this shall be regulated by law.

Seventh: Ratifying the final results of the general elections for membership in the Council of Representatives.

Eight:

A. Settling competency disputes between the federal judiciary and the judicial institutions of the regions and governorates that are not organized in a region.

B. Settling competency disputes between judicial institutions of the regions or governorates that are not organized in a region.

Article 93 grants the Federal Supreme Court the exclusive right to interpret the Constitution. Although the constitutional provisions concerning the management of oil and gas have been interpreted by the IFG, the KRG, and different legal scholars, none of the above have jurisdiction or legal authority, under the Constitution, to interpret the Constitution. The right to interpret Articles 111 and 112 is reserved for the Federal Supreme Court. The disputed parties have tried various means to settle this matter and to reach an agreement, including ongoing negotiations since 2004, threatening the IOCs to blacklist them if they

do not stop investing in the KRG oil and gas by the IFG,³³⁶ urging foreign countries to refrain from petroleum trading with the KRG, and restricting oil and gas importing with the IFG.³³⁷ The dispute even escalated to military confrontation on different occasions.³³⁸ The dispute further escalated to the extent that the KRG threatened to hold a public referendum over the independence of Kurdistan. On 24 September 2017, over 92% of the Kurdish people, including Kurdish people from the disputed territories, voted yes for the independence. This result fuelled the conflict between the two governments. Less than a month after, the IFG engaged in a military offence on the KRG and regained all territories that the KRG claimed after the Iraqi troops withdrew from them because of the ISIS attacks, including the oil-rich city of Kirkuk,³³⁹ which are disputed areas between the IFG and the KRG.³⁴⁰

Surprisingly, the parties have been reluctant to settle this long-standing and legally complicated dispute through the Federal Supreme Court. In 2012, the IFG raised a legal action seeking an order from the Federal Supreme Court to stop the KRG from exporting oil and gas independently outside Iraq. The Iraqi Federal Supreme Court rejected the IFG's claim.³⁴¹ This confirms that the KRG has legitimacy to enact energy laws and conclude petroleum contracts. The Federal Supreme Court did not grant the Ministry of Oil the injunction due to a lack of sufficient information regarding the constitutional provisions and

³³⁶ Asharq Al-Awsat. *Iraq nullifies Kurdish oil deals*. 2007. <https://eng-archive.aawsat.com/theaawsat/business/iraq-nullifies-kurdish-oil-deals>

³³⁷ Maher Chmaytelli. *Iraqi government asks foreign countries to stop oil trade with Kurdistan*. World News, September 2017. Reuters. <https://www.reuters.com/article/us-mideast-crisis-kurd-referendum-oil/iraqi-government-asks-foreign-countries-to-stop-oil-trade-with-kurdistan-idUSKCN1BZ0Y0>

³³⁸ *Iraqi Kurds send more troops into standoff with Iraqi army*. World News, Reuters. 2012. <https://www.reuters.com/article/us-iraq-kurds/iraqi-kurds-send-more-troops-into-standoff-with-iraq-army-idUSBRE8AO00320121125>

³³⁹ *Baghdad: Iraqi forces in full control of Kirkuk*. Aljazeera, 16 October 2017 <https://www.aljazeera.com/news/2017/10/baghdad-iraqi-forces-full-control-kirkuk-171016133409720.html>

³⁴⁰ Robin Mills. *A rocky road: Kurdish oil and independence*. Iraq Energy Institute. P61, 2018. The full text is available at [https://www.qamarenergy.com/sites/default/files/A%20Rocky%20Road %20Kurdish %20Oil%20and%20Independence.pdf](https://www.qamarenergy.com/sites/default/files/A%20Rocky%20Road%20Kurdish%20Oil%20and%20Independence.pdf)

³⁴¹ Walsh D. (2018) "Iraq: Iraqi Kurdistan, unresolved issues, and changing international priorities". In: *Territorial Self-Government as a Conflict Management Tool. Federalism and Internal Conflicts*. Palgrave Macmillan, Cham. 2018. https://link.springer.com/chapter/10.1007/978-3-319-77234-9_6

domestic legislation concerning the KRG's right to export oil and gas independently. The Federal Supreme Court, in refusing to grant such injunction stated that "[granting such an injunction] would give an impression of a premature decision on the subject matter of the proceedings and the decision that shall be issued by the court' which would contravene the judicial "context/norms".³⁴² Following this decision, the KRG continued exporting its oil and gas independently. In response thereto, the Maliki government cut the KRG's share of the federal budget until the KRG relinquished all petroleum revenue to the IFG for redistribution. The KRG refused. Since then the battle between the IFG and the KRG is focused on oil and gas revenue and the KRG's share of the federal budget. In response to the KRG's stance over oil and gas revenue, the IFG did not send the KRG's share of the federal budget until January 2019 when the federal parliament voted for the federal budget of 2019.³⁴³ In accordance with the federal budget for 2019, the KRG must hand over or export 250,000 bpd through the Sell Oil Market Company (SOMO).³⁴⁴ The IFG fulfilled its obligations under the 2019 budget and resumed sending the KRG sufficient funds to pay its employees' salaries. The MoO's Thamer Al-Ghadban confirmed on the state television Al-Iraqiyah that the KRG has not begun exporting the 250,000 bpd oil through SOMO.³⁴⁵ This is a temporary agreement between the IFG and the KRG to ease the financial crises the KRG has been through since 2014, until a final agreement is reached between the disputed parties³⁴⁶.

On 27 June 2018 the Federal Supreme Court reviewed the case again and decided to postpone the procedural hearing for 14 August 2018. The Federal Supreme Court further delayed the procedural hearing to allow the parties to submit expert reports and further information regarding the dispute. The Court heard the case again on 7 April 2019 and based on the parties' request, the

³⁴² Florian Amereller & Dahlia Zamel. "Iraqi Kurdistan". *The Oil and Gas Law Review*-Edition 6. 2018. The text available at <https://thelawreviews.co.uk/edition/the-oil-and-gas-law-review-edition-6/1175819/iraqi-kurdistan>

³⁴³ Sangar Ali. Oil and gas disputes with Baghdad to be addressed once new KRG cabinet formed. Kurdistan 24. 23 May 2019. <https://www.kurdistan24.net/en/news/d227436b-1f58-4cc9-b560-4c8e64843239>

³⁴⁴ *Ibid*

³⁴⁵ Mohammed Rwanduzy. *Oil: Iraq highly unlikely to receive 250000 bpd from Kurdistan in 2019*. Rudaw. <http://www.rudaw.net/english/business/26022019>

³⁴⁶ Interview with Dr Sherko Jawdat available at Annex 2.

hearing was adjourned again to allow the parties to submit further information or to reach an agreement on the constitutional issues and passing of a FOGL.³⁴⁷ The case is still ongoing.

The Federal Supreme Court has difficulties dealing with this matter. The parties' agreement on certain constitutional issues regarding Article 111 and 112 of the Constitution and the FOGL is required before the court can make final judgement on the KRG's right to extract and export oil and gas independently.

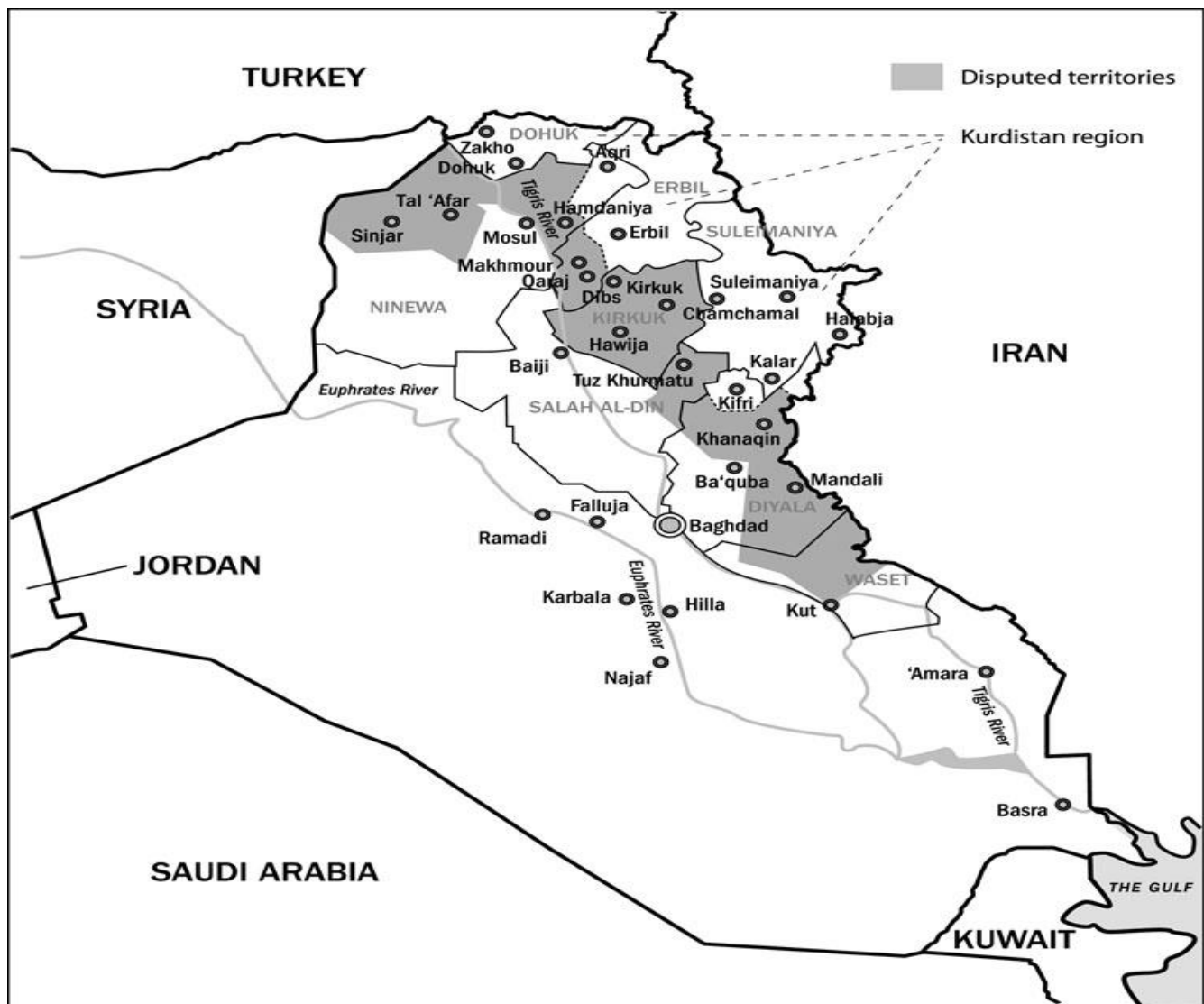
5.7 The management of oil and gas operations within disputed areas between the IFG and KRG

(a) Background

Iraq was one of the new states formed by the British Government and it geographically consisted of the three former Ottoman Vilayets of Basra, Baghdad and Mosul. Vilayet Mosul covered a large area in northern Iraq, including Kirkuk province. Kurds claim its ownership over most areas of Mosul, specifically the areas most populated by Kurdish people at the time Iraq was first formed in 1920. Since the formation of Iraq, Kurdish people have struggled to have their own state. The Kurds claim that Kirkuk and other Kurdish populated areas which have been administrated by the central government since 1920 are Kurdish territories. These areas are now called 'disputed areas' between the Kurds and Arabs, in other words between the KRG and the IFG. The return of these areas to Kurdish territories has always been one of the Kurdish demands during negotiations with Iraq governments to settle the long-standing political conflict between Kurds and Arabs. During the peace negotiation between the Kurds and central government in the 1960s, the Kurds demanded to take 33% of Iraq's oil revenues. It is now agreed and confirmed by the Constitution that the Kurds' share of Iraq's oil and gas revenue is 17%. The request of 33% of Iraq's oil revenues by Kurds at that time was based on the Kurdish population within the current KRG's territories and disputed areas of Kirkuk, Mosul, Diyala and Salah-al-Din. The disputed areas are now administrated and funded by the IFG. Ownership of the province or Vilayet of Mosul, including the city of Kirkuk, which is rich with oil and it is estimated to

³⁴⁷ *Federal Supreme Court delays hearing on KRG oil exports.* NTR.
<http://www.nrttv.com/EN/News.aspx?id=11518&MapID=2>

have 17% of Iraq's proven oil reserves, has been disputed between the British and French after the WWI and between the Turkey Government and Iraqi Government since the formation of Iraqi state in 1920, and now between the Kurds and Arabs in Iraq. It seems that oil has always been a primary factor in the ownership dispute over this area.³⁴⁸ The map below shows the disputed areas between the IFG and the KRG.



This map was produced by the International Crisis Group. The location of all features is approximate.³⁴⁹

³⁴⁸ Crisis Group. *Iraq and the Kurds: The brewing battle over Kirkuk*. Report 56/ Middle East & North Africa 2006. Full Report is available at <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/iraq-and-kurds-brewing-battle-over-kirkuk>

³⁴⁹ International Crisis Group (Crisis Group). *Oil for Soil: Toward a grand bargain on Iraq and the Kurds*. Middle East Report No80. 20 October 2008.

Following the invasion of Iraq by the Coalition Force in 2003, the Kurds and Arab agreed to resolve the ownership of the disputed areas in accordance with Article 140 of the Constitution.³⁵⁰ The current dispute between the IFG and the KRG is mainly over the city of Kirkuk. Kurds are struggling to take control over Kirkuk's vast oil revenues. In accordance with Article 140, the city of Kirkuk and other disputed areas should have been determined through a census by the end of December 2007. The census has not yet taken place and the disputed areas remain under the control of the IFG, with the exception of the period 2014 until 16 October 2017. The KRG was in control of most of the disputed areas. In October 2017 the Iraqi forces regained control of these areas in a military offence on the Kurdish forces Peshmarga. The disputed areas are now under the administration of the IFG.

(b) Article 140 of the Constitution and the disputed areas

Before the Constitution came into effect, the Transitional Administrative Law (TAL)³⁵¹ of 2004 was in force in Iraq. The TAL contains two articles regarding the disputed territories between the KRG and the IFG, Article 53 (A) and Article 58. TAL was valid for a short period until the Constitution was approved by the Iraqi people. Article 140 of the Constitution was designed to settle the conflict between the Kurds and Arabs over the disputed areas. Article 143 of the Constitution is designed to complete the link between the TAL and the Constitution regarding the disputed territories. Article 143 states that "*The Transitional Administrative Law and its Annex shall be annulled on the seating of the new government, except for the stipulations of Article 53(A) and Article 58 of the Transitional Administrative Law*". Article 143 confirms that Article 53 (A) and Article 58 of the TAL are still in effect even after the enforcement of the Constitution. The boundary of the KRG in accordance with Article 53 (A) of TAL is very practically important in relation to the management of oil and gas under

³⁵⁰ Constitution of Iraq 2005. Article 140: *Second: The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this Constitution, provided that it accomplishes completely (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007.*

³⁵¹ The English version of the Transition Administrative Law is available at <http://www.au.af.mil/au/awc/awcgate/iraq/tal.htm>

Article 112 of the Constitution. Article 53(A) of the TAL limits the KRG's participation in oil and gas management only within the Kurdish provinces of Dohuk, Erbil, Suleimaniya, the three disputed Kurdish territories of Kirkuk, DIALA and Ninewa, within areas under Kurdish control on 19 March 2003. The disputed Kurdish territories in the other two provinces of Salaheddin and Wasit were out of Article 112's jurisdiction.

The TAL legal regime for oil and gas granted the IFG the exclusive authority to manage petroleum operations within the disputed areas that were out of the KRG's control as of March 2003. The management of petroleum operations within the disputed territories is part of the wider dispute between these two governments over the management of oil and gas across Iraq. The unanswered question here is in what manner oil and gas operations within the disputed areas will be managed, given that the timeframe provided in Article 140 has lapsed and no census took place. Even the validity of Article 140 is arguable.

(c) Kurdistan's Oil and Gas Law 2007 and oil and gas within the disputed areas

Article 19 Fourth of the Kurdistan Oil and Gas Law 2007 states that *"the Federal Government must not practise any new Petroleum Operations in the disputed territories without the approval of the Regional Government until such time as the referendum required by Article 140 of the Federal Constitution is conducted."*

The KRG confirmed that any petroleum operations within the disputed areas must be done in cooperation between the two governments. The IFG should not unilaterally manage petroleum operations within the disputed areas. Article 19 confirms that any unilateral management of petroleum operations within the disputed territories by the IFG must be dealt with in accordance with Article 112 (2) of the Constitution.³⁵²

³⁵² Kurdistan Oil and Gas Law. No 22-2007. Article 19: Fifth: any activities in the disputed territories related to Petroleum Operations carried out in contradiction to Paragraph Fourth of this Article shall be dealt with according to the provisions of this Law and Article 112(2) of the Federal Constitution once the decision is made to re-join these territories to the Region under the provisions of Article 140 of the Federal Constitution

The KRG simply tries to prevent the IFG from managing oil and gas alone within the disputed areas. The IFG must cooperate with the KRG in managing oil and gas within these areas, and any acts from the central government concerning oil and gas within the disputed areas must be approved by the KRG. The KRG's stance regarding the management of oil and gas under Article 19 of the Kurdistan Oil and Gas Law 2007 was criticised by the IFG and academics because the disputed areas are still administered by the IFG and they are still under its jurisdiction. Prior to the enactment of the Kurdistan Oil and Gas law 2007, the IFG granted the MoO permission to develop most of the oilfields within the disputed areas without consultation with nor approval from the KRG. It seems that Article 19 of the Kurdistan Oil and Gas Law 2007 was passed in reaction to the IFG's act of carrying out the development works to the oil fields within the disputed areas.³⁵³ The management of oil and gas operations within the disputed areas must be shared between the IFG and the KRG in accordance with the Constitution, and the TAL prior to the enforcement of the Constitution. The situation concerning the management of oil and gas within the disputed areas remained unchanged.

5.8 Summary of the relevant Constitutional Provisions in this Dispute

Article 1 of the Constitution defines Iraq as a federal state with full sovereignty. Article 4 recognises the KRG as a regional government within Iraq. These two recognitions did not exist in the previous constitution. Prior to the Constitution, the Transitional Administrative Law recognised the KRG as an autonomous region. This has been confirmed once again by Article 117 of the Constitution, which states:

First: This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region.

Second: This Constitution shall affirm new regions established in accordance with its provisions.

The Constitution is the supreme law in Iraq as is confirmed by article 13 of the Constitution. Therefore, it is the first source of legal authority for any other federal and regional laws. All federal and regional legislation must not contradict

³⁵³ Tina Susman. "Iraqis resist US pressure to enact oil law". *The Los Angeles Times*. 2007. <http://www.scoop.co.nz/stories/HL0705/S00301.htm>

the Constitution. The Constitution confirms all KRG's laws, legislations, court's decision issued, and contracts concluded by the KRG from 1992 are valid and remain in force if they do not contradict with the Constitution.

Article 141 states that:

Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution."

The Constitution provides the matters that are in the exclusive authorities of each government and the matters, which authorities are shared between them. Article 110 of the Constitution confirms that the following matters are in the exclusive authority of the IFG: "foreign policy; national security and defence policy; fiscal and customs policy; standards, weights and measures; citizenship and immigration; broadcasting and postal policies; budget; planning of waters flowing to Iraq; census and statistics". On the other hand, Article 114 provides all matters which authorities are shared between the federal and regional government. Article 114 states:

First: The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government.

...

Third: Regions and governorates shall be allocated an equitable share of the national revenues sufficient to discharge their responsibilities and duties, but having regard to their resources, needs, and the percentage of their population.

...

Fifth: The regional government shall be responsible for all the administrative requirements of the region, particularly the establishment and organization of the internal security forces for the region such as police, security forces, and guards of the region.

While Article 115 provides that the regional government has exclusive authority in the matters which are not in the exclusive authority of the IFG. The matters which are the authorities are shared between the federal and regional governments under Article 114, the regional government is given priority in case of dispute and contradiction. Article 121 also grants priority to the regional power in case of contradiction between federal and regional power. The regional laws and power are given priority in matters which are not in the exclusive authority of the IFG under article 110, or any other matters which the constitution provides how to be handled. In all other matters identified by Articles 114, 115 and 121, the priority is for the regional power.

Article 114 provides:

The following competencies shall be shared between the federal authorities and regional authorities:

First: To manage customs, in coordination with the governments of the regions and governorates that are not organized in a region, and this shall be regulated by a law.

Second: To regulate the main sources of electric energy and its distribution.

Third: To formulate environmental policy to ensure the protection of the environment from pollution and to preserve its cleanliness, in cooperation with the regions and governorates that are not organized in a region.

Fourth: To formulate development and general planning policies.

Fifth: To formulate public health policy, in cooperation with the regions and governorates that are not organized in a region.

Sixth: To formulate the public educational and instructional policy, in consultation with the regions and governorates that are not organized in a region.

Seventh: To formulate and regulate the internal water resources policy in a way that guarantees their just distribution, and this shall be regulated by a law.

Article 115 provides:

All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute."

Article 121, Second, provides:

In case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region.

It is clear that the above Articles 110, 114, 115 and 121 have not categorised oil and gas as one of the matters over which the IFG or the regional government has exclusive authority, or one of the shared powers between the federal and regional governments. In fact, the constitution deals with oil and gas separately in two separate articles, Article 111 and 112. Article 111 of the Constitution deals with oil and gas ownership in Iraq. Article 112 deals with the management of oil and gas extracted from the "present fields" and with revenue distribution.

5.9 Conclusion

This chapter examined the ongoing dispute between the IFG and the KRG over the management of oil and gas operations within the KRG and the disputed

areas. It demonstrated that the dispute concentrates on the core constitutional issues for oil and gas operations and the adoption of the KRG of the PSC as the preferred model contract in managing oil and gas operations in the region. The dispute is generally associated with the long-standing political and ethnical conflict between the Kurds and Arabs over independence and land ownership within the region. The disputing parties (central and regional governments) have attempted to use different methods to settle their differences in this ongoing dispute, ranging from direct and indirect negotiations, proposals of a new oil and gas federal law, and military confrontation.

This analysis shows that there is no definite constitutional provision granting either party absolute authority over the management of oil and gas operations within the KRG's territories. The primary legal authority for oil and gas operations remain Articles 111 and 112. This chapter shows that these two key articles are vague and do not give a clear vision/guidance over who has the exclusive right to manage oil and gas within the KRG territory. It is therefore obvious that the absence of a unified interpretation of these relevant articles of the Constitution and the lack of a universally accepted Federal Oil and Gas Law are highlighted as major stumbling issues in this ongoing dispute.

Finally, this chapter concludes that in any potential settlement between the KRG and IFG, it is vital that the KRG's PSC must be recognised for the following reason: The KRG has concluded over 50 PSCs with IOCs. The KRG has always argued that its PSCs are consistent with the Constitution. Therefore, the implications of any potential settlement on the KRG's PSC must be carefully considered to avoid potentially catastrophic legal claims against the KRG or the IFG from IOCs. Accordingly, the KRG's PSC will constitute a large part of any future settlement on oil and gas management. This would require prior negotiation and agreement with IOCs regarding the practical implication of any potential settlement on the KRG's PSC.

CHAPTER 6 RESEARCH FINDINGS, RECOMMENDATION AND CONCLUSION

6.1 Research Findings

6.1.1 Brief Overview

In the previous chapters, specifically chapters three and four, the history of the oil and gas dispute between the KRG and the IFG was discussed. An examination and analysis of the legal arguments forwarded by both governments over their interpretation of the relevant articles of the Constitution concerning oil and gas ownership and management in Iraq and in the Kurdistan region were provided. the arguments are supported by the available literatures and the data collected from the interviews with the individuals who were directly or indirectly involved in this dispute. Almost all sources, primary and secondary, have been explored, examined, and analysed to conclude the following findings and recommendations.

The KRG started managing oil and gas operation from 1994 and concluded a number of PSC before the formation of the IFG in 2004 and the enactment of the Constitution in 2005. Despite strong opposition from the IFG, the KRG has so far concluded more than 50 PSCs with IOCs under the Kurdistan Oil and Gas Law No. 22 of 2007, which was passed following the enforcement of the Constitution in 2006. The KRG made it clear that its Oil and Gas Law of 2007 is based on the Constitution and it is consistent with the constitutional provisions. Article 121 of the Constitution grants the KRG power to enact laws and legislation concerning the KRG in respect of any matters which are not in the exclusive authority of the IFG. The KRG Oil and Gas Law 2007 regulates oil and gas operations within the KRG's territories, including signing PSCs. Therefore, the KRG argues that its PSC is compatible with the Constitution. The KRG's position over the legality or constitutionality of its PSCs has been disputed by the IFG for various reasons. The IFG argues that the KRG's PSC grants petroleum ownership to IOCs, while the Constitution prohibits foreign ownership

of the national oil and gas. The IFG further argues that the KRG's PSCs violate Iraqi sovereignty and does not achieve the highest benefit for the people of Iraq as is stipulated by Article 112 of the Constitution. The IFG refers to the PSC's terms and clauses which are so favourable to IOCs to the extent that they violate the Constitution. The KRG has constantly rejected the IFG's arguments and has always confirmed that its PSCs are constitutional³⁵⁴. The KRG has always referred to the constitutional provision in rejecting the IFG's arguments and as evidence that its PSCs are constitutional.

The major constitutional dispute between the KRG and the IFG is over the KRG's right to manage oil and gas operations within the KRG's territory. The KRG has always claimed that its PSCs are consistent with Articles 111 and 112 of the Constitution. This has been disputed by the IFG, arguing that Article 111 does not vest oil and gas ownership in the KRG, and Article 112 does not grant the exclusive right to the KRG to manage the petroleum operations within its territories.

The following findings have been identified in this research:

6.1.2. Kurdistan Regional Government's insistence on the operational management of all oil and gas resources in the region

The research established that the KRG primarily relies on the following legal authorities in managing oil and gas operations, including concluding PSCs with IOCs:

1. Article 110, 111, 112, 114, 115 and 121 of the Constitution.
2. Oil and Gas Law of the Kurdistan Region- Iraq Law No. (22)-2007.

The legal opinion of Professor James Crawford over the KRG's authority over oil and gas under the Iraqi Constitution.³⁵⁵ These sources have been examined in the previous chapters.

6.1.3 The Constitutional dispute between KRG and IFG and the status of KRG's PSC

The Constitution is the supreme law in Iraq, including the Kurdistan region.

It is not disputed by the KRG and IFG that there must be no federal and

³⁵⁴ Interview with Dr Yusef Mohammed Sadiq available at Annex 2.

³⁵⁵ Professor James Crawford. *The authority of the Kurdistan Regional Government over oil and gas under the Constitution of Iraq*, 2008. The full text is available at <http://mnr.krg.org/index.php/en/publications/57-the-crawford-opinion>.

regional laws and legislation in contradiction of the Constitution. Article 13 of the Constitution provides that:

First: This Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception.

Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.

Article 13 makes clear that any regional and federal legal text that contradicts the Constitution is considered void. A distinction should be made between Article 13 and Articles 115 and 121, which grant priority to the regional laws and legislations in the event of contradiction with the federal laws and legislations. Article 13 concerns the contradiction between the regional and federal laws and legislation with the Constitution as the supreme law of the country, while Articles 115 and 121 concerns the contradiction between the regional and federal laws and legislations. The starting point of the oil and gas dispute between the KRG and the IFG are the constitutional provisions.

Article 110 of the Constitution provides all matters which are in the exclusive authority of the federal power. Oil and gas are not categorised as one of these matters. Article 114 provides all the matters in which the authority is shared between the federal and regional governments. Oil and gas are not among these matters. Article 115 provides that the regional government has exclusive authority over the matters outside Article 110 and 114 jurisdictions. The above three articles do not mention, directly or indirectly, oil and gas management. However, the Constitution deals with the matter of oil and gas in two separate articles, articles 111 and 112. Therefore, categorising oil and gas under articles 110, 114 and 115 as one of the federal and regional exclusive authorities is not correct. Article 111 vests the ownership of oil and gas in people of Iraq in all regions and governorates. The ownership of oil and gas in Iraq was thoroughly discussed in detail in chapter three. It seems that the legal dispute over the ownership of oil and gas emanates from the dispute over the management of oil and gas under Article 112. The KRG refers to Article 111 only when its right to manage oil and gas within its territories is denied under Article 112 by the

IFG. Therefore, Article 112 is most relevant constitutional provision to oil and gas dispute between the KRG and the IFG.

(a) Management of oil and gas under Article 112 of the Constitution

Article 112 provides:

"The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law.

Second: The federal government, with the producing regional and governorate governments, shall together formulate the necessary strategic policies to develop oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encouraging investment".

The Article clearly confirms the cooperation between the federal, regional and governorate government in managing oil and gas extracted from the "present fields", and there must be cooperation between these governments in formulating the necessary strategic policies to develop oil and gas wealth in a way achieves the highest benefit for the Iraqi people. The KRG does not dispute the cooperation with the IFG over the management of oil and gas, but only in respect of the "present fields" and providing that oil and gas revenues are distributed in all parts of Iraq in a fair manner. The issue here is the Constitution came into effect on the 15 April 2006. Article 112 only concerns those oil fields present on the 15 April 2006. Any other fields discovered and developed after the enforcement of the Constitution is not in the jurisdiction of Article 112. The KRG distinguishes between the "present fields" and the "future fields". The point the KRG makes regarding the "present fields" and "future fields" is valid. There is no constitutional provision or federal law regarding the management of oil

and gas from the "future fields". It is not clear why the Constitution does not make any reference, either in Article 112 or any other constitutional provision, to the future fields, considering that Iraq is a country where exploration and development of oil and gas are constantly in process. The same question could be asked in a different way, why Article 112 only refers to the "present fields", but not the "future fields". Another issue with Article 112 is the "management of oil and gas extracted from present fields". Management here only concerns the extracted oil and gas. Therefore, the management under Article 112 does not extend to the exploration and development of oil and gas. This is a crucial issue that makes the dispute more complicated, as the dispute over the management of oil and gas primarily emanates from Article 112.

Article 112 is about the management of the extracted oil and gas, while the dispute between the KRG and the IFG is about the management of oil and gas operations from the exploration point to selling it in the international market, including concluding PSCs with IOCs. The boundary of the dispute between the KRG and the IFG over oil and gas management is much wider than mere management of the extracted oil and gas from the present fields. The second part of Article 112 is about formulating necessary strategic policies to develop oil and gas wealth in a way that achieves the highest benefit for the Iraqi people.

The point here is that the disputing parties, legal scholars, academics, and all literature on this subject consider Article 112 as the core of the dispute, while it is not clear that Article 112 covers the whole dispute between the KRG and the IFG. What the KRG has done so far is conclude PSCs with IOCs and manage oil and gas operations within its territories unilaterally, without prior approval from, or cooperation with the IFG. Article 112 concerns only the cooperation between the KRG and IFG in managing oil and gas extracted from the present fields, and the cooperation between the IFG and the KRG over formulating necessary strategic policies to develop oil and gas wealth in a way that achieves the highest benefit for the Iraqi people. The first part covers only the management of oil and gas extracted from the present fields to 15 April 2006. It does not refer explicitly or impliedly to the KRG's right to conclude PSCs for the exploration of oil and gas, which is a phase prior to the extraction of oil and gas. Secondly, it only covers the fields within the KRG territories until 15 April 2006. Article 112 does not refer to the specific type of model contract to be used for oil and gas

operations and it does not say PSC cannot be used³⁵⁶. All PSCs concluded by the KRG to date are provided in Chapter four. The following PSCs would be covered by Article 112:

- **Taq Taq**
 - [PSA - Genel Enerji - 20/01/2004](#)
 - [Taq Taq: PSA Attachments - Genel Enerji - 2002](#)
 - [Taq Taq: PSA - Genel Enerji - 2002](#)
- **Tawke**
 - [PSA – DNO – 25/06/2004](#)
- **Shakal**
 - [PSA - PetOil Petroleum and Petroleum Products International Exploration and Production Inc - 10/01/2003](#)
- **Pulkhana**
 - [PSA - PetOil Petroleum and Petroleum Products International Exploration and Production Inc - 10/01/2003](#)
- **Erbil**
 - [PSA Annex A – DNO – 25/06/2004](#)
 - [PSA Annex C – DNO – 25/06/2004](#)
 - [PSA – DNO – 25/06/2004](#)

All other PSCs were concluded after the enforcement of the Constitution and therefore are not covered by Article 112. Article 112 is not precisely drafted, nor does it give a definite framework regarding the management of oil and gas in Iraq. There is not a clear line of Article 112's jurisdiction over the management of oil and gas. Therefore, Article 112 would not be a perfect legal means to assist the disputing parties to come up with a unified interpretation of how oil and gas should be managed. However, the Constitution provides only the general framework of how oil and gas should be managed. A federal and regional law is required to regulate the petroleum operations in greater detail. It seems that the Federal Oil and Gas Law of 2006 and subsequent amendments of 2007 and 2011 was prepared based on the necessity of such a federal law. However, passing a Federal Oil and Gas Law to regulate the management of oil and gas operations in Iraq and KRG would be extremely difficult in the absence of a clear

³⁵⁶ Interview with Dr Sherko Jawdat available at Annex 2.

and definite constitutional provision over the management of oil and gas. In addition to the legal challenges caused by the constitutional issues, political and security factors have always played a negative role in this dispute. Withholding the KRG's share of the federal budget since 2014, the Kurdish referendum for independence in 2017, and the subsequent military attack on Kirkuk has made the relationship between the IFG and the KRG worse ever and adversely impacted the oil and gas dispute. The legal, political, and economic difficulties the disputed parties have had during the last 15 years in reaching an agreement confirms that a comprehensive federal oil and gas law is required to regulate all petroleum operations across Iraq, including KRG. In the interim, the relevant constitutional provisions concerning the management of oil and gas should be amended to remove the legal defects in the Constitution. Moreover, corruption and lack of transparency in oil and gas operations is also a significant obstacle on the road toward an oil and gas settlement.³⁵⁷ There are major concerns regarding the transparency of the KRG's management over oil and gas operations and petroleum revenues.³⁵⁸ There is no clear data regarding the KRG's oil and gas revenue.³⁵⁹

Article 112 encourages both the IFG and the KRG to work together over the management of oil and gas extracted from the present fields, but the contrary has been practised. The draft Federal Oil and Gas Law of 2007 was an attempt to unify the management of oil and gas in Iraq. However, due to strong positions from the KRG and criticism from academics and relevant organisations, the law has not been ratified by the Iraqi Parliament up to the time of writing this thesis.

In summary, neither the KRG nor the IFG could rely on Article 112 as a legal authority for an exclusive right to manage oil and gas operations. The IFG cannot rely on Article 112 to deny the KRG's right to manage oil and gas from the "future fields" within its territories. Article 112 does not provide an adequate

³⁵⁷ U4 Expert Answer. Anti-Corruption Resource Centre. *Iraq: overview of corruption and anti-corruption*. 2013. <https://www.u4.no/publications/iraq-overview-of-corruption-and-anti-corruption.pdf>

³⁵⁸ Interview with Dr Yousif Mohammed Sadiq. Annex 2.

³⁵⁹ Cameron, Peter Duncanson; Stanley, Michael C. 2017. *Oil, gas, and mining: A sourcebook for understanding the extractive industries (English)*. Washington, D.C: World Bank Group. <http://documents.worldbank.org/curated/en/222451496911224999/Oil-gas-and-mining-a-sourcebook-for-understanding-the-extractive-industries>

legal framework for the management of oil and gas operations in Iraq. A national law or federal oil and gas law is required to regulate the management of oil and gas operations.

(b) Ownership of oil and gas under Article 111 of the Constitution

Article 111 vests oil and gas ownership in the people of Iraq in all regions and governorates. The KRG relies on Article 111 as a legal authority for its right to manage oil and gas operations within its territories as a representative of the Kurdish people in the Kurdistan region. Article 3 of the Oil and Gas Law of the Kurdistan Region 2007 states that Article 111 of the Constitution grants the KRG ownership of oil and gas within the KRG's territories. The ownership and its legal implication have been discussed in great detail in chapter two under the Iraqi Civil Code No 40 of 1951. The Iraqi Civil Code does not contain specific provisions over the ownership of oil and gas but has dealt with the scope of ownership in general, which applies to oil and gas ownership. The Civil Code does not limit the ownership right to the surface of the land, but it extends to what is above the land and what is beneath it, to the extent the landowner could fully enjoy the benefit of the land. Article 1049 of the Civil Code provides the scope of land ownership in three sections. Section (1) stated that "*The owner of a thing also owns everything which is deemed by usage to constitute an essential element thereof such as it cannot be separated therefrom without the thing owned perishing, deteriorating or changing*". This section deals with the ownership in general, the owner of the thing, whether the thing is movable or immovable and tangible or intangible. That essential element cannot be separated from that thing without perishing, deteriorating or changing. Under this section, the owner of land owns the dust, the stones, the plant and trees. The ownership right is not limited on the thing itself and the core elements that are part of its composition, but also extends to things which could be taken away from it and its accessories.

Section (2) of the same article states that "*The ownership of land includes that which is above and below as far as can be usefully enjoyed in height and in depth*". The ownership right of a landowner is not limited to the surface of the land, but it is extended to what is above it to the sky and under the land to the depth of the earth. The landowner owns the space above it and is entitled to

use the space above the land for planting, construction or laying of wires. The owner of the land also owns the layers beneath it. The landowner has a right to dig wells or extend pipes or extract stones and others. The landowner's right is protected by law and others are not allowed to use or benefit from the space above the land and the depth under the land without landowner's permission.

A further section of the same article states that "*The ownership of the surface of the land may by agreement be separated from that which is above it and that which is below it*". Section (3) permits that the ownership of the land could be separated from what is above or below it by agreement. It is permissible to agree to the possession of above the surface of the earth, the space above and the construction above the land could be owned by others as in the flat. The owner of the land can sell the underground to the other, the ownership of the underground could be separated from the ownership of the surface such as the tunnels and warehouses.

Article 1050 of the Civil Code states that "*No one can be deprived of his ownership except in the cases and in the manner provided for by law and in consideration of a fair compensation payable in advance*". This article prevents the owner from being deprived of his property except by law in exchange for a fair compensation paid in advance. It confirms that the property cannot be expropriated except in the cases and manner prescribed by law.

The issue with Article 111 of the Constitution is that it provides general ownership of oil and gas in Iraq. The article does not grant a clear mandate to the KRG to exercise its ownership rights over oil and gas operations within the KRG territories. therefore, the KRG's reliance on Article 111 as a legal basis, for its right to manage oil and gas operations within its territories, lacks clear legal authority. Article 3 of the KRG Oil and Gas Law refers to Article 111 of the Constitution as a legal basis for its right to manage oil and gas operations. Article 3 also refers to Article 112 as a constitutional authority by which the KRG should receive a fair share of oil and gas revenues and also to co-operate with the IFG in managing the extracted oil and gas from the present fields. The KRG's reliance on Article 111 of the Constitution as a legal basis of its right to manage oil and gas operation within the KRG's territories is based on its own interpretation of Article 111, supported by the legal opinion of Prof Crawford. The legal issue here

is that the KRG does not have constitutional authority to interpret the Constitution and the KRG's interpretation of Article 111 lacks legal authority.

(c) KRG's Oil and Gas Law (Law No. 22 of 2007)

Article 115 of the Constitution grants the KRG authority to enact laws and legislation over any matter which is not in the exclusive authority of the IFG. Although, Article 112 provides that oil and gas extracted from the present fields must be managed by the IFG and the KRG together. The co-operation between these two governments is limited over oil and gas extracted from the present fields. There is no federal oil and gas law superseding the KRG Oil and Gas Law of 2007. Therefore, the provisions of the KRG Oil and Gas Law 2007 are only subject to the Constitution. Under Article 13 of the Constitution, any regional or federal laws and legislation that contradict the Constitution are void. The KRG Oil and Gas Law seems to be consistent with the Constitution with the exception of Article 43 and 50. Articles 43 and 50 provide IOCs with significant legal protection in the case of a dispute between the KRG and IOC. If the dispute cannot be settled internally, it should be referred to arbitration outside Iraq. Secondly, the Minister of Natural Resources, on behalf of the KRG, may waive sovereign immunity in the legal proceedings and enforcement of judgements in petroleum contract.³⁶⁰ In the event of a dispute between the KRG and the IOC over the interpretation and application of any terms or clauses of the PSC, Article 50 provides that the parties should resolve the dispute through negotiation. If an agreement cannot be reached between the parties, the dispute should be referred to international arbitration³⁶¹. Article 43 grants the KRG Minister of Natural Resources significant power to waive sovereign immunity in relation to "legal proceedings and the enforcement of judgment" in petroleum contracts.³⁶²

³⁶⁰ Kelly, Michael J., "The Kurdish regional constitution within the framework of the Iraqi federal constitution: a struggle for sovereignty, oil, ethnic identity, and the prospects for a reverse supremacy clause" (May 15, 2010). *Penn State Law Review*, Vol. 114, No. 3, pp. 707-808, 2010. Available at SSRN: <https://ssrn.com/abstract=1608334>

³⁶¹ Interview with Dr Sherko Jawdat available at Annex 2.

³⁶² Article 43 states "*The Minister may, in a Petroleum Contract, waive on behalf of the Region any claim on to sovereign immunity with regard to legal proceedings and the enforcement of judgments.*"

Therefore, it the KRG Oil and Gas Law No. (22) -2007 grants excessive powers to the Minister of Natural Resources in regulating the PSC and its terms and clauses³⁶³ to the extent undermine the Iraqi sovereignty. Waiving sovereign immunity by the KRG's Minister of Natural Resources is not consistent with Article 109 of the Constitution.³⁶⁴ Sovereignty is reserved to the federal authority. Implementing Article 43 of the KRG Oil and Gas Law will constitute a clear breach of Article 109 of the Constitution.

(d) The Draft Federal Oil and Gas Law (2007)

The Federal Oil and Gas Law (2007) was an amended version of the Federal Oil and Gas Law (2006). The Federal Oil and Gas Law (2007) was originally prepared and drafted by a committee of three Iraqi oil and gas experts.³⁶⁵ The 2006 version was modified by the Federal Oil and Energy Committee of the Council of Ministers and was submitted to the Iraqi parliament for approval in February 2007. The 2007 draft could not get through Parliament due to the strong disagreement between Shai, Kurds and Sunni.³⁶⁶ The 2007 draft was, therefore, further amended in 2011 to cure the criticism from the oppositions. The 2011 amendments did not bring major changes to the 2007 draft. The Federal Oil and Gas Law seeks to provide a legal framework for oil and gas operations in Iraq, including KRG, and at the same time to provide a legal solution for the constitutional dispute between the IFG and the KRG over the management of oil and gas. The Draft Oil and Gas Law has been with the federal parliament since February 2007 but has not yet been enacted³⁶⁷ because it seeks to maximise federal control over oil and gas operations. The drafters primarily relied on legislation enacted by the former Iraqi regimes, with little regard to the relevant provisions of the current Constitution. This was confirmed

³⁶³ Rex J Zedalis, "Remedial actions against oil sourced from the Kurdistan Region of Iraq: issues of concern for companies claiming breach of a PSC", *The Journal of World Energy Law & Business*, Volume 10, Issue 6, December 2017, Pages 505-519, <https://doi.org/10.1093/jwelb/jwx029>

³⁶⁴ Article 109: "The federal authorities shall preserve the unity, integrity, independence, and sovereignty of Iraq and its federal democratic system".

³⁶⁵ The three Iraqi experts were Tariq Shafiq, Thamir Al-Ghadban and Farouk al-Qassem

³⁶⁶ Interview with Dr Bayazid Hassan. Annex 2.

³⁶⁷ Republic of Iraq, Oil and Energy Committee, Council of Ministers, *Draft Oil and Gas Law* (15 February 2007). I rely on an English translation provided by the KRG.

at the preamble of the 2006 version. The Draft Oil and Gas Law seeks to establish a Federal Oil and Gas Council (FOGC), with full legal authority to manage oil and gas operations in Iraq. All oil and gas operations, including the KRG's PSCs, are subject to FOGC's approval. The regional government has representatives in the FOGC. Under the Draft Federal Oil and Gas Law the Iraqi National Oil Company would be established to manage oil and gas operations from the so-called present fields. The Draft Oil and Gas Law allows the KRG to manage oil and gas operations only from fields located in Annex 3, including signing contracts subject to the FOGC approval. The Draft Oil and Gas Law divided the location of the oil fields in Iraq into Annex 1, Annex 2, Annex 3 and Annex 4. The fields within Annex 3 is about 05% of Iraqi oilfields. The Draft Oil and Gas Law does not make a distinction between oil and gas operations from present fields, under Article 112 of the Constitution, as opposed to the future fields. It is heavily in favour of the centralisation of oil and gas management with little involvement of the regional governorates. Management of oil operations of present fields and future fields is a major issue in the long-standing dispute between the KRG and IFG. The Draft Oil and Gas Law should have provided a substantial solution to oil and gas operations from future fields as the this is totally absent in the Constitution.

The Draft Federal Oil and Gas Law failed to fill up the gap caused by the inadequately drafted Constitution over oil and gas management within the KRG. Therefore, it did not change the direction of the ongoing dispute between these two governments over oil and gas management. The ultimate aim of the draft was to curb the regional government's authority over oil and gas management. The Draft Oil and Gas Law only granted the regional government the right to manage oil and gas operations regulated by the federal law for the "discovered but undeveloped Fields mentioned in Annex No. 3". The Draft Oil and Gas Law limited the KRG's right to manage oil and gas operations prior to the extraction phase. Formulating policies and carrying out major tasks are reserved to the FOGC. The KRG does not have a substantial role in managing oil and gas from present and future fields within the KRG. In addition, all the KRG's PSC concluded prior to the enforcement of the Draft Federal Oil and Gas Law must be reviewed by a panel of independent advisors. Article 40(A) of the Draft Federal Oil and Gas Law provides:

The Designated Authority in the Kurdistan Region will take responsibility to review all existing Exploration and Production contracts with any entity before this law enters into force to ensure harmony with the objectives and general provisions of this law to obtain maximum economic returns to the people of Iraq, taking into consideration the prevailing circumstances at the time at which those contracts were agreed, and in a period not exceeding three (3) months from the date of entry into force of this law. The Panel of Independent Advisors will take responsibility to assess the contracts referred to in this Article, and their opinion shall be binding in relation to these contracts.

The legality and constitutionality of the KRG's exiting PSC will be reviewed in accordance with the above article of the Draft Federal Oil and Gas Law. It seems that insufficient weight has been given to Articles 110, 111, 112, 114, and 115 of the Constitution in drafting the Federal Oil and Gas Law. There is no clear and direct constitutional provision to support the Draft Federal Oil and Gas Law's approach to manage oil and gas in Iraq and KRG. The Draft Oil and Gas Law could not provide an acceptable legal framework for oil and gas management consistent with the Constitution. The Draft Oil and Gas Law has not been ratified since 2007 and there is no indication that it will be with the current concerns from the Kurds and Sunni unless it is substantially amended. The Draft Federal Oil and Gas Law is subject to further development based on any future amendments to it and any future agreement between the disputed parties over oil and gas management.

(e) KRG's existing oil and gas contracts with the IOC's

The KRG has concluded over 50 PSCs with IOCs since 2002, most of which were concluded after the enforcement of the Constitution (only 11 were not). The legality of these contracts has been disputed by the IFG for their inconsistency with the Constitution. The KRG rejects the IFG's argument regarding the illegality of its PSCs and confirmed that all its PSCs are consistent with the Constitution.

The Draft Federal Oil and Gas Law seeks to review all the KRG existing contracts to assess consistency with the Constitution. Assessing the legality or consistency of the KRG's PSC with the Constitution would be extremely difficult in the absence of a clear agreement between the KRG and IFG over the interpretation of Article 111 and 112 of the Constitution over oil and gas management in Iraq. Careful consideration must be given to the KRG's existing oil and gas contracts in any potential future settlement between the KRG and IFG over oil and gas management. The KRG and IOCs have been extracting and exporting oil and gas from the KRG's area based on those contracts and will continue to do so for at least next two or three decades. Any alteration, amendments or annulment of the KRG's existing contract may cause IOCs financial loss. The potential issue here is how to deal with an existing PSC that is established to be unconstitutional, whether they will they be amended or nulled, who will be responsible for any potential claim by IOCs for any potential financial loss the IOC sustains as a result of any amendments to the terms of the KRG's PSC, or the annulment of the contract. It is unclear whether IOCs can seek remedies from the IFG for any financial loss they suffer if the KRG's PSC is found to be unconstitutional, given that those contracts were concluded by the KRG without any involvement and approval from the IFG and as the IFG has repeatedly denied the KRG's constitutional authority over the existing oil and gas contracts with IOCs. Therefore, thorough consideration must be given to any IOC's potential claim deriving from the amendments or annulment of the KRG's existing oil and gas contracts before any decision to review the KRG's existing contracts could be taken. Perhaps an advanced agreement between the KRG, IFG, and IOCs over the KRG's existing oil and gas contracts may mitigate the legal and economic consequences resulting from reviewing the KRG's existing contracts.

However, the future of the KRG's existing oil and gas contracts is a subject for further research and discussion based on the future development between the disputed parties. Following the KRG referendum for independence in September 2017 and the IFG's attack on Kirkuk in October 2017, the KRG and IFG are now working on normalising their relationship. The IFG has resumed sending the KRG its share of the federal budget, which has been withheld since 2014 as the dispute over oil and gas escalated.

(f) IOC's perspective on the oil and gas dispute

The position of both the KRG and IFG over the KRG's right to manage oil and gas operations and its PRG is clear. What is unknown and unclear is the stance of IOCs, the contracting parties to the KRG's PSC who practically manage oil and gas under the PSC. The existing literature is silent on this issue. There are serious legal issues over the management of oil and gas operations and uncertainty about the future of the KRG's right to manage oil and gas. However, there is no information or evidence that the IOC has any hesitation in participating in the KRG's PSC. Despite serious threats from the IFG to the IOCs to withdraw from, or not to engage in the KRG's oil and gas operations, IOCs are actively participating in the KRG's oil and gas business. This may explain the IOCs' position over the ongoing legal and constitutional dispute between the KRG and IFG on petroleum operations. However, IOCs have not officially expressed their position over the ongoing dispute between the KRG and IFG on the KRG's right to manage oil and gas operations. The researcher also found it difficult to obtain interviews with the IOCs operating in the country, however the view of the IOC's could be extracted from the following statement of one of the well-known oil and gas experts in Iraq.

Dr Ashti Hawrami, who has been a Minister of Natural Resources of KRG for the last 12 years and prior to that he worked as a consultant for oil and gas companies for many years, confirmed that IOCs would not risk their funds in investing in the KRG's oil and gas sector if they were not sure about the legality and constitutionality of the KRG's right in managing oil and gas operations and the KRG's PSC. In his interview with the Iraq Oil Forum in August 2010, he confirmed that IOCs understand the Constitution and the laws of the country.

The following is a quote from the interview:

“Q. Were you surprised that Baghdad signed up that many contracts at a time when you were describing them as failures?”

A. Well the story goes like this: Iraq spent two to three years talking about technical service (support) agreements which were actually consulting jobs. We wasted so much time talking about someone giving you advice on how you produce 100,000 b/d, and I kept saying major companies are not consulting firms. At the end of the day, they found out the hard way that the oil companies

were not interested. Then they went to the second tier of negotiations that miserably failed again. At the end, it was time for the end of government and parliament, and they panicked, so they rushed and signed a dozen contracts left and centre without any real checks and balances. I'm still happy they signed some contracts, don't get me wrong. It's still better that Iraq made some movement somehow. But actually, there is no legal cover to those contracts, because they neither go with the constitution which requires local authorities and others to be on board, nor did they go to parliament should you want to rely on the old law. That's a problem I have with those contracts. So, the contractors are smart people, they have legal counsel, they understand the constitution and they understand our laws. You can't fool them. They are not going to put their precious big money there and that's why they are now being called upon to hurry. They're not going to hurry up. You can take a horse to the water; you can't make it drink. The contracts have been signed, but the contractors are waiting for clarity: does my contract pay, does my contract stand the scrutiny of the next parliament, does it have legal cover? These are all hard questions and I'm quite certain after the formation of the government they will be asked. And we have to clarify them. I think the contractors deserve clarity in order to rush and spend their money. This is what I want".³⁶⁸

However, it is not clear on what basis Dr Hawrami provided the above statement.

6.2 Recommendations

The dispute between the IFG and the KRG over the management of oil and gas operations primarily emanates from Article 111 and 112 of the Constitution.³⁶⁹ Although the political background of the dispute is undeniable, the constitutional arguments and illegality of the KRG's management of oil and gas operations as claimed by the IFG dominated the relationship crises between Baghdad and Erbil. Therefore, any future settlement over the management of oil and gas will not be sustainable without a robust legal solution. Article 111 concerns the ownership of oil and gas in Iraq, while Article 112 regulates the management of oil and gas operations and distribution of oil and gas revenues among all regions and governorates in a fair manner. These two articles have been repeatedly referred to by both governments in their arguments as a constitutional authority

³⁶⁸ Interview with Dr Ashti Hawrami conducted by Ruba Husari in August 2010. The full text of the interview is available at <https://www.iraqoilforum.com/?p=1979>

³⁶⁹ Pinar Ipek (2017) "Oil and intra-state conflict in Iraq and Syria: sub-state actors and challenges for Turkey's energy security", *Middle Eastern Studies*, 53:3, 406-419, DOI. <https://www.tandfonline.com>

to support their position. It is now clear these two articles are drafted vaguely. They are not definite and subject to different interpretations. The political system in Iraq is different than before. Iraq is now a federal state, which is confirmed in the Constitution. The Constitution is clear on the matters in the IFG's exclusive authority and those in the KRG's exclusive authority and the matters shared between them. Ownership and management of oil and gas are not clear in the Constitution. Article 111 provides that oil and gas are owned by people of Iraq in all regions and governorates. The Iraqi people are now represented by the IFG and regional government. The article should have made it clear who represents the people of Iraq in terms of oil and gas ownership, as it is in respect of the matters are in the exclusive authority of the IFG. In relation to the management of oil and gas, the phrase or the wording order "extracted from present field" should not have been used in Article 112, or the article should refer to the "future fields" together with "present fields", and all oil and gas operations, including exploration and development. The co-operation between the IFG and the regional government over oil and gas management should not be limited or restricted to certain times, area and operations.

Therefore, substantial amendments are required to Articles 111 and 112. Amendments to these two articles are the starting point towards a comprehensive federal oil and gas law to regularise oil and gas management in Iraq and KRG. However, amending constitutional provisions is a complicated and difficult process. Article 126 of the constitution provides the amendment process. Section three of Article 126 stipulates that any amendments to the general issues of the constitution requires the approval of the two-thirds of members of the Council of Representatives, the amendment must also be approved by the people in a general referendum, and ratified by the President of the Republic within seven days.³⁷⁰

Under Section four of the same article, any amendments concerning the limitation of the regional powers over the matters that are not within the IFG's exclusive authorities are not allowed, except with the approval of the legislative

³⁷⁰ Article 126. *Third: Other articles not stipulated in clause "Second" of this Article may not be amended, except with the approval of two-thirds of the members of the Council of Representatives, the approval of the people in a general referendum, and the ratification by the President of the Republic within seven days.*

authority of the region concerned and by the majority of its citizens in a general referendum.³⁷¹ The process of the constitutional amendment is lengthy and complicated. Hence, without an advance and clear agreement between the disputed parties over the constitutional amendment, it will be impossible to amend Articles 111 and 112. Given that the Constitution is the supreme law in the country, Articles 111 and 112 are the most powerful constitutional provisions in the formation of energy policy and the management of natural resources in Iraq, including the KRG. As the amendment of the constitutional provisions is a difficult and complicated process, the disputed parties should also have alternative solutions to the constitutional amendment. In the event the dispute parties could not agree on amending Articles 111 and 112, the whole dispute should be referred to the Federal Constitutional Court for settlement, specifically the interpretation of Article 111 and 112 of the Constitution. A unified or definite interpretation of Articles 111 and 112 will assist the disputed parties to come up with a new Federal Oil and Gas Law, and a new KRG's Oil and Gas Law acceptable to both the federal and regional government consistent with the Constitution. The KRG may not need to enact a new oil and gas law. Instead, amending its Oil and Gas Law of 2007 to remove any inconsistencies with the Constitution will be sufficient.

Selecting the most appropriate solution for the current oil and gas dispute or choosing the preferred option should be left for the disputed parties to decide. This is because the dispute over the management of oil and gas is subject to further escalation developments depends on the stability of the security and political situation in Iraq. The disputed parties should choose the option which is most appropriate for the current situation of Iraq. Legal experts in this area of law should be consulted to ensure any future settlement over the management of oil and gas will be free of legal errors and legal challenges.

6.2.1 Amendment of the oil and gas law of the Kurdistan Region of Iraq

The Constitution is silent on the KRG's right to develop and manage future fields within its territories, and the current oil and gas legislation of the Kurdistan

³⁷¹ Article 126. *Fourth: Articles of the Constitution may not be amended if such amendment takes away from the powers of the regions that are not within the exclusive powers of the federal authorities, except by the approval of the legislative authority of the concerned region and the approval of the majority of its citizens in a general referendum.*

Region is not free of criticism in terms of inconsistency with the Constitution as claimed by the IFG. Amending the KRG Oil and Gas Law 2007 to remove the inconsistencies with the Constitution will effectively assist the disputed parties to minimise their difference regarding the constitutional dispute over oil and gas management.

The KRG's Oil and Gas Law of 2007 is considered inconsistent with the Constitution for the following reasons: (a) The KRG Oil and Gas Law 2007 grants the Minister of Natural Resources huge power, including negotiation and signing oil contracts on behalf of the KRG. Articles 6 to 9 of the KRG Oil and Gas Law provide full details of the authorities the Minister of Natural Resources enjoys in managing oil and gas operations. the power of the Minister of Natural Resource in managing oil and gas is excessive, they should be reduced and transferred to other institutions involved in oil and gas operations within the KRG. This would help the KRG to move towards the decentralisation of the KRG's energy policy and institutionalising the petroleum policy in the KRG. The decentralisation and institutionalisation of the oil and gas sector in the KRG is crucial and an effective method of reducing corruption in petroleum operations in the KRG. After the constitutional disagreement, corruption is the major barrier preventing the disputed parties from reaching a settlement. Therefore, any action reducing the level of corruption within oil and gas management will reduce the tension between the disputed parties and subsequently take the settlement process a step forward. In doing so, the KRG may benefit from the Norwegian model, in which the power to manage oil and gas have been split between a national oil company, the ministry, and a regulatory body.³⁷² It is accepted that there are other institutions in the KRG involved in oil and gas management and policy formulation, but the power exercised by the Ministry of Natural Resources under the current oil and gas law is excessive and can be exploited and abused for personal gains.³⁷³

(b) It is argued by the IFG that the KRG's PSC are so favourable to IOCs that they do not achieve "the highest benefit for the people of Iraq" as stipulated by

³⁷² Thurber, Mark C. & Hults, David R. & Heller, Patrick R.P., 2011. "Exporting the "Norwegian Model": The effect of administrative design on oil sector performance," *Energy Policy*, Elsevier, vol. 39(9), pp. 5366-5378, September.

³⁷³ Chraxan Rafiq, the ex-wife of the Ashti Hawrami the Minister of Natural Resources in Kurdistan.

the Constitution. New articles should be added to the KRG Oil and Gas Law 2007 to establish an independent commission comprising of oil and gas experts to review the KRG's existing contracts to ensure that "the highest benefit" is achieved. If reviewing the KRG's existing oil and gas contracts triggers potential claims by IOCs against the KRG and make the reviewing of the existing contracts impossible, then the independent commission should oversee any future contract to ensure oil and gas contracts "achieve the highest benefit for people of Iraq". This would positively impact on resolving the dispute.

(c) Article 43 of the KRG Oil and Gas Law 2007 grants the Minister of Natural Resources power to waive sovereign immunity in legal proceedings and the enforcement of judgments. Sovereignty is reserved for the IFG. Therefore, Article 43 should be removed so it does not contradict the constitutional provisions.

The above recommendations are effective factors to reduce the tension and disputed points between the KRG and the IFG over the constitutional inconsistencies and would assist them to resolve this long and complicated dispute.

6.2.2 Enactment of the Federal Oil and Gas Draft Law

co-operation between the IFG and KRG is a cornerstone for a strong petroleum policy and to manage oil and gas effectively to achieve "the highest benefit" for people of Iraq as stipulated by the Constitution. The dispute over oil and gas has continued for more than 15 years and contributed to corruption, lack of transparency in oil and gas contracts and revenues, and mismanagement of revenue. For a strong management system for oil and gas operations consistent with the Constitution, the dispute must be settled between the parties and a federal oil and gas law must be enacted. Iraq does not have legislation to manage oil and gas, which has created legal challenges for the IFG to effectively manage oil and gas. A federal oil and gas law will close the current gap in oil and gas law in Iraq. The disputed parties should agree on amending the current Draft Federal Oil and Gas Law or draft a new Federal Oil and Gas Law reflecting the current political, economic, and social developments in Iraq, while consideration must be given to the fact that the KRG has been running oil and

gas operations on its own for the last 20 years. Therefore, in any future settlement over oil and gas management or in any potential federal oil and gas law in Iraq, the KRG must actively participate in oil and gas management. This will persuade the KRG to co-operate with the IFG over oil and gas management.

6.3 Conclusion

6.3.1 Brief Overview

This research examined the **extent to which the Iraqi Federal Constitution grants exclusive rights to KRG to manage the oil and gas operations within KRG's territory. It examined both positions of KRG and the Federal Government over the oil and gas activities in the region. Clarity on this question is needed for both parties and also investors in this strategically important sector in the country.** This chapter provides the main conclusions this research has achieved. It starts with an overview of the historical background of the oil and gas dispute between the IFG and the KRG and how the dispute has developed, ending in a military confrontation between Baghdad and Erbil in 2017. The chapter then provides the examination of the constitutional issues that have dominated the legal arguments in this long-standing dispute between the Iraqi IFG and the KRG over the management of oil and gas. The thesis has examined a number of primary sources and first-hand legal documents to answer the research questions and achieving its objectives. The chapter further analyses the legal and non-legal barriers preventing the disputed parties from reaching an agreement over the management of oil and gas operations in Iraq. The chapter outlines the contribution the research makes to the literature in this area of law, particularly as the thesis touches some legal issues in this dispute which have not been covered by any previous studies. It finally provides the recommendations for the disputed parties to follow to resolve this complicated legal dispute. The chapter provides areas for further research.

6.3.2 Historical significance of the oil and gas dispute in Iraq

The chapter two highlighted the history of oil and gas operations in Iraq and how they have been managed from when oil was first discovered to the present day as an important part of this study, enabling the reader to understand the current conflict between the Kurds, represented by the KRG, and Arabs, represented by the IFG. It showed that oil has always played a crucial role in Iraq's economy and is the main source of the country's income. It demonstrated that since the establishment of Iraq in 1920, Kurds have struggled for self-determination or/and independence. They have always claimed that they have been stuck to Iraq by force. Before 1991, the city of Kirkuk was known as a city of oil and most of the Iraqi oil comes from Kirkuk. There has been a long-standing dispute between Kurds and Arab over the identity of Kirkuk. The Kurds have always claimed that Kirkuk is a Kurdish city and therefore it has to be part of the Kurdish territories, which has always been one of the primary demands by the Kurds in all negotiations regarding the Kurd's self-determination or independence and always rejected by Baghdad. Kirkuk has been the most complicated political issue between the Arab and Kurds throughout the ongoing ethnic conflict and remains unresolved. The primary reason for both Baghdad and Erbil not to compromise on Kirkuk is petroleum. Petroleum revenues makes up over 80% of the country's income.³⁷⁴ The country's reliance on oil and gas revenue may explain why it is so difficult for the disputed parties to reach an agreement on oil and gas management. During the peace negotiations in the 1960s, the Kurdish leader Mustafa Barzani demanded 33% of the Iraqi oil revenue for Kurdistan. This figure was based on the percentage of the Kurdish population at that time and that Kirkuk was a Kurdish city and its oil revenue should be returned to them.³⁷⁵ Article 140 of the Constitution provides that the dispute over Kirkuk and other disputed territories between KRG and the IFG

³⁷⁴ Trtworld, *Iraqi parliament approves 2018 budget of \$88 billion*. May 2018. The full text is available at <https://www.trtworld.com/mea/iraqi-parliament-approves-2018-budget-of-88-billion-15646>

³⁷⁵ Majid Khadduri. *Republican Iraq "A study in Iraqi politics since the revolution of 1958"*. Published by Oxford University Press, 1969.

should have been resolved through a referendum by 31 December 2007.³⁷⁶ The timeframe lapsed but the dispute over Kirkuk remains unresolved.

6.3.3 The Kurdistan Regional Government and oil and gas management between 1992 and 2003

Following the First Gulf War in 1991, the Kurds gained control over large areas in Iraq populated by Kurdish people for the first time. The KRG was established in 1992 as a semi-autonomous government. The KRG had no national or international recognition and there was no formal relationship between the KRG and the former Iraqi regime. Following the war in 1991, the UN imposed economic sanctions on Iraq, including Kurdistan. The KRG began searching for oil and gas within the territories under its control and developing the fields that were found but undeveloped before. In 1994, the KRG declared extracting oil from Taq Taq oil field.³⁷⁷ The extracted oil was for local use until 2003 and then exported to outside through the neighbouring countries of Iran and Turkey.³⁷⁸ This was the first time in the history of Iraq that Kurds began managing oil operations independently without any direct or indirect involvement of the central government. Further searches for oil were made and more oil fields were developed. Between 1994 and 2003, the extracted oil was exported to neighbouring countries by tankers. The KRG managed to persuade a few IOCs to get involved in the KRG's petroleum operations during that time. The KRG concluded the following oil and gas contracts:

(e) **Taq Taq**

- a. [PSA - Genel Enerji - 20/01/2004](#)
- b. [Taq Taq: PSA Attachments - Genel Enerji - 2002](#)
- c. [Taq Taq: PSA - Genel Enerji - 2002](#)

(f) **Tawke**

- a. [PSA – DNO – 25/06/2004](#)

³⁷⁶ Ofra Bengio. "Jerusalem of the Kurds: Kirkuk and the Kurdish strategy for independence". *Tel Aviv Notes*. Vol 11, No 11. 29 June 2017. The text is available at <https://dayan.org/content/jerusalem-kurds-kirkuk-and-kurdish-strategy-independence>

³⁷⁷ Robin Mills. "Under the mountains: Kurdish oil and regional politics". *The Oxford Institute for Energy Studies*. January 2016. The full text is available at <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2016/02/Kurdish-Oil-and-Regional-Politics-WPM-63.pdf>

³⁷⁸ *Ibid*

- (g) **Shakal**
 - a. [PSA - PetOil Petroleum and Petroleum Products International Exploration and Production Inc - 10/01/2003](#)
- (h) **Pulkhana**
 - a. [PSA - PetOil Petroleum and Petroleum Products International Exploration and Production Inc - 10/01/2003](#)

The former Iraqi regime was aware of the KRG's oil and gas activities, but issued no formal or informal objections, even against the neighbouring countries for purchasing the KRG's oil and gas. In 2004, following the formation of the new Iraqi government, the KRG was confronted by the newly formed Iraqi government that it did not have a right to manage oil and gas operations within its territories, oil and gas operations must be managed in co-operation with the central government. The KRG's PSC with Norway's company DNO on 25 June 2004 heated the tension between the IFG and the KRG over the management of oil and gas. The IFG publicly expressed its opposition to the KRG's right to manage oil and gas.³⁷⁹ Despite the opposition from the IFG the KRG continued managing oil and gas operations and it increased its efforts to persuade IOCs to invest in the KRG's oil and gas operations. The dispute and tension over the management of oil and gas between the KRG and IFG continued until the enforcement of the Constitution in 2006 when the dispute entered in a new phase of the so-called constitutional war, where constitutional provisions have dominated the dispute. Chapter two of this thesis provides a detailed history of oil and gas dispute between Baghdad and Erbil and how the disputed has developed over the last 15 years.

6.3.4 The dispute over the key constitutional articles over the management of oil and gas in Iraq

Following the enforcement of the Constitution, in 2006 the dispute between the KRG and IFG over the management of oil and gas triggered a constitutional battle. Chapters three and four of this research provide a critical examination of the constitutional arguments forwarded by both governments over the KRG's

³⁷⁹ David I. Phillips. *The Kurdish Spring: A new map of the Middle East*. 2017. The full text is available at <https://books.google.co.uk/books>

right to manage oil and gas operations and analysing the legality of the KRG's PSC under the constitutional provisions.

The constitution deals with oil and gas in two separate articles, Article 111 and 112. Article 111 of the Constitution deals with oil and gas ownership in Iraq. Article 112 deals with the management of oil and gas extracted from the "present fields" and with revenue distribution.

6.3.4.1. Ownership of oil and gas under the Constitution

Article 111 provides that: "*Oil and gas are owned by all the people of Iraq in all the regions and governorates.*" The issues with oil and gas ownership have been discussed in Chapter three in detail. Article 111 is unclear as to whether the IFG has the exclusive ownership right over oil and gas operations as a sole representative of the people of Iraq.

The KRG argues that under Article 111 of the Constitution the KRG as a representative of the Kurdish people, who are part of the Iraqi people, is entitled to exercise the ownership right over oil and gas within the KRG's territories. The IFG opposed the KRG's interpretation of Article 111. The KRG mainly relies on the Legal Opinion from Professor Crawford who argues that

First, there is the stipulation of Article 111, that "Oil and gas are owned by all the people of Iraq in all the regions and governorates". This must be read in the context of Article 112: the "ownership" of the people of Iraq is without prejudice to the "management" of oil and gas, either by the federal government "with" the relevant producing region in the case of oil and gas extracted from "present fields", or by the producing regional government in the case of oil and gas, pre- or post-extraction, from all other fields, including those currently (i.e., at the time of the entry into force of the Constitution) not producing.³⁸⁰

The opinion of professor Crawford lacks legal authority and therefore, it is not binding on the disputed parties. It is his own interpretation of Article 111 of the Constitution, providing that the Iraqi Federal Court of Constitution is the only

³⁸⁰ Professor James Crawford. *The authority of the Kurdistan Regional Government over oil and gas under the Constitution of Iraq*, 2008. The full text is available at <http://mnr.krg.org/index.php/en/publications/57-the-crawford-opinion>.

competent authority to interpret the Constitution.³⁸¹ Article 111 is vaguely drafted and accordingly it would be difficult for the disputed parties to rely on this article as a confirmation of ownership rights over oil and gas. This is for two reasons, first there is no formal interpretation of this article from the Federal Constitutional Court and secondly, there is no constitutional provision on who could act on behalf of people of Iraq in managing oil and gas operations. Practically, the IFG has been exercising ownership rights over oil and gas since the 1920s, with an exception to oil and gas within the KRG for the period from 1992 until the present. The KRG have been exercising ownership rights over oil and gas within its territories since 1992.

The concept of ownership under the Iraqi Civil Code No.41 of 1951 and in Sharia Law is provided in Chapter three of this thesis. Sharia Law is a foundation source of legislation and no law may be enacted contradicts the establishment of provision of Islam. Article 2. First (A) provides *"Islam is the official religion of the State and is a foundation source of legislation: A. No law may be enacted that contradicts the established provisions of Islam."*

Therefore, the concept of natural resource ownership in Sharia Law is relevant in examining the constitutional dispute between the IFG and KRG over oil and gas ownership. However, Article 112 of the Constitution provides that the IFG in co-operation with the regional government and producing governments manage oil and gas operations. Article 112 provides how oil and gas operations should be managed. This will explain how the ownership rights over oil and gas could be exercised. Therefore, Article 111 and 112 are strongly connected to each other on the management of oil and gas operations in Iraq. Nevertheless, like Article 111, Article 112 is not free of legal issues.

6.3.4.2. Management of oil and gas under Article 112 of the Constitution

Article 112 and its implications on oil and gas management has been critically examined in great details in Chapters four and five. The concept of the management of oil and gas under Article 112 is vague and confusing. Article

³⁸¹ Article 93: The Federal Supreme Court shall have jurisdiction over the following:
Second: Interpreting the provisions of the Constitution.

112 refers to the extracted oil and gas from the present fields. It does not cover oil and gas operations at the exploration and development phase, and it does not refer to oil and gas operations from the future fields, the fields which have been discovered and/or developed after the enforcement of the Constitution in 2006. There are three primary issues with Article 112. First, the present fields mean the fields in operation at the date of the constitution came into force. Second, it only covers the extracted oil and gas. Third, the management of the extracted oil and gas from the present fields must be in co-operation with the regional government and the producing governorates. The point needs to be noted here that the dispute between the IFG and the KRG over the management of oil and gas is only over the management of oil and gas operations within the KRG's territories.

In addition to the management of oil and gas operations, the IFG argues that the KRG's PSCs are not consistent with the Constitution. The IFG's concerns about the terms of PSC which are so generous to IOCs that it does not meet the requirement of "to achieve the highest benefit for the people of Iraq" as is stipulated by Article 112, and under PSC the IOC acquires ownership of oil and gas. The Constitution does not allow foreign ownership of oil and gas. Article 111 provides that oil and gas are owned by the people of Iraq. The previous Iraqi constitution clearly prohibited the foreign ownership of oil and gas. Following the invasion of Iraq, the Order 39 of the Coalition Provision Authority (CPA) provided a friendly investment to the foreign company,³⁸² but did not allow the foreign ownership in petroleum, banking and insurance. The 2006 Investment Law of Iraq provides the same treatment to the foreign companies that the national companies enjoy, excluding petroleum.³⁸³

Investing in petroleum operations within the KRG's territories requires huge capital, technology, and technical expertise, moreover, exploration and development of oil and gas from the area within the KRG is considerably new compared to those within the IFG's territories. There was no accurate data about oil and gas reserves within the KRG. Therefore, IOCs would not invest in the

³⁸² The full text of the CPA is available at http://www.cpa-iraq.org/regulations/20031220_CPAORD_39_Foreign_Investment_.pdf

³⁸³ International Trade Administration. *Legal Guide to Investing in Iraq*. Prepared by the Office of the Chief Counsel for International Commerce, U.S. Department of Commerce. 2008. It was last updated on 25 August 2015.

KRG oil and gas if the terms of its PSC were not generous. IOCs must gain some benefits in return for the risk they take in investing in the KRG's oil and gas, especially the risk of losing their contracts with the IFG. The IFG threatened IOCs with losing their contracts with the IFG if they did not abandon their contracts with the KRG.³⁸⁴

The dispute between the IFG and the KRG over the KRG's right to manage oil and gas within its territories and model contract has been going on for about 15 years. Despite many meetings, negotiations, or even the military confrontation, the dispute has not been resolved. The Federal Oil and Gas Law has been drafted and sent to Iraqi parliament for ratification. The purpose of the Federal Oil and Gas Law was for one law to regulate the management of oil and gas across Iraq. The Draft Federal Oil and Gas Law has been criticised by Kurds, Sunni, Academics and others over the power the Law grants to the IFG in managing oil and gas. The Draft Federal Oil and Gas Law grants great power to the IFG while the power of the regional authorities is limited. Under the Draft Federal Oil and Gas Law, all oil and gas contracts concluded by the federal authority and the KRG must be approved by the Federal Oil and Gas Council within 30 days from the date the contract was initially signed. In Chapter four and five the concerns and criticism over the Draft Federal Oil and Gas Law were evaluated against the principle of decentralisation, which is guaranteed by the Constitution.

The Draft Federal Oil and Gas Law was first prepared in 2006. It was modified by Maliki's government before sending it to parliament for ratification in February 2007. It faced strong criticism by the Kurds and Sunni, which forced the IFG to make further amendments in 2011. The amendments made to the Draft Federal Oil and Gas Law in 2011 did not bring substantial changes to the previous draft, therefore, the disagreement between the disputed parties over the Draft Federal Oil and Gas Law continues. The IFG does not have a new oil and gas law. Oil and gas operations are still managed under the former Iraqi government's petroleum regime.

³⁸⁴ ExxonMobil blows Iraqi oil politics apart. PETROLEUM ECONOMIST.
<https://www.petroleum-economist.com/articles/politics-economics/middle-east/2011/exxonmobil-blows-iraqi-oil-politics-apart>

6.3.4.3 Significance of the results of the dispute

The legal dispute between the IFG and the KRG over the management of oil and gas and the legality of the KRG's PSC is politically motivated. The political conflict between the Kurds and the IFG over a century made the current legal dispute difficult to resolve. The IFG must understand the structure of new Iraq is different from Iraq before 2003. The legal system in Iraq must be a reflection of the politically developed system. The IFG must work towards the decentralisation of power, including the power to manage oil and gas operations. However, the decentralisation of oil and gas management must not undermine the sovereignty of Iraq nor promote corruption in oil and gas operations. Decentralisation must not be exploited for personal gains.

6.3.5 Contribution to literature

As far as the author is aware, this study is the first PhD regarding the legal dispute between the IFG and the KRG over the management of oil and gas and the legality of the KRG's PSC. This study has filled the gaps left by previous literature in this area of law. The legal issues in this dispute are relatively new. Therefore, there was little knowledge and expertise in this area of law when the dispute started. The disputed parties mostly relied on foreign expertise as a legal authority to support their interpretation of the relevant provisions of the Constitution. This study will benefit the disputed parties in understanding the legality of the dispute and the possible resolution over the management of oil and gas and the future of the KRG's PSC. The study made the following contribution to the relevant areas of the literature.

6.3.5.1 Historical background of Iraq's oil and gas regime

This study is the first research to provide a detailed historical background of the petroleum regime in Iraq. The knowledge of the history of petroleum regimes in Iraq is crucial to understand the legal aspect of the current dispute between the IFG and the KRG. The current textbooks by Rex J. Zedalis, *The Legal Dimensions of Oil and Gas in Iraq 2009*, *Claims against Iraqi Oil and Gas Legal Considerations and Lessons Learned 2010*, *Oil and Gas in the Disputed Kurdish Territories 2012*, and the other works referred to in this study have not covered the history of oil and gas operation to the extent that this study has. Chapter three of this study provides how oil and gas agreements were first made in Iraq,

and then how oil and gas contracts and oil and gas regimes developed between the 1920s and now. Analysing the terms and clauses of oil and gas contracts in Iraq shows that the terms and clause of the contracts reflected the political, economic, and legal situation of that period. This explains the effect of the current political, economic, and legal situation of the KRG in shaping the KRG's oil and gas policy and why its PSCs are so generous to IOCs.

6.3.5.2 The constitutional issues of the oil and gas dispute

The study provides a thorough examination of the relevant constitutional provisions concerning oil and gas operations in Iraq, particularly the implementation of Articles 111 and 112 on oil and gas management from different dimensions. For the first time, this study considered the position of the Iraqi Civil Code No. 40 of 1951 and the stance of Sharia Law in analysing the concept of oil and gas ownership in Iraq as is referred to by Article 111. Previous literature limited the examination of these two articles to the disputed parties' interpretation or their own understanding of these two articles. This study is the only literature that provides that the Federal Constitutional Court is the only authority to interpret the constitution and its decision is binding. Any other interpretation of the constitutional provisions is not binding and lacks legal authority. This study further provides that the Constitution provides only general guidelines on oil and gas management, therefore, further federal legislation is required to regulate oil and gas operations in line with the Constitution.

6.3.5.3 Contribution to the disputed parties

Chapter five of the thesis provides findings and recommendations to benefit the disputed parties by providing them with different dimensions from which to view the dispute and to have a neutral understanding of the legal issues associated with the dispute over the management of oil and gas operations. The disputed parties must accept that the constitutional provisions, i.e. Articles 111 and 112, are drafted vaguely. The ambiguity over the ownership and the management of oil and gas has made the legal issues in this dispute more complicated. Articles 111 and 112 are the most controversial issues in this dispute. It is recommended in Chapter five that the disputed parties must agree on a definitive interpretation of Articles 111 and 112. Alternatively, these two articles either must be amended to remove the ambiguity over oil and gas ownership and management, or the matter should be referred to the Federal Constitution Court for a legally

binding interpretation of these two articles. The Federal Constitutional Court's interpretation of these two articles should be the starting point for any future agreement between the parties or for the potential Federal Oil and Gas Law. As the KRG has concluded more than 50 PSCs and these contracts have managed oil and gas for over 15 years and will continue for the next few decades, it is recommended that any attempt to void these contracts or amend them for reasons of inconsistency with the Constitution must be considered carefully against the potential claims from IOCs against the KRG or IFG for financial remedies. Unless the KRG's PSC contradict serious constitutional provisions such as state sovereignty, amending the KRG's PSC for not achieving "the highest benefit for people of Iraq" may trigger potential claims from IOCs for compensation. Accordingly, the gain and loss must be considered properly in advance.

6.3.6 Areas for further research

There are many areas which this study cannot cover, especially new legal, regional and constitutional developments which may occur in the future. There may be new developments in the IFG and the KRG's relationship which will impact the direction of the current dispute over oil and gas management. Future legal and constitutional developments are subjects for further research. The possible future developments in the oil and gas dispute would be the role of the Federal Constitutional Court in this dispute. It is possible for the disputed parties to engage with the court in seeking a formal interpretation of the relevant articles of the Constitution, or the full determination over the management of oil and gas operations. Another development is possible amendments to the Draft Federal Oil and Gas Law in order to have it passed by the Iraqi parliament. These possible developments will require proper investigation to identify their implication on the management of oil and gas operations in Iraq.

The recent attack on the city of Kirkuk and most disputed areas in October 2017 caused the dispute over oil and gas management to enter a new era. There have been recent meetings and negotiations between the KRG and the IFG in respect of oil and gas management. It is not clear how long the new negotiations will take and what the possible outcome would be. It would be difficult to expect the terms of any future settlement between the KRG and IFG over the long-standing

dispute and its impact on normalising their relationship, given that negotiations have been going on for the last 15 years between these two governments without any substantial progress. Therefore, further research is required regarding the possible outcome of the new round of negotiations and their impact on the oil and gas regime in Iraq as a whole, and the KRG's PSC in particular.

6.3.7 Final Conclusion

Chapter Two demonstrated the legal frameworks for oil and gas operations throughout its history in Iraq. This is specifically from the 1920s, when oil was first discovered, until 1972 when oil was fully nationalised by the Iraq government. During that time petroleum operations were regulated under the concession agreements. The terms of those concession agreements were more favourable to the IOCs than those under the KRG's PSC. Under the concession agreement petroleum operations were fully controlled by the IOCs. The Iraqi government did not have any management control over the petroleum operations during the first three decades of oil production. In 1950s the Iraqi government demanded an amendment to the concession agreement terms through which Iraq could have more management control over oil operations and to gain more profit from oil revenue. The Iraqi government's request for re-negotiation of the concession agreements was due to pressures from the nationalist groups in Iraq at that time, otherwise, the Iraqi government was relaxed about the fact the IOCs were in full control of the management of petroleum operations in Iraq. The current management powers the IOC's exercise in managing the oil and gas operations under the KRG's PSC, are far less than those the IOCs exercised under the concession agreements. The question here is why the Iraqi government was so relaxed about the IOC's management of petroleum under the concession agreements but is now so concerned about the KRG's management of oil and gas operations under the current Federal Constitution. This is while KRG is formally recognised by the

Federal Constitution of 2005 as a regional government, and the KRG only manages the oil and gas operations within its territories.

The interpretation of Article 112 of the Constitution, specifically the phrase “present fields” has been translated by the KRG and other experts and academics to mean the fields that were discovered and were in operation at the date of enforcement of the new Iraqi Constitution. This is literally correct, but the Federal Constitutional Court may have a different view of the ‘present fields’, as it had regarding the interpretation of Article 140 of the Constitution. Article 140 concerns the disputed territories between the IFG and the KRG. The second part of Article 140 provides that *“The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this Constitution, provided that it accomplishes completely (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007”*. Under this article the disputed territories should have been resolved through a referendum by 31 December 2007. There have been arguments among the Iraqi political parties especially between the Kurds and Arabs, regarding the validity of Article 140 over the status of the disputed territories between the KRG and IFG since it passed its implementation deadline of 31 December 2007. The Iraqi Parliament made a request to the Iraqi Federal Supreme Court to interpret Article 140 of the Constitution and whether it is still valid. In July 2019, the Federal Supreme Court ruled that the Article should remain in effect until the implementation of its provision³⁸⁵, despite the implementation deadline of the Article expired, but its validity remains in effect. “The Court affirmed that the date specified in the implementation of Article 140 does not affect its essence.”³⁸⁶ Therefore, it is possible the Federal Supreme Court may have a different interpretation of the terms “present field” from those of the disputed parties.

³⁸⁵ Sangar Ali. Iraq’s Supreme Federal Court: Article 140 on disputed areas “remains in effect”. Kurdistan 24. 2019. the news is available at <https://www.kurdistan24.net/en/news/226048ed-a0b6-4374-8001-62358c319f52>

³⁸⁶ <https://ekurd.net/article-140-disputed-areas-2019-07-30>

Giving the unpleasant and inhuman treatment of the former Ba'athist regime towards Iraqi people, especially, Kurds and Shai, it would be very difficult for the Kurds to accept transferring oil and gas authorities to the IFG. The new Constitution is carefully drafted to ensure the decentralisation of power in Iraq. The power must be shared between central government, regional government and all governorates, especially the economic powers, to prevent the creation of another dictatorship in Iraq. That was agreed between all political parties from the Kurds, Shia and Sunni during the process of drafting the Constitution of 2005 with effective presence of the Coalition force, especially the USA played effective roles in that regards³⁸⁷.

³⁸⁷ Michael F. Fitzsimmons. Centralization or Decentralization in Iraq? In Search of the Elusive Sweet Spot. INSTITUTE FOR DEFENSE ANALYSES. December 2008. Full text is available at <https://www.ida.org/-/media/feature/publications/c/ce/centralization-or-decentralization-in-iraq-in-search-of-the-elusive-sweet-spot/d-3702.ashx>

Questions for the individuals in the IFG

Key Questions

- Do you think the KRG's PSC is legal in accordance with the Iraqi constitution?
- What is the legal basis for the central government's arguments in respect of the KRG's right to manage oil and gas within its territories?
- What is the core of this dispute between the central government and the KRG over oil and gas contracts?
- Since this dispute over oil and gas is a legal one, why has this legal matter not been referred to a competent Iraqi court, the Federal Constitutional Court?
- Who has the right to receive the oil revenue and re-distribute it between the Iraqi people in accordance with the law?

Follow-up questions

- What is the current position of the Iraqi government towards the KRG's PSCs signed with the International Oil Companies?
- What is the legal framework the KRG should adhere to in dealing with oil and gas activities, including signing contracts with IOCs, within its territories in accordance with the federal constitution?
- You may be aware that the draft of the Hydrocarbon Law was completed in 2007, which has been adopted as a solution to the dispute between the KRG and the Iraqi government over oil and gas issues. The Hydrocarbon Law has not been enacted since then. Do you know why this law has not been enacted during the last nine years?
- Does the current political situation in Iraq have any impact on the way this matter has been dealt with by the central government, if so how?

- Does the Iraqi government have any plan to bring this matter to the end?

Bonus questions

- As you know, the KRG has signed over 50 PSCs with IOCs and this has been going on during the last decade. In the event the Iraqi government and the KRG have reached an agreement on this matter what will happen to those contracts, in terms of their legalities?
- Can the terms and clauses of the KRG's PSC be amended or modified to make them compatible with the Iraqi constitution?
- As far as you know, what is the IOC's legal basis to sign PSCs with the KRG? Is it due to the favourable clauses in the PSCs or is there legal basis?

Questions for the individuals in the Kurdistan Regional Government

- Do you think the KRG's PSCs are legal, or constitutional?
- If you believe they are constitutional, can you explain how and what are the relevant law and regulation to support this?
- Why the Iraqi government states the KRG PSCs with IOCs are not constitutional? What are their legal arguments?
- What law or regulation regulates or governs oil and gas activities, contracts, selling and exporting, in the KRG?
- Does the current KRG oil and gas law consistent, or compatible with the relevant Articles of the Iraqi constitution, (i.e. Article 111, 112, 115)?

Follow up questions

- What is the relationship between the KRG and the Iraqi government?
- What law regulates the relationship between the KRG and the Iraqi government?

- What are the devolved powers to the KRG in accordance with the federal constitution?
- How did the KRG come to the decision to carry out oil and gas business on its own without approval from the central government?
- The KRG has signed nearly 50 PSCs with IOCs, what is the legal basis for these contracts in accordance with the Iraqi and KRG law?
- Why there are two different interpretations for the same articles of the federal constitution, the articles concerning oil and gas?
- Who has the right to interpret the law and constitution in Iraq? Does the KRG have the right to interpret the Iraqi constitution?

Bonus questions

- If you believe that the KRG has acted in accordance with the Iraqi constitution in dealing with oil and gas within its territories, what is/are the legal authorities for this?
- The dispute between the KRG and the Iraqi government has been going on for a decade and no settlement has been reached on this matter. Why this dispute has not been referred to an Iraqi court, who has jurisdiction in this matter, or an international court?
- What are the law and regulations regulating oil and gas revenue?
- We understand that it has been for a decade that the KRG has been exporting the oil and recently gas to the international markets. What has happened to oil and gas revenue? Does the KRG return oil and gas revenue to the central government? If not, why not?
- What is your suggestion to resolve the current dispute between the KRG and Iraqi government over the KRG PSCs?

Questions for the individuals in political parties

- Are you familiar with the controversial dispute between the KRG and Iraqi government over the legality of the KRG's PSCs with IOCs?

- Do you think this is a legal problem, or it is a political problem, but the legal issue is presented as a tool of this fight between the parties?
- What is the core of the problem?
- What deters the parties for not referring this matter to a legally competent authority, i.e. Iraqi national court or international court, for settlement?
- Do you think the KRG PSCs are constitutional? If yes how, if not, why not?
- Do you think the KRG's interpretation of Article 112 is right, or the Iraqi government's interpretation is right? Or none of them?

Questions for academics

- Do you think the PSC is compatible with the current, or previous Iraqi oil and gas law, or current/ former Iraqi constitution?
- Has ever this type of oil and gas contract provided to IOCs in Iraq, prior to those of the KRG?
- Are the clauses of the KRG's PSCs compatible with the Iraqi constitution, the KRG's constitution, the Iraqi oil and gas law, the KRG oil and gas law, the Iraqi Investment Law and the KRG Investment Law?
- Do you think the KRG PSCs are constitutional? If yes how, if not, why not?
- What are the legal authorities in support of your answer?

Follow up questions

- Is there any academic research so far on this topic?
- Was there any national or international conference on the legal dispute between the KRG and Iraqi government over the KRG PSCs with IOCs?

- You may note that there is not much national, or even international literature on this topic? Why do you think that is?
- What has been noticed during the last decade in respect of this dispute is the lack of the national and international courts' involvement in this matter. Why do you think the parties do not want to refer this matter to the courts for settlement?
- Is there a similar dispute anywhere else in the world? If there is any, what are the similarities with the situation in Iraq

Annex 2 Interviews

Interview with Dr. Bayazid. who had been a member of oil and gas Committee of the Iraqi Parliament for two terms, from 2006 to 2014.

The interview was recorded with Dr Bayazid's consent.

There are different types of questions and some of the questions are for the individual from the Federal Authorities. Because you are from the Iraqi Parliament, I will ask the questions for the Federal Government.

Questions. Do you think the KRG's PSCs are legal under the Iraqi Constitution?

Answer: Because Iraq does not have an Oil and Gas Law. The Iraqi people voted for the Constitution in 2005. The separation of powers is confirmed in the Constitution. The Parliament, Executive and Judiciary are separated. The Iraqi Constitution recognised the Kurdistan Region and its authorities. Therefore, the authority for managing Oil and Gas must be separated.

The first part of Article 112 of the Constitution provides that the federal government, with the producing governorates and regional governments should manage oil and gas from the current fields. provided that its revenue is distributed in a fair manner and a specified portion the revenue should be for the regions damaged by the former regime.

So, do you think the KRG's contracts are legal.?

I think it is Article 130 of the Constitution provides that all existing laws should be remain in force unless they are annulled or amended in accordance with the Constitution. I think it is Article 117 of the Constitution recognises the KRG as a federal region. I also think that Article 141 of the Constitution states that all the legislations enacted by the KRG and contracts signed from 1992 until 2005, are valid. Therefore, the KRG's PSC are legal under the KRG's Oil and Gas Law.

Question 2: What is the legal basis for the IFG claims that the KRG's Oil and Gas contracts are illegal.

Answer: Not legality, because there is not Oil and Gas Law in Iraq. Iraq has constitution and Article 112 of the Constitution provides that the IFG, with the producing governorates and regional governments should manage oil and gas from the current fields. The authority to manage oil and gas must be shared between the IFG and the KRG. Accordingly, the IFG has some authority and the KRG should be given some authority to manage oil and gas.

Question 3: What is the centre of the dispute between the IFG and the KRG over the KRG Oil and Gas Contracts?

Answer: There are two model oil and gas contracts in Iraq. The type of the model contract will differ based on the place for searching oil, if it is easy and cheap to find oil or not, if the host country has enough funds and technical expertise to develop oilfields. Iraq so far help four rounds of bidding. the first round was for the developed oilfields were producing oil, the second round was for the developed oilfields and were about producing oil, the third rounds was for the fields for Gas, the field of Sibay near Basra, Majnoon field near Dyallah and Ukaz field near Rumdia, and the fourth round was for 12 Blocks only 4 of them were contracted out. these contracts were heavy contracts. The IFG uses Service Contract because extracting oil from the Federal oilfields are easy and cheap, while the KRG uses the PSC. the essence of the Service Contract is the host country pays fixed rate pbr to the IOC. The IOC gets \$1.39 pbr for extracting oil from Majnoon oilfield and \$1.93 pdr from Rumila oilfield and in addition to that the IOC will recover the expenditure for developing the oilfield from the oil revenue. While the under the KRG oil contract the IOC will spend all cost for searching oil and if the oil was not discovered the IOC will not recover the funds spent for searching oil, but if the oil was found then the IOC will recover the cost for searching oil from the produced oil.

There are 189 financial system for oil contracts. I have a book which in English confirms that there are 189 financial systems for oil contracts. In the Kurdistan 10% of the oil revenue goes for Royalty payment. the remainder is 90%. 40% of the that 90% will go to the IOC to repay the cost of the oil, the money the IOC spent for searching and developing oil. The rest of the revenue will be divided between the IOC and the KRG on the basis of the R factor. 30% for the IOC and 70% for the KRG if the R factor is 0-1. 15% for the IOC and the 85%

for the KRG if the R factor is 2. the R factor is the oil revenue divides the expenditure. In addition to that the KRG will get the profit for the its 25% in the produced oil. The KRG have 25% with the IOC.

Question 4: The dispute between the IFG and the KRG is a legal dispute (Dr. Bayazid it is a constitutional dispute) Why this dispute so far has not been referred to a competent court when settlement has not been reached by the disputing parties.

Answer: There is a Federal Constitutional Court which was established at the time of the Bremer.³⁸⁸ Following the Establishment of the Iraqi Parliament, the Federal Constitution Court should have been rearranged. The draft law for re-arranging was prepared and first reading for that law was done in Parliament, the barrier for processing this law was the members staff of this court. There is a suggestion that the court should consist of 7 Judges, one Sharia expert and one legal expert. There is another suggestion that there should be 9 Judges, 2 Sharia experts and 2 legal experts. The Shia wants to have a voice in the Court and the Kurds as well wants to be protected, because they are minorities so they want to have a like veto vote to be able to block any potential law which would put Kurdish interest at risk. The Court established at the time of Bremer and it is under the influence of a specific side in Iraq.

(Brzooom: that means the Kurds think the Court is not independent).

Dr Bayazid: Yes, Kurds do not think the Court is independent. The problem is there is no trust between the Iraqis. Kurds do not trust others, Shia and Sunni, and they also do not trust Kurds. There is an Iraqi politician says the Shia is afraid of the past because they were deprived of everything in the past and they do not want that to be repeated, Sunnis afraid of the future because the rules Iraq from 1920 until 2003 and they do not know what will happen to them in the future, but Kurds afraid of both, the past and the future, because they did

³⁸⁸ Lewis **Paul Bremer** (born September 30, 1941) is an American diplomat. He is best known for leading the Coalition Provisional Authority (CPA) following the 2003 invasion of Iraq by the United States, from May 2003 until June 2004

not have anything in the past and they afraid if they be deprived of the things they have now.

Question 5: Who has the right to receive oil and gas revenue in accordance of the law?

Answer: Not law, the Iraqi Constitution states that oil and gas revenues from regions and governates should go to the Central government and from there it should be redistributed in a fair manner.

دا

Question 6: What is the current Iraqi government's stance towards the KRG's oil and gas contracts with the IOC.

Answer: During the first terms of the Iraqi Parliament when Shahrstani was the Minister of Oil, he was always against the KRG Oil and Gas contract and did not recognise them. However, during the second terms from 2010 to 2014, the IFG demanded the KRG to return oil and gas revenues to the IFG in Baghdad. That means impliedly recognised the KRG's contracts

Brzoom: but there is not any officially documents or decision from the IFG confirming that it recognises the KRG's contracts.

Dr. Bayazid: There is nothing to confirm that, there are verbal agreement in 2010 and in 2015. they agreed on that that the KRG's oil and gas revenue must be returned to the IFG in Baghdad. That was an implied recognition of the KRG's Oil and Gas contracts, but the problem was the IFG wanted all KRG oil and gas revenues to be returned to the Central government, but it did not pay the IOC's funds. The IOC payments paid from the Federal Budget, but the IFG said the KRG must pay the IOC's payments from the its share of 17%.

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Questions 7: Is There a Federal Oil and Gas Law.

Answer: No, there are three Federal Oil and Gas Law. The First was is called the Law of February 2007 which was agreed by the KRG and IFG and was sent to the Council of Ministers for review. The Council instead of reviewing the law, it made substantial changes by which more power was given to the IFG. Because

of the amendments the KRG does not accept amended Law. the second one was the Kurds and Sunni agreed on new draft of the Federal Oil and Gas Law. Oil and gas Committee are 16 members, 11 members participated in the meeting. Nine members voted for the draft to be passed for its first reading in Parliament. I was reading the said law and I reached Article 26 the Shias said they were not aware of the draft and therefore, the reading of the draft should be postponed for one week to allow them to go through the draft. The Speaker of the Parliament was Osama Nujayfi, he postponed the meeting for one week. A few weeks passed then the Shia returned to Parliament with a new draft which was prepared by them. They said the one prepared by them should be reading Parliament. The Problem with draft prepared by Shai was that it gave too much power to the IFG and reduced the KRG's authority in managing oil and gas. There the Kurds and some of the Sunnis did not agree with the Shai's draft. Therefore, there are three different draft of the Federal Oil and Gas Law in the Iraqi Parliament. The parties have not been agreed on one draft.

Questions8: Does the Iraqi government has a plan to settle this problem?

Answer: The Iraqi government wants to pass a law which gives more power to the central government and reduce the KRG's authority and that is against the Iraqi Constitution. The Shai and Sunni they think like before the 2003 and that does not work.

(Kurdish version of interview)

ن چاوپێکهوتن له گهڵ د. بایهزید نه‌ندامی لیژنه‌ی نه‌وت و گاز له پهرله‌مانی عێرق بۆ ماوه‌ی دوو خول له‌ سالی ٢٠٠٦ تا ٢٠١٤

به‌رامه‌ندی د. بایه‌زیدم و مرگرتوه بۆ تو‌مارکردنی ئهم چاوپێکهوتنه

به‌ریز د. بایه‌زید پرسیاره‌کانم چهند به‌شیکن وه هه‌ندیک له پرسیاره‌کان تاییه‌تن به حکومه‌تی ناوه‌ندی. جه‌نابیشت له‌به‌رئوه‌ی .که نه‌ندامی پهرله‌مانی عێراقیت ئهو پرسیارانه ئه‌که‌مه‌که تاییه‌تبه حکومه‌تی ناوه‌ندی

پێتوایه که گریه‌سته نه‌وتیه‌کانی حکومه‌تی هه‌ریمی کوردستان یاساین به پێی ده‌ستوری عێراق ١.

وه‌لام: له‌به‌ر ئه‌وه‌ی هه‌شتا یاسای نه‌وت و گاز دهرنه‌چوه‌، وه له ٢٠٠٥ ده‌ستوری عێراق ده‌نگی پێدرا وه به پێی ده‌ستور ده‌سته‌لاته‌کانی یاسادانان، جێبه‌جێکردن و دادوهری جیاکراوه‌ته‌وه. وه هه‌روه‌ها ده‌ستوری عێراقی به‌رهمی دانیناوه به هه‌ریمی کوردستاندا له عێراقیه‌کی فیدرا‌لدا وه ده‌سته‌لاتی تاییه‌ت به خۆی پێداوه. له‌به‌ر ئه‌وه ده‌بیت ده‌سته‌لاتی نه‌وت و گازیش جیاکریته‌وه

به‌شی یه‌که‌م له ماده‌ی ١٢ ی ده‌ستوری عێراقی ده‌لێت به‌ریوه‌بردنی نه‌وت و گاز له‌و بیره‌نه‌وتانه‌ی که ئێستا هه‌ن ده‌بیت به‌گو‌به‌شی بێیت له‌تیوان حکومه‌تی فیدرا‌ل و حکومه‌تی هه‌ریمی کوردستاندا ئهو پارێزگانه‌ی که نه‌وتیان تێدایه به‌و مه‌رجه‌ی که داها‌تی

نەوت و گاز بە يەكسانی بەسەر دانیشتوانی عێراقدا دابەش بکەیت وە بێرێک لە داھاتی نەوت و گاز تەرخان بکەیت بۆ ئەو پارێزگانی که لە جەنگدا زەرەرمەند بوون.

کەواتە پێتواپە گریبەستە نەوتیەکانی حکومەتی هەریەمی کوردستان یاسایی بن.

پێمواییت مادی ١٣٠ س دەستورە که دانی بەمەدا ناوہ که یاساکی هەریەمی کوردستان که پیش دەستوری نوێی عێراق دارچوون کاریان پێدەکەیت تا هەموار دەرکێنەو یان تا هەڵدەوشێنەو. وە مادی ١١٧ ی دەستور دانی بە هەریەمی کوردستاندا ناوہ وەک هەریەمیکی فیدرال.

وہ هەروەها پێمواییت مادی ١٤١ ی دەستورە که دەلێت هەموو ئەو یاسا گریبەستەنە ی که لە ساڵی ١٩٩٢ تا ساڵی ٢٠٠٥ دەرچوون لە روی یاسایەو تەواون وە لەبەر ئەوہ گریبەستە نەوتیەکانی حکومەتی هەریەمی کوردستان بە پێی یاسای نەوت و گاز ی حکومەتی هەریەمی کوردستان یاساین.

بەسیاری دووم؛ ئەساسی قانونی حکومەتی ناوهندی چیه که دەلێت گریبەستە نەوتیەکانی حکومەتی هەریەمی کوردستان نایاساین.

وہ لām: یاسایی نە، چونکە لە عێراقدا یاسای نەوت و گاز نیە. دەستور هەیه. دەستیش مادی ١٢ دەلێت بەرێوەبردنی نەوت و گاز لەو کێلگانی که ئێستا هەنە دەبێت بە هاوبەشی بەیت لە نیوان حکومەتی ناوهندی و حکومەتی هەریەم و ئەو پارێزگانی که نەوتیان تێداپە. یانی دەستەلاتی بەرێوەبردنی نەوت و هگاژ دەبێت هاوبەش بیت یانی دەستەلاتەکە دەبێت دابەش بکەیت. هەندێک لە دەستەلات لای حکومەتی ناوهندی بەیت وە هەندیکیش لای حکومەتی هەریەم.

بەسیاری سێیەم؛ ناوڕۆکی کێشە ی حکومەتی هەریەم و حکومەتی ناوهندی لەسەر گریبەستە نەوتیەکانی حکومەتی هەریەم چیه.

وہ لām: دوو جۆر گریبەستی نەوتیمان هەیه لە عێراقدا. جۆری گریبەست بە پێی کەمی و زۆری نەوت لە شوێنەکە وە توانای مادی و تەکنیکی دەگۆرێت. عێراق تا ئێستا چوار دەوری گریبەستی کردوہ. بەکەمیان تاییەت بوو بەو کێلگانی که نەوت بەر هەم دێنن. خوولی دووم تاییەت بوو بەو کێلگانی که نزیکن لە بەر هەم هێنانەوہ. خوولی سێیەم بۆ کێلگە گاز یەکان بوو، کێلگە ی گاز ی سێیە ی که لە بەسەر نزیکە وە کێلگە ی گاز ی مەنسوریە لە دیالە وە کێلگە ی گاز ی عەمز لە رومادیە. خوولی چوارم تاییەت بوو بە ١٢ بلۆک وە تەن ها ٤ بلۆکیان درا بە کۆمپانی نەوتیەکان چونکە گریبەستەکان قورس بوون. عێراق گریبەستی سێرفس کۆنتراکت دەدات، بە لām حکومەتی هەریەم گریبەستی شەیرین کۆنتراکت، لەبەر ئەوہ ی لە عێراقدا نەوتەکە بە ئاسانی دەر دێت. ئەساسی گریبەستی سێرفس کۆنتراکت ئەوہ ی که کۆمپانیایەکی بێگانه دێت نەوت بەر هەمدێنێت وە بۆ هەر بەرمیلێک بێرکی دیاری کراو کرێ وەردەگرت. بۆ نمونە لە کێلگە ی مەجنون کۆمپانیای بەر هەم هێنەر بۆ هەر بەرمیلێک نەوتی بەر هەم هاتو ١,٣٩ دۆلار وەردەگرت، وە لە کێلگە ی رومیلە ی شیمالی بۆ هەر بەرمیلێک نەوتی بەر هەم هاتو ١,٩٣ دۆلار وەردەگرت وە لەسەر ئەوہ شەوہ ئەو پارە ی خەرجی کردوہ لە بەر مو پێشبردنی کێلگە نەوتیەکەدا لە حکومەتی عێراقی وەردەگرتەوہ. بە لām لە هەریەمی کوردستان که کۆمپانیایەک دێت بۆ نەوت دەرگرت لە هەریەمی کوردستان ئەگەر نەوتی نەوزیەوہ ئەوا هەموو ئەو پارە ی خەرجی کردوہ لەگەران بە دوا ی نەتدا دەر وات و هیچ وەرنەگرتەوہ لە حکومەتی هەریەمی کوردستان چونکە حکومەتی هەریەمی کوردستان پارە ی نیە بێداتەوہ، بە لām ئەگەر نەوتی دوزیەوہ ئەوا هەموو ئەو پارە ی خەرجی کردوہ لە گەران بە دوا ی نەوت و بەر هەم هێنانی نەوتدا هەموو وەردەگرتەوہ لە بە

تەبعەن ۱۸۹ سىستېمى مالى ھەيە بۇ گرىپىستى نەوتى. ئەمە كىتېنكەم لايە بە زمانى ئىنگىلىزىيە كە باسى ئەمەدەكات كە ۱۸۹ سىستېمى مالى ھەيە بۇ گرىپىستى نەوتى. لە كوردستان ئەمە نەوتەى دەردەھىنرېت لە ۱۰% ى پىئىدەوترېت رۇيالىتى واتە حقوقى مولكەيە ئەمەى دەمىنېتەمە، ئەمە لە ۹۰% لە ۴۰% بۇ كۆست ۋف ۋىلە يانى ۳۶% ى پارەى بەرھەم ھاتووى نەوت كۆمپانىياكە ھەلى دەگرېتەمە بۇ ئەمە پارەى كە سەرفى كىدوہ بۇ دۆزىنەمە بەرھەم ھىنانى نەوت. چەندى دەمىنېتەمە لە ۵۴%، لە ۳۰% ئەمە لە ۵۴% دەچىت بۇ كۆمپانىيائى وەبەرھىنەر وە لە ۷۰% شى بۇ حكومەتى ھەرىم. ئەمە پىئىدەوترېت ر فاكتەر. ر فاكتەر واتە كۆى پارەى بەرھەم ھاتووى نەوت لەسەر كۆى پارەى سەرفىكراو. ئەمە بىت و ئەمە ر فاكتەر لە سەرمە بەرھەم ھاتووى نەوت ۵۴% ى پارەى ماوہى بەرھەمى نەوت دابەشەدەكرېت لە بەينى كۆمپانىياكەو حكومەتى ھەرمىدا ۳۰% بۇ كۆمپانىياكە وە لە ۷۰% شى بۇ حكومەتى ھەرىم. بەلام ئەمە ر فاكتەر كە گىشە ۲ ئەمە ۵۴% دابەشەدەكرېتەى دەگرېت بۇ لە ۱۰% بۇ كۆمپانىياكە وە لە ۸۵% ى بۇ حكومەتى ھەرىم. بىجگەلەمەش حكومەت ھەرىم بە رېژەى ۲۵% لەمەل كۆمپانىياكە بەشدار دەمىتواتە لەوئىش ھەندەك پارەى ترى بەردەمەوت

پرسىار: كاك دكتور ئەمە ناكۆكەى نىوان ھەرىم و حكومەتى ناومەندى ناكۆكەى ياسايە (د. بەيزىد ناكۆكەى دەستورە). بۇچى تا ئىستا نەيان بەردەمە بەردەمە دادگايەك كە ئىختىساسى ھەبىت لەمە بابەتەدا، كاتىك خۇيان ناتوان رېكەبون

وہلام: لە عىراقدا دادگاي فیدرالى ھەيە كە تايەتە بە كىشەدەستورەيەكان. ئەمە دادگايە لە سەردەمى بەرھەمەدە دروستكرا، لە دواى دروستبونى پەرلەمان دەبايە سەر لەنوئ تەشكىل بەرايەتەمە ، مسودەى قانونى دائراوہ وە خویندەنەمەى يەكەمەش بۇ كراوہ لە پەرلەمان بەلام ئەمەى بومە كىشە لەسەر ستافى مەكەمەكەيە. بۇچونىك ھەيە دەلەيت ستافى مەكەمە دەبىت ۹ بن فەقى ھىكى شەرىعە فەقى ھىكى قانونى ھەبەت. ھەندىكى تر دەلەين دەبىت ۱۳ ئەندامىن ۲ فەقى ھى شەرىعە ۲ فەقى ھى قانونى وە لايەنى شىعە دەلەين دەبىت ئىمەش دەنگەمان ھەبەت. ئەمە لەلەيكە لە لايەكى تر كوردەش دەلەيت ئىمە دەبىت جۆرىك لە قىتومان ھەبەت لە بەرپارىك لە مەكەمەى فیدرالى دەرنەچىت دژ بە بەرژەمەندىەكانى كورد بىت. ئىستا ئەمە مەكەمە لەسەردەمى بەرھەمە دروست بووہ مەكەمەى موسەيسە بە گۆرەى راكانى جى ھەتتىكى سىياسى بەرژەمەندىە

(بەرزوم: يانى كورد پىي وانیە مەكەمەكە بىلايەن بىت)، (د. بەيزىد، بەلى كورد پىي وانیە بىلايەن بىت). كىشەكە ئەمەى كە مەتەنەيە، نە كورد مەتەنە بەنەوان دەكات نە ئەوانىشەتەمانەيان ھەيە. كابرەيكى سىسى قسەيكى جوان دەكات دەلەيت شىعە لە رابردو دەترسەت، سونە لە داھاتو كوردەش لە ھەردوکیان. چونكە بۇ شىعە لە رابردو ھىچیان بەدەست نەبووہ، سونە لە رابرو بەدەستىاب بووہ بەلامەدەستیان چوو، وە كوردەش نەلەربەردو ھىچى بەدەست بووہ وە دەترسەت لە داھاتووش وایلىبەكرېتەمە.

پرسىار: بە پىي ياسا كى مافى ئەمەى ھەيە كە رەفنىوئى نەوت وەربەگرىت؟

وہلام:ياسا نىە، بە پىي دەستورە. دەستورى عىراق دەلەيت دەبىت داھاتى ھەموو ھەرىم و پارىزگاكان بچىتەمە مەركەز، مەركەزىش بە پىي ژمارەى دانىشتوانى پارىزگاكان دابەش بەكرېتە

پرسىار: مەوقىفى ئىستاي حكومەتى عىراقى چىە دەربارەى گرىپەستە نەوتەكانى حكومەتى ھەرىم لەمەل كۆمپانىيا بىيانەكان

وہلام: لە خوولى يەكەمى پەرلەمان كە شەھەرستانى وەزىرى نەوتى عىراقى بوو دائىمەن دانى بە گرىپەستەكانى حكومەتى ھەرىمەدەنا. بەلام لە خوولى دووہمەدا كە لە ۲۰۱۰ تا ۲۰۱۴ بوو حكومەتى عىراق دەيگوت دەبىت حكومەتى ھەرىم داھاتى نەوت تەسلىمى حكومەتى ناوہند بەكات تەقرىبەن ئىعترافيكى زەمى بوو بە گرىپەستەكانى ھەرىم

برزوم: به‌لام هیچ شتێکی رسمی نیه، وەرەقیه‌کی رسمی نیه له‌لایهن حکومه‌تی عێراقیه‌وه که بلیت ئیمه ئیعتزاف ئه‌که‌ین به گرتیه‌سته‌کانی حکومه‌تی هه‌ری‌دا.

د. بایه‌زی: نه‌لیت، به‌لام ئیتیفاق هه‌یه، ئیتیفاقی ۲۰۱۰، ئه‌و ئیتیفاقه‌ی ۲۰۱۵ که ده‌لیت داها‌تی نه‌وت و گازی حکومه‌تی هه‌ری‌م ده‌بیت بیه‌وه حکومه‌تی ناو‌ند ئه‌مه ئیحتزافیکی زه‌نیه به گرتیه‌سته‌کانی حکومه‌تی هه‌ری‌م. به‌لام یه‌ک شت هه‌یه حکومه‌تی عێراقی دا‌وی پاره‌ی نه‌وت و گازی حکومه‌تی هه‌ری‌م ده‌کات به‌لام ئاماده‌یه پاره‌ی ئه‌و کۆمپانیانه‌ ب‌دات که نه‌وت ده‌ردین له کوردستان. هه‌موو سألێک برێک پاره‌له بوجه‌ی عێراق ته‌رخان ده‌کری‌ت بۆ ئه‌و کۆمپانیانه‌ی که نه‌وت ده‌ردین له عێراق، به‌لامی حکومه‌تی عێراق ده‌لیت حکمه‌تی هه‌ری‌م ده‌بیت له‌بوجه‌ی خ‌وی پاره‌ی کۆمپانیا نه‌وتیه‌کان ب‌دات، واته‌ له‌ ۱۷% ی که بۆی دیاری کرا‌وه ب‌دات.

پرسیار: کاک دک‌تور یاسایه‌ک هه‌یه

وه‌لام: نا س‌ی یاسایه، یاسایه‌ک پ‌یی ده‌لێن یاسای شو‌باتی ۲۰۰۷ حکمه‌تی هه‌ری‌م و به‌غدا له‌سه‌ر ئه‌و یاسایه‌ رێکه‌وتن به‌لام دا‌وی حکمه‌تی عێراقی نار‌دی بۆ ئه‌نجوومه‌نی ش‌ورا، ئه‌نجوومه‌نی ش‌ورا له‌جباتی ئه‌وه‌ی سه‌یری لایه‌نی قانونی ب‌کات جو‌وه ده‌ستکاری جو‌مله‌کانی کرد‌وه ده‌سته‌لاته‌کانی هه‌ری‌می که‌م‌کرد‌وه‌وه له‌به‌ر ئه‌وه حکمه‌تی هه‌ری‌م ده‌لیت ئیعتزاف به‌و نه‌سخه‌ناکه‌م. ئه‌وه یه‌ک، دا‌وی و‌اب‌زانم سالی ۲۰۱۲ له‌په‌رلامانی عێراق ک‌ورده‌کان و سه‌نه‌کان رێکه‌وتن له‌سه‌ر مس‌وده‌ی قانونی نه‌وت و گاز، ژ‌وری نه‌وت و گاز ۱۶ که‌سه له‌و ۱۶ که‌سه ۱۱ که‌س ک‌وب‌ونه‌وه‌که‌مان کرد‌ ۹ که‌س ده‌نگی بۆدا له‌ خوێندنه‌وه‌ی یه‌که‌می بۆ ب‌کری‌ت. خوێندنه‌وه‌ی یه‌که‌مان بۆ کرد‌ من ده‌م‌خوێند‌وه له‌کاتی خوێندنه‌وه‌ی گه‌شته‌ ماده‌ی ۲۶ شیع‌ه‌کان ووتیان که‌وا ئه‌وان ناگایان له‌نی نیه، ته‌بع‌ن شیع‌ه‌کان ۸ بۆ ۹ ئه‌ندامیان هه‌یه له‌ لیژنه‌ی نه‌وت و گاز و ناگایان له‌نی بو‌و، به‌لام ووتیان ناگامان له‌بینه‌ و سه‌رۆکی په‌رله‌مانیش ئوسامه‌ نوجه‌یفی بو‌و رێگه‌ی دا که هه‌فته‌یه‌ک دوا‌بخری‌ت بۆ ئه‌وه‌ی شیع‌ه‌کانیش ناگادار‌بن. دا‌وی ج‌ژنی ق‌وربانی به‌سه‌ردا هات دوا ج‌ه‌ژنی ق‌وربانی ۳ هه‌فته‌ی ر‌وشت پاشان شیع‌ه‌کان قانونیکی تازه‌یاب ه‌ینا ووتیان ده‌بیت‌وه قانونه‌ بخوێنری‌ته‌وه. ئه‌و قانونه‌ش ده‌سه‌لاتی حکمه‌تی ناو‌ندی ز‌ور کرد‌بو‌و و ده‌سه‌لاتی ک‌وردی که‌م‌کرد‌بو‌وه له‌به‌ر ئه‌وه ک‌ورد و تا راده‌یه‌کیش س‌ونه به‌و قانونه‌ تازه‌ی ر‌ازی نه‌بون. ئیستا له‌ په‌رله‌مان س‌ی یاسا هه‌یه بۆ نه‌وت و گاز و تا ئیستا رێکه‌وتن نه‌کرا‌وه که کام یاساین خو‌ندنه‌وه‌ی پاک و دو‌وی بۆ ب‌کری‌ت و بخری‌ته ده‌نگدانه‌وه

پرسیار: کاک دک‌تور حکمه‌تی عێراقی پلانی ه‌یا چاره‌سه‌ری ام‌کیشه‌ ب‌کات

وه‌لام: حکمه‌تی عێراقی ده‌یه‌وێت یاسایه‌ک به‌ دلی ئه‌و ده‌رچیت که ده‌سه‌لاته‌کانی حکمه‌تی ناو‌ند زیاد ب‌کات و ده‌سه‌لاتی حکمه‌تی هه‌ری‌مکه‌م‌ب‌کاته‌وه ئه‌وه‌ش د‌ژ به‌ ده‌ست‌وره. لایه‌نی عێراقی له‌ شیع‌ه و س‌ونه‌ن ز‌وربه‌یان به‌ عقیله‌تی پ‌یش ۲۰۰۵ ب‌یرده‌که‌نه‌وه و ئه‌وه‌شنابیت.

Interview 2 With Dr. Yusef Mohammed Sadiq, The Speaker of the Kurdistan Parliament (2014-2018)

Q1. Do you think the KRG's Oil and Gas contact are legal or constitutional?

Answer: Well, some of the KRG's Oil and Gas contracts have not been announced therefore, I cannot comment on them and there are some problem which I will come to that, however, principally, in accordance with the permanent constitution of Iraq the KRG has a right to manage oil and gas from the fields have been discovered, or will be discovered, after the enforcement of the Iraqi Constitution of 2005. The management will cover all oil and gas operations, including the contracts for exploration, development and exporting to the International market for sale. In accordance to the Iraqi Constitution, I think Article 108, 109 and 110 the management of the developed and producing fields prior to the enforcement of the Constitution must be shared between the IFG and KRG. (Brzoom, under Article 112 of the Constitution, yes that is right), and the management of Oil and Gas is not one of the exclusive authorities of the IFG. therefore, the KRG has a right to manage oil and gas operations from the fields which have been discovered after 2005.

Question 2. Dr Yousif, the Iraqi Government states the KRG's Oil and Gas contracts are not legal and constitutional. What is the legal basis for the Iraqi Government's claim that the KRG's Oil and Gas Contract are illegal and unconstitutional?

Answer: I do not know really what their legal basis is, you need to ask them that question, but they are talking about some issues in their writings, they compare their Oil and Gas contract, which is a Service Contract, to those of the KRG, which is PSC, they are talking about those things, but from the legal point of view, the KRG's Oil and Gas contract in general are legal. However, there are problems with the transparency about the way the KRG contracts concluded and the revenues and there are problems with some contracts for example the contract with the Dana Gas which was signed and concluded in April 2004. The problem is about the area of the contract which is the field of Kormor. The Kormor field was discovered by the former Iraqi regimes before 2003 and accordingly this field was discovered prior to the enforcement of the Constitution of 2005. The KRG is in constitutional crises if it signed the contract with Dana Gas without the co-operation with the IFG. Therefore, in exceptional circumstances there are problem with the KRG's Oil and Gas contract and there are problems with management of oil and gas revenues, but generally the KRG

has a right to manage oil and gas operations from the fields discovered after the enforcement of the 2005 Constitution.

Question 3: Does the law oblige the KRG to get approval from the IFG before signing the contract. I mean the KRG could negotiate and agree on the terms and clauses of oil and gas contract, but it must obtain the IFG's approval before signing the contract.

Answer: First, Iraq does not have oil and gas law, the KRG has an oil and gas law. What regulate the relationship between the KRG and IFG over oil and gas management is the Iraqi Constitution. The Constitution regulates the management of oil and gas as I said above. The KRG must co-operate with the IFG in managing oil and gas from the fields discovered prior to 2005, for example the oilfields in Kirkuk like Baba Gurgur, Havan and Bai Hassan, which were discovered by the former Iraqi regimes (before 2003) the KRG or the Kirkuk governorate must co-operate with the IFG in managing these fields, but a field which has been recently discovered such as Niran field or Kurdamir field or Taqtaq or others which have been discovered after the enactment of the Constitution of 2005, the KRG has right to manage them alone in accordance with the Constitution. These newly discovered fields are regulated by the Constitution, there is no Federal Oil and Gas law. The newly discovered fields within the KRG are regulated by the Iraqi Constitution and the KRG's Oil and Gas Law. There are some problem with enforcing the KRG's Oil and Gas Law, because the Law requires the establishment of a number of the state companies like a state company for marketing oil and gas and a state company for managing oil and gas revenues and a company which is responsible for the oil refinery and oil infrastructures, we manage to pass a law concerning oil and gas revenue, but unfortunately due to the suspension of the Parliament the law was not enforced. The draft of two laws were ready for COMO and CODO, but they were not completed due to the suspension of the Parliament. It is right that there are problems with enforcing the KRG's Oil and Gas Law, but there are no issues with the KRG towards the IFG over the management of oil and gas operation from the fields discovered after 2005 except the circumstances I referred to before.

Question 4: Dr Yousif, the KRG states that under Article 112 of the Constitution the KRG has a right to manage oil and gas in accordance with the regional law. What is the KRG law to manage oil and gas?

answer: It is the KRG Oil and Gas Law of 2007. Oil and gas Revenue Law is also passed, but the box has not been set up yet.

Brzoom: Is the KRG Oil and Gas Law consistent with the Federal Constitution?

Dr Yousif: I think and also some International experts in Oil and Gas law believe the KRG Oil and Gas Law is consistent with the Constitution, there is not a serious issue. The PSC, which I am not personally with it, is more consistent with investment policy provided by the Constitution, I cannot remember the article, which was designed by the Americans. I may not personally agree with the PSC, but it is more consistent with the Constitution than the TSC.

Question 5: Under the PSC the IOC will gain ownership of the extracted oil. Does the Constitution allow the foreign ownership?

Answer: I will read that text for you from the Federal Constitution with is about the management of oil and gas. *Article 112 Second: The federal government, with the producing regional and governorate governments, shall together formulate the necessary strategic policies to develop oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encouraging investment.*

The IOC prefer the PSC, as I said before I am personally not with PSC and as a researcher during my PhD I criticised this type of contract that the PSC provides more profits to the IOC while extracting oil in the Kurdistan is more easier than the place the PSC is generally signed for like offshore oil and gas where searching and extracting oil and gas is difficult and expensive, while in the Kurdistan is much easier and cheaper to have a commercial discovery. Legally and Constitutionally there is no problem with the PSC, but in term of profits and revenue, they are good for IOCs and provide less profit and revenue for the host country. I explained in my PhD thesis that the model contracts the KRG used will gradually, like dominos, enforce the neighbouring countries to follow the KRG to use the same model of contract. I think it was in the four rounds for bidding the Iraqi Government was under pressure to grant IOC more favourable

clauses in order to compete the KRG and Gulf countries will gradually follow the same route in the future. therefore, the issue in term of the Constitutional is different from public interest point of view.

Brzoom: The Coalition Provision Authority (CPA) attempted to use the PSC in Iraq after the invasion with the intention to persuade the IOC to come and invest in Iraq, but the Iraqis did not accept that on the basis that the PSC is against the Constitution. The former Constitution of Iraq did not allow the foreign ownership in property, natural resource, Insurance and Banking. I do not know if the current Iraqi Constitution allows the foreign ownership in those things, and after the invasion the Iraqi government did not allow the PSC to be used in Iraq.

Dr Yousif, as I said before the Constitution drafted during the CPA, sorry the TALL was drafted and valid during the CPA but this matter was fully considered. in addition to that the American expert played crucial role in drafting the new Iraqi Constitution. The Constitution drafted in a way allows the IOC to invest in Iraq. Therefore, the spiritual of the Constitution is not inconsistent with that type of the contract, the PSC, but there is a nationalist movement in Iraq from the day oil nationalised in Iraq and that movement still continue and these people believe that there should not be PSC and they only support the TSC.

Question 6: Why there is difference in interpreting the Constitution between the IFG and the KRG?

Answer: I said that I said that was related to the way of thinking. the Iraqis think the PSC is not in the best interest of the Iraqis, but in the KRG's view, if we do not have PSC, this is what the KRG Minister of Natural confirmed, if the KRG do not use PSC it cannot persuade the IOC to invest in the Kurdistan. Despite the Central Government's objection, IOCs still invest in the KRG's oil and gas sector because of the PSC.

Question 7: Who has the right to interpret the Constitution in Iraq?

Answer: The Federal Court has jurisdiction to look at the lawsuits concerning constitutional issues, but the Federal Court has not been re-established under the new law, in order to interpret the Constitution or even to settle lawsuits concerning constitutional matters.

Question 8: In every dispute over the civil matters the dispute parties will first attempt if they could settle the dispute, if the dispute could not be settled between the parties then it has to be referred to a competent authority for determination. The dispute between the KRG and IFG over the management of the oil and gas operation has been going on for more than 10 years without settlement, In Iraq as you said the Federal Court is the right authority settle this matter. Why the disputed parties have not referred this dispute to the Federal Court yet.

Answer: This means that the IFG is not certain if they could win the case otherwise, they would have taken this matter to the Federal Court. They are not sure if the KRG's PSC is illegal or unconstitutional. therefore, they are not sure if they win the case. It is not only us believe the KRG' has a right to manage oil and gas, there are international experts who believe the KRG has a right to manage oil and gas unilaterally. I mentioned that in my PhD thesis. Professor James Crawford is one of the International Law experts, who believes the KRG has a right to manage oil and gas from the fields discovered after 2005 without co-operation with the Federal Government.

Question 8: Do not you think the unwillingness of the KRG to take this dispute to the Federal Constitutional Court is because the KRG concerns about the impartiality of the Court due to its establishment in terms of the its members.

Answer: The KRG does not need to take this dispute to the Court, because it is now exporting its oil to the outside, The IFG is the complainer in this matter, they should take the dispute to the Court. The IFG has now cut the KRG share of the budget and has not sent the KRG's share from the budget.

Question 9: If there is hesitation to take the dispute to the Federal Constitutional Court in Iraq, why they disputed parties have not taken this dispute to the independent international court outside Iraq?

Answer: The dispute parties play politics over this matter. The IFG has exploited the dispute over oil and gas and used it as a reason for cutting the KRG's share from the federal budget. At the same time the KRG has exploited the situation, as the IFG has not taken any further action against the KRG, to export oil and gas as by its own and deals with the revenue as it wants. Both sides of the

dispute do not have intention to settle and they do see their interest in settlement. it is not in the KRG to settle this dispute, because KRG does not want to export its oil and gas through SOMO under the IFG's control. It is not in the IFG's interest to allow KRG to export its oil and gas and to give the KRG the 17% share of the Federal budget. therefore, they do want a mediator to help them to settle the dispute.

Question 10: What law regulates the relationship between the KRG and IFG?

Answer: There is no law, it is the Constitution. the Constitution regulates the relationship between them.

Question 10: Can the KRG do something inconsistent with the Federal Law or the Federal Constitution?

Answer: No, it cannot do something contrary to the Federal Constitution. in respect of the Federal Law, Article 121 of the Constitution state that, I will read the text for you. "First: *The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government.*"

That is first and second Article 115 of the Constitution state that " *All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute.*". Under Article 115 if there is contradiction between the regional law and the Federal law the priority is for the regional law, if the contradiction is not in matters in the exclusive authorities of the IFG, but if the contradiction occurred in the matters in the IFG's exclusive authorities then the priority if for the Federal law.

Question 11: Article 112 of the Constitution allows the KRG to manage oil and gas, but it has to be in co-operation with the IFG.

Answer: I will read Article 112 for you. It state "First: *The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law.*"

Under this article managing oil and gas from the fields discovered up to the date of the enforcement of the Constitution must be shared between the KRG and the IFG, but the Constitution is silent on the fields discovered after the enforcement of the Constitution. Therefore, there is nothing in the Article 112 to oblige the KRG to co-operate with the IFG in managing oil and gas from a field discovered after the enforcement of the Constitution.

Question: There is a Federal Oil and Gas Law at the Iraqi Parliament since 2007. That law has been drafted with the aim to resolve the problem between the KRG and IFG over the Oil and Gas management. The Federal Oil and Gas Law has been with the Parliament for over 10 years, but it has not been ratified yet. Why the Federal Oil and Gas Law has not been ratified so far?

Answer: Because there is disagreement between the Kurds and Arab over that Law. Agreement reached a few times, but sometimes the KRG changed its mind and sometime Arab changed their mind, therefore, final agreement has not been reached so far.

Question 12: Another problem between the KRG and the IFG is over oil and gas revenues. Before I ask my question. Can I ask who is the owner of oil and gas within the KRG's territories? The Constitution vested oil and gas ownership in the Iraqi people. The Iraqi government represent the Iraqi people, is not it?

Answer: It is Article 111 of the Constitution which states that "*Oil and gas are owned by all the people of Iraq in all the regions and governorates.*".

Based on that it could be interpreted that oil and gas revenues should be returned to the IFG and then re-distributed between all governorates.

Question 12: Does the KRG return oil and gas revenue to the IFG?

Answer: Not just it does not return oil and gas revenues to the IFG, even in the KRG there is not transparency in oil and gas revenues.

Question 13: Based on the non-transparency in oil and gas revenues in the KRG, does not the Iraqi government, as a representative of all Iraqi people, has a right to interfere in stopping the KRG to export its oil and gas and suspending all KRG's oil and gas contract?

Answer: It does not have right to suspend the KRG oil and gas contract, but it has right to get the KRG's oil and gas revenues and in return the IFG must pay the KRG's 17% share from the federal budget. Article 112 states that *"provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law."*

Accordingly, oil and gas revenues must be returned to the IFG, and the IFG has a right to demand oil and gas revenues from the KRG, and the IFG must re-distribute the revenues in accordance to Article 112 and must pay *"specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime"*, these areas are mostly in Kurdistan. In exercising that right, the IFG cut the KRG's share of the 17% from the Federal budget for not getting oil and gas revenues from KRG. The KRG's share of 17% is more than the KRG's oil and gas revenues.

Question 14: The IFG has not recognised or accepted the KRG's oil and gas contract legal or constitutional.

Answer: It has not recognised the KRG's oil and gas contract as legal, but impliedly it recognised them as legal. How it impliedly recognised them as legal is when the IFG Federal budget law demanded the KRG to give 450000-barrel oil per day from the KRG territories and 150000 from Kirkuk oilfields to the IFG. These 600000 bpd must be exported through SOMO. That means it impliedly recognised the KRG's oil and gas contract as a legal.

Brzoom: impliedly is different from officially recognise them. Can not the IFG in the future argue that the KRG's oil and gas contracts are illegal? The current political and security situation may not be helpful for the IFG to do so, but in the future if Iraq become more stabilised politically, may be able to argue that the KRG's oil and gas contracts are not legal especially there is not official recognition from the IFG, or decision from national or international court confirming the KRG's oil and gas contracts are legal .

Dr Youfi: Yes the Federal Government can do that inside Iraq, but on the international level what the Federal Government can do, for example what it can do to stop KRG's exporting oil and gas, it may send the plane and strike the KRG's pipelines to stop the KRG's oil exporting, or what the federal Government can do, when the KRG has agreed with the Turkey to send its oil to Turkey through KRG's pipelines. Or it may raise a legal action against the KRG in the Turkish court and in that case the legality and illegality of the KRG's oil and gas contract would be considered by the Turkish court, and the fact that the Federal Government impliedly recognised the KRG's oil and gas contract in the Federal Budget Law would be used against the Federal Government and the constitutional issues and the International experts views would be used against the Federal Government. Yes, the Federal Government could do something, as it cut the KRG's share of the Federal budget and can do more. in addition to that the Federal Government can also use the disputed territories as a reason to attack the KRG and return the Iraqi's troops to the disputed area. The Federal government at the moment cannot more than it has already done.

Question 14: I do not know if I could ask this question. As far as you are aware, the Federal Government has threatened IOCs on different occasions not to sign oil and gas contract with the KRG because the KRG's oil and gas contract are illegal, it has threatened IOCs that it would not renew their contracts with

Federal Government or it does not grant new contracts to those participating in the KRG's oil and gas contract. What do you think makes IOCs to sign oil and gas contract with the KRG and ignore the Federal Government's threat? as you know IOCs have legal Counsels and would not any deal or contract without confirmation from their legal Counsels.

Answer: two things might attract them. one is the view of the experts of the International law in that area of law as I mentioned before, which confirm that the KRG's oil and gas contracts are legal. in addition to the immunity the KRG grants to the IOCs.

(Kurdish version of interview)

چا ووی پیکهوتن له گهمل د. یوسف محمد سەرۆکی پەرلهمانی کوردستان له ساڵی ٢٠١٤ تا ٢٠١٨

پرسیار: نایا پیتوایه که گریهسته نهوتیهکانی حکومتی ههرمی کوردستان یاسایی یان دهستوری بن

وه لām: ههندیک له گریهستهکان ناشکرا نهکراون له بهر ئهوه ناتوانم له سهر ئهوانه قسه بکهه. ههندیک کیشه ههیه که دواى دیمه سهری، به لām به گشتی حکومتی ههریمی کوردستان به پتی دهستوری ههمیشهیی عێراق مافی بهر یومبردنی نهوت و غازى ههیه لهو بیر ه نهوتانهی که دواى جیهه جیکردنی دهستور له ٢٠١٥ دۆزرا و نهتوه

بههر یومبردنی نهوت و غاز ههموو بوارمکان ههر له گهران به دواى بهوت و غاز ههتا و بهر هینان وه فرۆشتنی. پیمو ابیت مادهی ١٠٨، ١٠٩ و ١١٠ له دهستور که دملین بهر یومبردنی نهوت و غاز لهو بیرانهی که پیش ٢٠٠٥ دۆزرا و نهتوه و بهر هینان تادا کرا وه دهبیت به هاو بهشی بیت له نیوان حکونهتی ههریم و حکونهتی فیدرالیدا. (برزومیمو ابیت مادهی ١١٢ یه. د یوسف به لām راسته) وه بهر یومبردنی نهوت و غاس یهکیک نیه لهو بابتهانهی که تن ها له دهسته لاتی حکومتی ناوه ندیدا .بیت. له بهر ئهوه حکومتی ههریم مافی بهر یومبردنی نهوت و غازى ههیه لهو کیلگانهی که له دواى ٢٠٠٥ دۆزرا و نهتوه

پرسیار: د. یوسف، حکومتی فیدرالی ده لیت گریهستهکانی نهوت و غازى حکومتی ههریمنا یاسین یان نا دهستورین؟

من نازانم ئهساسی یاسایی ئهوان چیه بۆ ئهوه دهبیت ئهو پرسیاره له ئهوان بهکیت. به لām ئهوان له نوسینهکانیدا ئهوان بهراوردی نیوان گریهسته سیر قز کونترات و ئهوانهی حکومتی ههریم دهکهن

که گریهسته شهراکهته. ئهوان باسی ئهم شتانه ئهکهن به لām له روی یاسایهوه گریهستهکانی کوردستان به شێوهیهکی گشتی یاسایی، ههندیک کیشه ههیه دهربارهی شهفافیات له چۆنیتهی کردنی گریهستهکاندا وه له داهاهی نهوتو غازدا، وه ههندیکه گریهستهکان کیشهیان ههیه وهک ئهوه گریهستهی که له گهمل دانهگاس کرا وه له مانگی ٤ ی ساڵی ٢٠٠٤ کیشه که له سهر شوینی گریهستهکویه که کورموره. کیلگهی کورمور له سهردهمی رژیمی پیشوو دۆزرا و نهتوه له پیش ساڵی ٢٠٠٣ له بهر ئهوه ئهوه کیلگه له پیش ساڵی ٢٠٠٥ دۆزرا و نهتوه واته پیش جیهه جیکردنی دهستوری ٢٠٠٥. له بهر ئهوه ئهگهر حکومتی ههریمی

کوردستان گریهستهکەمی دانەگاسی بەی ئاگاداری حکومەتی فیدرāl کردبیت ئەو بەینی دەستور تەواو نیە، لەبەرئەوێ لە هەندێک حālەتی تاییبەدا هەندێک گریهست کێشە تێدایبیت وە کێشەش لە چۆنیەتی ادارەیی داھاتداتی نەوت و گاز ھەیە، بەلام بەشیوەیەکی گشتی حکومەتی ھەریەمی کوردستان مافی بەریوەبردنی نەوت و گازێ لەو کێلگانەییە ھەیە کەلە دواي سالی ۲۰۰۵ دۆزراونەتەوێ

پرسیار ۳: بەینی یاسا حکومەتی ھەریەمی پێویستە کە ڕەزامەندی حکومەتی فیدرāl وەربگریت پێش ئیمزاکردنی گریهستە نەوتیەکان. مەبەستم ئەوێە کە حکومەتی ھەریەمی کەگریهست دەکات لەگەڵ کۆمپانیا نەوتیەکان پێویستە ڕەزامەندی حکومەتی فیدرāl وەربگریت پێش ئیمزاکردنی گریهستەکان.

ووەلام: سەرمتا عێراق یاسای نەوت و گاز نیە، بەلام کوردستان یاسای نەوت و گازێ تاییبەت بە کوردستان ھەیە. ئەوێ کە پەیمەندی نیوان ھەریەمی و ناوێد ڕیکدەمخات لە بەریوەبردنی نەوت و گازدا تەنھا دەستووری فیدرāl وەک لە سەرەوێە بایسکرد. حکومەتی ھەریەمی پێویستە بە ھاوکاری حکومەتی فیدرāl ئەو کێلگانە بەریوە ببات کە پێش ۲۰۰۵ دۆزراونەتەوێ وەک کێلگانەکانی بابە گۆر گۆر، بای ھەسەن و ھاڤانە ئەم کێلگانە دەبیت حکومەتی ھەریەمی حکومەت فیدرāl بەھاوێشی بەریوەی بەرن، بەلام ئەو کێلگانەیی کە تازە دۆزراونەتەوێ وەک کێلگانەکانی نیران، کوردەمیر و تەق تەق کە لە دواي ۲۰۰۵ دۆزراونەتەوێ حکومەت ھەریەمی مافی ھەییە کە بە تەنھا خۆی بەریوەی بەریت بەی ئاگاداری ھەریەمی گەرانەوێ بۆ حکومەتی فیدرāl. ئەو کێلگانەیی تازە دۆزراونەتەوێ بەینی دەستور ڕیکدەمخزین. یاسای نەوت و گاز نیە لە عێراقدا. ئەو کێلگانەیی کە دواي ۲۰۰۵ لە کوردستان دۆزراونەتەوێ بە پێی دەستور و یاسای نەوت و گازێ حکومەتی ھەریەمی ڕیکدەمخزین. کێشە لە یاسای نەوت و گازێ حکومەتی ھەریەمی نیە، بەلام کێشە لە جێبەجێکردنی یاساکەدا ھەیە. بە پێی یاساکە دەبیت چەند کۆمپانیا یەکی نیشتمانی تاییبەت بە بازاریکردنی نەوت و فرۆشتنی نەوت و وە تاییبەت بە داھاتی نەوت دروست بکۆرین. ئەم دەرگایانە تائیسنا دروست نەکران. ئێمە توانیمان لە پەرلەمان یاسای تاییبەت بە داھاتی نەوت و گاز دەرکەین بەلام بەداخەوێ بەھۆی پەکخستنی پەرلەمانەوێ یاساکە جێبەجێ نەکران. وە ڕەشەنوسی دوو یاسایی تاییبەت بە فرۆشتنی نەوت و ھەنەردەکردنی نەوت و گاز ئامادەکرا بەلام بەھۆی پەکخستنی پەرلەمانەوێ یاساکان دەرئەچوون. راستە کێشە ھەییە لە جێبەجێکردنی یاسای نەوت و گاز دا بەلام ھیچ کێشەییەک لگانەیی کە دواي ۲۰۰۵ دۆزراونەتەوێ تەنھا لەھەندێک لانیە لە بەریوەبردنی نەوت و گاز لەلایەن حکومەتی ھەریەمیە لەو ک حālەتی تاییبەدا نەبیت کە لەسەرەوێە بایسمان کرد.

پرسیار: د.یوسف، حکومەت ھەریەمی کوردستان دەلێت بە پێی دەستووری عێراق حکومەت ھەریەمی مافی ئەوێ ھەییە کە بەتەنھا لگانە بەریوە ببات کە لە دواي ۲۰۰۵ دۆزراونەتەوێ. U و بەینی یاسای نەوت و گازێ حکومەتی ھەریەمی نەوت و گازێ ئەو ک یاسای نەوت و گازێ حکومەتی ھەریەمی چێ؟

ووەلام: یاسای نەوت و گازێ حکومەتی ھەریەمی سالی ۲۰۰۷. وە یاسای تاییبەت بە داھاتی نەوت و گازیش دەرچوو بەلام ی داھاتەکە دروست نەکران بەھۆی پەکخستنی پەرلەمانەوێ Qسندو.

نایا ئەو یاسایە ھیچ شتیکی نادەستووری تێدایە؟

من پێم وایە وە ھەرەوێە شارەزاییانی نیو دەولەتی بواری نەوت و گازیش پێیان وایە کە یاساکە یەکانگیرە لەگەڵ دەستورو ھیچ نادەستووریەکی تێدا نیە. من خۆم شەخسی لەگەڵ گریهستێ ھاوێشدا نیم، بەلام بیرم نیە چ مادەییەکی دەستورە کە ئەمریکیەکان

له دهستور جیگیریان کردوه، که گریهستی هاوبهش له بهرهم لهگهڵ دهستوری عیراقدای زیاتر دهگونجیت تا گریهستی خزمهت گوزاری حکومتهی عیراقی.

پرسیار: به پێی گریهستهکانی حکومتهی ههریم کۆمپانیان بیانیهکان مافی مولداریتی نهوت و غازیان ههیه له کوردستاندا. ئایا دهستوری فیدرالی رێگهدهدات که کۆمپانیای بیانیی مولداریتی نهوت و غازیی ههیه؟

وههلام: با ئهوهی کهله دهستوردا به تایبتهت به بهریوهبردنی نهوت و غاز بۆت بخێنمهوه. د یوسف مادهی ۱۱۲ بهشی یهکهمی به عهرهیی خۆیندهوه. ".....". کۆمپانیان بیانیهکان گریهستی هاوبهش له بهرهمدا پێیاشتره ئهوه جۆره له گریهسته زیاتر لهگهڵ دهستوردا دهگونجیت. وەک ووتم من خۆم لهگهڵ ئهم جۆره گریهسته، وه له نامهیی دکتوراکهیدا رهنهه لهم جۆره گریهستهانه گرتوه چونکه قازانجی زیاتر بۆ کۆمپانیی بیانیهکان دهستهبرده. له کوردستاندا نهوت به ناسانی و به تێچووی کهم بهرهم دیت، ئهم جۆرانه له گریهسته بۆ ئهوه شوێنانه دهییت که بهرهم هێنایی نهوت و غاز تیاندا ناسان نیه وه تێچووی زۆریشی دهوینت وەک بهرهم هێنایی نهوت و غاز له دهریاکاندا. له بهر ئهوه گریهستهکانی هاوبهش له بهرهمدا حکومتهی ههریمی کوردستان له روی یاسایی و دهستوریهوه هیچ کێشهیهکی نیه، بهلام قازانجی زۆر دهنه به کۆمپانیای بیانیهکان. پێمواییت دهوڵهتانی دراوسێش له دواڕۆژدا بهرمو بهکارهێنایی ئهم جۆره گریهسته. حکومتهی عیراقی پێمواییت له دهوهری چواردا بوو که له ژێر کاریگهری گریهستهکانی حکومتهی ههریمدا ناچار بوو که بهندی گریهستهکانی بگۆریت به شێوهیهک که ئیمتیزاتی زیاتر بدات به کۆمپانیان بیانیهکان، وه له داهاوتودا دهوڵهتانی ناوچهکهو دورگهی عهرهیی ورده ورده به پێی کات بهرمو بهکارهێنایی ئهم جۆره له گریهسته دهچن. له بهر ئهوه کێشهیی دهستوری بوون شتی که و بهرمو موندی گشتیش شتیکی تره.

پرسیار: دهسهلاتی کاتی هاوپهیمانان له دواي داگیرکردنی عیراق له سالی ۲۰۰۳ ههولیدا که حکومتهی عیراقی گریهستهی شراکهتهی هاوبهش بهکاربهێنیت بهو مهستهی که هانی کۆمپانیای بیانیهکان بدات بهشدار بن له و بهر هێنان له عیراقدا وه بهشدار له ئاومدانکردنهوهی عیراقدا، بهلام عیراقیهکان بهمه رازی نهوون له بهر ئهوهی ئهم جۆرانه له گریهسته دژ به دهستوری عیراقن. دهستوری پێشووی عیراق رێگهی نهدهدا به خاومنداریتی له بوارهکانی مولداریتییدا، سامانی سروشتی، بیمه وه بانک، بهلام نازانم ئهگهر دهستوری تازه رێگهی به خاومنداریت.

وههلام: وەک ووتم له سهردهمی دهسهلاتی کاتی هاوپهیماناندا لهکاتی نوسینهوهی یاسای بهریوهبردنی کاتییدا ئهمبابهته باسکرا، وه لهکاتی نوسینهوهی دهستوردا ئهمریکیهکان دهوێکی زۆریان ههبوو له نوسینهوهی. له بهر ئهوه دهستوری عیراقی بهشیهیهکه که له بهرژموندی کۆمپانیای بیانیهکانه. ناوهڕۆکی دهستوری عیراقی دژ به گریهستهکانی شراکهتهی هاوبهش نیه، بهلام ههژدێک لهتهیاری نهتهوهیی له عیراقدا دژ بهو جۆره له گریهسته. تهنگا پشنگیری گریهستهی خزمهت گوزاری دهکهن

پرسیار: بۆچی حکومتهی ههریم و حکومتهی فیدرالی دوو تهفسیری جیاوازیان ههیه بۆ دهستوری فیدرالی؟

وێلام: پێشوتر ئاماژەم پێکرد کە ئەو پەيوەندى بە بێرکرنەوه هەيه. ئەوانەى حکومەتى فیدراى پێيان وایە کە گرتییەستەکانى شەراکەتى هاوبەش لە بەرزەوێندى عێراقدا نیه، بەلام حکومەتى هەریم، وەزیری سامانە سروشتیەکان دەلیت ئەگەر حکومەتى هەریم گرتییەستى شەراکەتى هاوبەش بەکار نەگێنێت ئەوا ناتوانیت هانى کۆمپانیا بیانیەکان بدات کە سەرمايەگوزرى بکەن لە نەوت و غازى هەریمی کوردستاندا بکەن. بەلام ئێستا لەگەڵ نەزایى حکومەتى فیدراى کەچی کۆمپانیا بیانیەکان هەر بەردەوامن لە سەرمايەگوزارى لە نەوت و غازى حکومەتى هەریمی کوردستاندا لەبەر ئەوەى کە کوردستان گرتییەستى شەراکەتى هاوبەشى هەيه.

پرسیار: کى مافى تەفسیرکردنى دەستورى فیدراى عێراقى هەيه؟

وێلام: تەفسیرکردنى دەستور دەستەلاتى دادگای فیدراى، بەلام دادگای فیدراى دەبوايە سەرلەنوێ بەپێى یاسای نوێ دابەزرایەتەوه، بۆ ئەوەى بتوانیت تەفسیری دەستور و سکالای دەستورى ببینیت.

پرسیار: لە هەموو کێسەیهکی مەدەنیدا یەکم جار لایەنەکانى کێشەکە هەڵدەدەن کە کێشەکە لە ڕێگەى دانۆستانەوه چارەسەر بکەن، بەلام ئەگەر لایەنەکان گەشتە بنەست و نەیان توانی کێشەکە لا نێوان خۆیاندا چارەسەر بکەن ئەوا دەبیت کێشەکە ببەنە بەردەم لایەبى یاسای تاییەتمەند بۆ بێراردان لەسەرى. حکومەت هەریم و حکومەتى فیدراى ئەو بۆماوەى ۱۰ ساڵە ئەم کێسەیه لەنێوانیاندا بەردەوامە یەى چارەسەر. لە عێراقدا دادگای فیدراى دەسەلاتى هەيه کە ئەم جۆرە کێشە یان سکالایە داوێ تیدا بکات، بۆچی تانیستا حکومەتى هەریم و حکومەتى فیدراى ئەم کێشەیهیان نەبردۆتە بەردەم دادگای فیدراى بۆ داوێ؟

وێلام: لەبەر ئەوەى کە حکومەتى فیدراى دانیانە کە کەیسەکە دەباتەوه هەگینا دەبێرد. حکومەتى فیدراى دانیانە کە گرتییەستى شەراکەتى هاوبەش نا یاساییە یان نا دەستوریه. لەبەر ئەوەى دانیانین کە کەیسەکا دەبەنەوه. تەن ها ئێمە نین کە پێمان وایە گرتییەستەکانى حکومەتى هەریم یاساییین، شارەزایانى تێدەوڵەتیش پێیان وایە و هەمان بۆچونیان هەيه، لەوانە پروفیسۆر جەیمس کروفۆرد کە پێیوایە حکمەتى هەریم مافى بەرێوەبردنى نەوت و غازى هەيه لەو کێلگانی کەله دواى ۲۰۰۵ دۆزاورانەتەوه.

پرسیار: پێتوانیە کە نەویستى حکومەتى هەریم بۆ بەرزکردنەوهى کێشەى نەوت و غاز لەگەڵ حکومەتى فیدراى لەبەر ئەوەیه کە حکومەتى هەریم دەترسیت لەوەى کە دادگای فیدراى بیلایەنە بێرارد لە کەیسەکە بدات بەهۆى چۆنیەتى پێکهاى دادگای فیدراى.

وێلام: حکومەتى هەریم پێویستى بەونیه کە ئەم کێشەیه بەرزبکاتەوه بۆ دادگای فیدراى، چونکە حکومەتى هەریم نەوت و غاز بەبەردەوامى هەناردەى دەرەوه دەکات یەى کێشە. حکومەتى فیدراى خاوەن سکالایە لەم کێشەیهدا ئەوان دەبیت کێشەکە ببەنە دادگای فیدراى. حکومەتى فیدراى ئێستا بەشە بوجەى هەریمی بڕیوە لەسەر کێشەى نەوت و غاز.

پرسیار: ئه‌گەر دوو دلیله‌ک هه‌بێت له‌لایه‌ن حکومه‌تی هه‌رێم و حکومه‌تی فیدراڵیه‌وه بۆ بردنی ئه‌مکێشه‌یه‌ بۆ دادگای فیدراڵی، ئه‌ی بۆ تانیستا هه‌ول نهدراوه که ئه‌مکێشه‌ ببریته به‌رده‌م دادگایه‌کی نیوده‌ولته‌ی بێلایه‌ن له‌ دهره‌وه‌ی عێراق؟

وه‌لام: لایه‌نه‌کانی ئه‌م کێشه‌یه‌ سیاسیه‌ن مامه‌له‌ له‌گه‌ڵ ئه‌م کێشه‌ ده‌کهن. حکومه‌تی فیدراڵی ئه‌م کێشه‌ی قواسته‌وه‌ و به‌کاری هێناوه‌ و مکه‌ سه‌به‌بێک بۆ برینی به‌شه‌ بوجه‌ی هه‌رێم کوردستان. حکومه‌تی هه‌رێمی کوردستانیش به‌وه‌ی که حکومه‌تی فیدراڵی هێچ رێکارێکی تر ناگرێته‌به‌ر دژ به‌حکومه‌تی هه‌رێمی کوردستان، به‌رده‌وامه‌ له‌ هه‌ناردنه‌کردنی نه‌وت و غاز بۆ دهره‌وه‌ به‌به‌رده‌وامی وه‌ به‌ته‌ن ها خۆی مامه‌له‌ له‌گه‌ڵ داهااتی نه‌وت و غاز دا ده‌کات. هه‌ردوولا نیه‌تی چاره‌سه‌ری کێشه‌که‌یان نیه‌، له‌به‌ر ئه‌وه‌ی حکومه‌تی هه‌رێم نایه‌وێت نه‌وت و غاز له‌رێگه‌ی سۆمۆوه‌ هه‌ناردنه‌ی دهره‌وه‌ بکات. وه‌ له‌ به‌رژه‌وه‌ندی حکومه‌تی فیدراڵدا نیه‌ که حکومه‌تی هه‌رێم نه‌وت و غاز هه‌ناردنه‌ بکات و وه‌ حکومه‌تی فیدراڵیش ۱۷% به‌شه‌ بوجه‌ی بدات. له‌به‌ر ئه‌وه‌ پێویسته‌ نێوانگیر هه‌بێت یارمه‌تیا‌ن بدات تا به‌گه‌نه‌ چاره‌سه‌ر

پرسیار: چ یاسایه‌ک نیونی حکومه‌تی هه‌رێم و حکومه‌تی فیدراڵی رێکده‌خات؟

وه‌لام: یاسا نیه‌. ده‌ستوری فیدراڵی نیونیان رێکده‌خات.

پرسیار: ئایا حکومه‌تی هه‌رێم ده‌توانێت شتیکه‌ بکات که پێچه‌وانه‌ی یاسای فیدراڵی یه‌ن ده‌ستوری فیدراڵی بێت؟

وه‌لام: نه‌خیر ناتوانێت پێچه‌وانه‌ی ده‌ستوری فیدراڵی بکات، به‌ نیس=به‌تی یاسای فیدراڵیه‌وه‌ ماده‌ی ۱۲۱ی ده‌ستور ده‌لێت. به‌بۆت بخوێنمه‌وه‌..... حکومه‌تی هه‌رێم ده‌توانێت له‌ بواری یاسادانا‌ن، ده‌سه‌لاتی جێبه‌جێکردن و دادوهریدا سه‌ربه‌خۆبێت به‌ پێی ده‌ستور له‌هه‌موو ئه‌و باباته‌نه‌ی که‌له‌ده‌سه‌لاتی حکومه‌تی فیدراڵدا نین. ئه‌وه‌ یه‌که‌م، دووهم ماده‌ی ۱۱۵ی ده‌ستور پێی ماده‌ی ۱۱۵ ئه‌گه‌ر یاسای هه‌رێم و یاسای حکومه‌تی فیدراڵی P ده‌لێت.....، به‌ دژیا‌یه‌تیا‌ن هه‌بوو، له‌و باباته‌نه‌ی که‌ده‌سه‌لاتی حکومه‌تی فیدراڵ نه‌بوون، ئه‌وا ئه‌له‌وه‌یه‌ت بۆ یاسای هه‌رێم به‌لام ئه‌گه‌ر دژیا‌یه‌تیه‌که‌ له‌و باباته‌نه‌دا بوو که له‌ ده‌سه‌لاتی حکومه‌تی فیدراڵدا بوو ئه‌وه‌ ئه‌له‌وه‌یه‌ت بۆ حکومه‌تی فیدرا‌له

پرسیار: ماده‌ی ۱۱۲ یس ده‌ستور رێگه‌ی داوه‌ به‌ حکومه‌تی هه‌رێمکه‌ نه‌وت و غاز به‌رێوه‌ ببات به‌لام به‌ هاو‌به‌شی له‌گه‌ڵحکومه‌تی فیدرا‌دا.

.....وهلام: با مادهی ۱۱۲ بۆ بخوینمهوه. مادهکه دهلئیت

بی ئهم مادهیه بهرئومبردنی نهوت و غاز لهو کیلگانهی که دۆزراونهتهوه تا ئهو بهروارهی که دستور هاتوته جیهجیکردن P به دهییت به هاوبهشی بیت لهنیوان حکومتهی ههریم و حکومتهی فیدرالدا، بهلام دستور بیدهگه لهسر بهرئومبردنی نهوت و غاز لهو کیلگانهی که دواي دمواری جیهجیکردنی دستور دۆزراونهتهوه وه له داهاتودا دموورینهوه. لهبرئهوه هیچ شتیکه مادهی ۱۱۲ دا نیه که حکومتهی ههریم ناچار بکات یان ئیجباری بکات که نهوت و غاز لهو کیلگانهی که لهوای بهرواری جیهجیکردنی دستور وه دۆزراونهتهوه بههاوبهشی لهگهله حکومتهی فیدرالیدا بهرئومه بیات

پرسیار: یاسای نهوت و غاز فیدرالی سالی ۲۰۰۷ له پهرلهمانی عیراقه. یاساکه له سالی ۲۰۰۷ وه له پهرلهمانه. ئامانج له یاسای نهوت و غاز فیدرالهوه بوو که بتوانیت چارهمسریک بیت بۆ کیشهی نیوان حکومتهی ههریم و حکومتهی فیدرال لهسر بهرئومبردنی نهوت و غاز. یاساکه بۆماوهی ۱۰ سال زیاتره له پهرلهمانی عیراقه بهلام تا ئیستا له پهرلامان پسهسد نهکراوه. بۆچی تا ئیستا یاسای نهوت و غاز فیدرال پسهسد نهکراوه؟

وهلام: لهبرئهوهی که ناکوکی ههیه له نیوان کورد و عهربا لهسر یاساکه. چهند جاریک ریکموتن کرا بهلام جاریک کورد پهشیمان بووهوه، وه جاریکیش عهربا پهشیمان بووهوه. لهبرئهوه تا ئیستا ریکموتنی کوتای نهکراوه لهسر یاساکه

پرسیار: یهکیکتر لهکیسهکانی نیوان حکومتهی ههریم و حکومتهی عیراقی لهسر داهاتی نهوتو غازه. پئس ئهوهی پرسیارهکم بکم ئهتوانم بیرسم که کێ خاومداریتی نهوتو غازی ههیه له عیراقدا؟ دستور دهلیت نهوتو غاز مولکی خهلهکی عیراقه، حکومتهی فیدرالی ئهینهرایهتی خهلهکی عیراق دهکات. ئهوه وایه؟

وهلام: مادهی ۱۱۱ به لهدهستور که دهلیت نهوت و غاز مولکی خهلهکی عیراقه. مادهکه دهلیت لهسر ئهم ئهساسه دهتوانیریت مادهکهوا تهفسیربکریت که داهاتی نهوت و غاز دهییت بگهرینهوه بۆ حکومتهی فیدرال، وه جاریکی تر لهوئوه بهشیومهکی دادپهرومرانه دابهشکریتهوه بهسر ههریمهکان و پاریزگاگاندا

پرسیار: ئایا حکومتهی ههریمی کوردستان داهاتی نهوت و غاز دهگیرینهوه بۆ حکومتهی فیدرال؟

وهلام: نهکهر نایگهرینهتهوه بۆ حکومتهی فیدرال، بهلکو نا شفافیهت و نارونی ههیه له داهاتی نهوت و غاز و وه کس ناگادار نیه که چۆن ئیداره دهکریت

پرسیار: ئایا حکومتهی فیدرال دهتوانیت به بیانوی نا شفافیهت له داهاتی نهوت و غاز مافی ئهوهی ههیهت له رینگهگریت له ههناردهکردنی نهوت و غاز حکومتهی ههریم بۆ دهرمه وه ههمووگرێبهستهکانی حکومتهی ههریم ههلبهسیریت

وه‌لام: مافی ئه‌وه‌ی نیه‌ که گریه‌سته‌کانی نه‌وت و غازى حکمه‌تى هه‌رێم هه‌لبه‌ستێرێت. به‌لاممافی ئه‌وه‌ی هه‌یه‌ که داواى داهااتى نه‌وت و غاز بکات له‌عه‌که‌مه‌تى هه‌رێم وه‌ له‌ به‌رامبه‌ردا به‌شه‌بوجه‌ی حکومه‌تى هه‌رێم بدات که له‌ ١٧% ماده‌ی ١١٢ له‌ ده‌ستور ده‌لێت،ماده‌ی خوێنده‌وه

له‌به‌رئه‌وه‌ داهااتى نه‌وت و غاز ده‌بێتبه‌گه‌رێته‌وه‌ بۆحکومه‌تى فیدراڵ.وه‌ حکومه‌تى فیدراڵمافی ئه‌وه‌ی هه‌یه‌ که داواى داهااتى نه‌وت و غاز بکات. وه‌ حکومه‌تى فیدراڵی ده‌بێت داهااتى نه‌وت و غاز به‌ شێوه‌یه‌کى داد په‌روه‌رانه‌ دابه‌شه‌بکاته‌وه‌ به‌ سه‌ر خه‌ڵکی هه‌رێمه‌کان و پارێزگاگاندا. وه‌ ده‌بێت به‌شێکی تاییه‌ت بۆ ماوه‌یه‌کی دیاریکه‌راو ده‌رێت به‌و شێنانه‌ی که‌له‌لایه‌ن حکومه‌تى پێشووی عێراقه‌وه‌ زه‌مه‌رۆمانده‌ بوون. ئه‌و شونانده‌ش زۆربه‌یده‌که‌کوێته‌سنووری حکومه‌تى هه‌رێمه‌وه‌. حکومه‌تى فیدراڵ وه‌که‌مومارسه‌که‌ردنی مافی خۆی به‌شه‌ بوجه‌ی حکومه‌تى هه‌رێمی بڕیوه‌ که‌له‌ ١٧% بوجه‌ی حکومه‌تى فیدراڵه‌، حکومه‌ت فیدراڵ داواى داهااتى نه‌وت و غاز ده‌کات له‌ حکومه‌تى هه‌رێم وه‌ ده‌لێت به‌شه‌ بوجه‌ی حکومه‌تى هه‌رێم که له‌ ١٧% نانێریت تا داهااتى نه‌وت و غازى ته‌سلیم نه‌که‌رێت. له‌ ١٧% به‌شه‌ بوجه‌ی حکومه‌تى هه‌رێم له‌ حکومه‌تى فیدراڵ زیاتره‌ له‌ داهااته‌ی که حکومه‌تى هه‌رێم له‌ داهااتى نه‌وت و غاز ده‌ستی ده‌که‌وێت.

پرسیار: حکومه‌ی فیدراڵی تا ئێستا گریه‌سته‌کانی حکومه‌تى هه‌رێمی به‌ قانونی یان ده‌ستوری نه‌ناساندوه‌

وه‌لام: اعترافى پێنه‌کردن به‌لام به‌ شێوه‌یه‌کی زه‌مى اعترافى پێکردن. چۆن به‌ شێوه‌یه‌کی زه‌مى اعترافى کردوه‌، حکومه‌تى فیدراڵی ئێستا داوا له‌ حکومه‌تى هه‌رێم ده‌کات که رۆژانه‌ ٤٥٠٠٠٠ به‌رمیلنه‌وت له‌ رێگه‌ی کۆمپانیانی سۆمۆی حکومه‌تى فیدراڵه‌وه‌ هه‌نارده‌ بکات له‌به‌رامبه‌ردا به‌شه‌ بوجه‌ی حکومه‌تى هه‌رێم ده‌نێرێت. ئه‌مه‌ اعترافى زه‌میه‌ به‌گریه‌سته‌کانی حکومه‌تى هه‌رێم.

پرسیار: یاسای نه‌وت و غازى فیدراڵی ساڵی ٢٠٠٧ له‌ په‌رله‌مانی عێراقه‌. یاساکه‌ له‌ ساڵی ٢٠٠٧ وه‌ له‌ په‌رله‌مانه‌. ئامانج له‌ یاسای نه‌وت و غازى فیدراڵه‌وه‌ بوو که‌ به‌توانێت چاره‌سه‌ریک بێت بۆ کێشه‌ی نیوان حکومه‌تى هه‌رێم و حکومه‌تى فیدراڵ له‌سه‌ر به‌ریوه‌ردنی نه‌وت و غاز. یاساکه‌ بۆماوه‌ی ١٠ ساڵ زیاتره‌ له‌ په‌رله‌مانی عێراقه‌ به‌لام تا ئێستا له‌ په‌رلامان په‌سه‌ند نه‌که‌راوه‌. بۆچی تا ئێستا یاسای نه‌وت و غازى فیدراڵ په‌سه‌ند نه‌که‌راوه‌؟

وه‌لام: له‌به‌رئه‌وه‌ی که‌ ناکوکی هه‌یه‌ له‌ نیوان کورد و عه‌به‌دا له‌سه‌ر یاساکه‌. چهند جاریک رێکه‌وتن کرا به‌لام جاریک کورد په‌شیمان بووه‌وه‌، وه‌ جاریکیش عه‌به‌ب په‌شیمان بووه‌وه‌. له‌به‌رئه‌وه‌ تا ئێستا رێکه‌وتنی کوته‌ی نه‌که‌راوه‌ له‌سه‌ر یاساکه‌

پرسیار: یه‌کیکێتر له‌کێسه‌کانی نیوان حکومه‌تى هه‌رێم و حکومه‌تى عێراقی له‌سه‌ر داهااتى نه‌وتو غازه‌. پێس ئه‌وه‌ی پرسیاره‌که‌م به‌که‌م ئه‌توانم به‌رسه‌م که‌ کێ خاوه‌داربێتی نه‌وتو غازى هه‌یه‌ له‌ عێراقدا؟ ده‌ستور ده‌لێت نه‌وتو غاز موڵکی خه‌ڵکی عێراقه‌، حکومه‌تى فیدراڵیش نوێنه‌رایه‌تی خه‌ڵکی عێراق ده‌کات. ئه‌مه‌ وایه‌؟

وه لām: مادهی ۱۱۱ یه لهدستور كه ده لآیت نهوت و غاز مولکی خه لکی عیراقه. ماده كه ده لآیت.....
له سه ر ئهم ئه ساسه ده توانیریت ماده كه وا ته فسیر بکریت كه داهاتی نهوت و غاز ده بیت بگه ریته وه بۆ حکومتی فیدرال، وه
جاریکی تر له ویه به شیوه میکی دادپهروهرانه دابه شبکریته وه به سه ر هه ریمه کان و پارێزگاگاندا

پرسیار: ئایا حکومتی هه ریمی کوردستان داهاتی نهوت و غاز ده گه ریته وه بۆ حکومتی فیدرال؟

وه لām: نهک هه ر نا بگه ریته وه بۆ حکومتی فیدرال، به لکو نا شه فیهیت و نارونی ههیه له داهاتی نهوت و غاز و وه کهس
ئاگادار نیه که چۆن ئیداره ده کریت

پرسیار: ئایا حکومتی فیدرال ده توانیریت به بیانی نا شه فیهیت له داهاتی نهوت و غاز مافی ئه وهی هه بیت له رێگه بکریت له
هه نارده کردنی نهوت و غازی حکومتی هه ریم بۆ ده ره وه وه هه موو گه ریه ستهکانی حکومتی هه ریم هه لبه سیریت

وه لām: مافی ئه وهی نیه که گه ریه ستهکانی نهوت و غازی حکمهتی هه ریم هه لبه سیریت. به لامافی ئه وهی ههیه که داوای داهاتی
نهوت و غاز بکات له عکه مهتی هه ریم وه له بهرامبهردا به شه بوجهی حکومتی هه ریم بدات که له ۱۷% . مادهی ۱۱۲ له
دهستور ده لآیت، مادهی خوینده وه.....

له سه ر ئه وه داهاتی نهوت و غاز ده بیتی بگه ریته وه بۆ حکومتی فیدرال. وه حکومتی فیدرال مافی ئه وهی ههیه که داوای داهاتی نهوت
و غاز بکات. وه حکومتی فیدرالی ده بیت داهاتی نهوت و غاز به شیوه میکی داد پهروهرانه دابه شبکاته وه به سه ر خه لکی
هه ریمه کان و پارێزگاگاندا. وه ده بیت به شیکی تابهت بۆ ماوه میکی دیاریکراو بدریت بهو شینانهی که له لایه ن حکومتی پیشووی
عیراقه وه زه ره رۆماند بوون. ئه و شوینانهش زۆر بهیده که ویته سنوری حکومتی هه ریمه وه. حکومتی فیدرال
وه که ماره سه کردنی مافی خۆی به شه بوجهی حکومتی هه ریمی بریوه که له ۱۷% بوجهی حکومتی فیدراله، حکومهت فیدرال
داوای داهاتی نهوت و غاز دهکات له حکومتی هه ریم وه ده لآیت به شه بوجهی حکومتی هه ریم که له ۱۷% نانیریت تا
داهاتی نهوت و غاز ته سلیم نه کریت. له ۱۷% به شه بوجهی حکومتی هه ریم له حکومتی فیدرال زیاتره لهو داهاتهی که
حکومهتی هه ریم له داهاتی نهوت و غاز دهستی دهکویت

پرسیار: حکومهی فیدرالی تا ئیستا گه ریه ستهکانی حکومتی هه ریمی به قانونی یان دهستوری نهاساندوه

وه لām: اعترافی پینه کردون به لām به شیوه میکی زمی اعترفی پیکردون. چۆن به شیوه میکی زمی اعترافی کردوه، حکومتی
فیدرالی ئیستا داوا له حکومتی هه ریم دهکات که رۆژانه ۴۵۰۰۰۰ بهرمیل نهوت له رێگهی کۆمپانیانی سۆمۆی حکومتی
فیدراله وه هه نارده بکات له بهرامبهردا به شه بوجهی حکومتی هه ریم ده نیریت. ئه مه اعترافی زمیه به گه ریه ستهکانی حکومتی
هه ریم.

بەشیوەی زمانی جیاوازی لە دانێنانی رسمی. ئایا حکومەتی فیدرالی لە داھاتودا ناتوانیت بیانوی ئەوە بگریت بۆ گرتنەستەکانی حکومەتی هەرێم نا یاسایی؟ بەری ئەمە و سیاسی عێراق ڕەنگە ئێستا گونجاو نەبێت بۆ ئەمە بەلام ئەگەر لە داھاتودا باری سیاسی ئەسایشی عێراق جیگیر بوو حکومەتی فیدرالی لەوانە بە بۆت گرتنەستەکانی حکومەتی هەرێم یاسای نین، بە تاییەت کە اعترافیکی رسمی نەبە لەلایەن حکومەتی فیدرالی بە گرتنەستەکانی حکومەتی هەرێم باری دادغای عێراقی یان نیو دەولەتی نە لەسەر یاسایی بوونی گرتنەستەکانی حکومەتی هەرێم.

د. یوسف: بەڵێ حکومەتی فیدرالی دەتوانیت یەو بەکات لە ناوخوا عێراقدا، بەلام لە دەروە عێراق و لە ئاستی نیو دەولەتیدا ئەتوانیت چی بەکات. حکومەتی فیدرالی دەتوانیت چی بەکات بۆ ئەوەی ڕێگە لە حکومەتی هەرێم بگریت نەوت و غاز هەناردە ناکاتە دەروە مەگەر بە تەیارە بۆریە نەوتەکانی حکومەتی هەرێم بێتە قینتەو. ئێستا حکومەتی فیدرالی دەتوانیت چیبکات تا ڕێگە لە حکومەتی هەرێم بگریت تا نەوتەکانی لە ڕێگە تورکیا و هەناردە دەروە نەکات. لەوانە سکاڵای یاسای لە دژی حکومەتی هەرێم لە دادگای تورکیا تۆمار بەکات. ئەو کاتە اعترافی زمانی حکومەتی فیدرالی بە گرتنەستەکانی حکومەتی هەرێم و بۆچونی یاساناسان و شارەزایی نیو دەولەتی لەسەر گرتنەستەکانی حکومەتی هەرێم دژ بە حکومەتی فیدرالی بەکار دیت. بە ئێ حکومەتی فیدرالی دەتوانیت شتێک بەکات وەک ئەوەی کە ئێستا بەشە بۆجە حکومەتی هەرێمی بڕیوە، یان دەتوانیت کێشە ناوچە جێ ناکۆکەکان وەک هۆکاریک بەکار بەهێنیت بۆ هەرشکردنە سەر ئەو ناوچانەو گەرانەو جەیشی عێراق بۆ ئەو ناوچانە. حکومەتی عێراقی ناتوانیت لەوە زیات بەکات ئە تا ئێستا کردیتی.

پرسیار: نازانمەگەر بتوانمەرسیارە بکام. حکومەتی فیدرالی هەرشە لەکۆمپانیان بیانیەکان کردووە کە نابیت گرتنەستە نەوت و غاز لەگەڵ حکومەتی هەرێم بکەن، وە هەر کۆمپانیایەک گرتنەستە لەگەڵ حکومەتی هەرێم بەکات ئەو گرتنەستەکانی لەگەڵ حکومەتی فیدرالی لەدەستەدات. بۆت وایە چی و لەکۆمپانیان بیانیەکان دەکات کە گۆی بە هەرشەکانی حکومەتی فیدرالی نەدەن و بەردەوام بن لە گرتنەستەکانیان لەگەڵ حکومەتی هەرێم. وەک دەزانیت کە کۆمپانیان بیانیەکان ڕاوێژکاری یاساییان هەیە و وە هەتا دڵنیا نەبن لە یاسایی بوونی گرتنەستەکان و ژۆی ناکەن.

وەلام: دوو شت وای لێکردون. یەکەم بۆچونی شارەزایی نیو دەولەتی لەسەر یاسایی بوونی گرتنەستەکانی حکومەتی هەرێم وەک لە سەرئاو بەسەرکرد کە دەلێن گرتنەستەکانی حکومەتی هەرێم یاسایی. دوو بەخشینی کۆمپانیان بیانیەکان لە لێنچینەو یاسایی.

Interview 3 with Dr Sherko Jawdat the Chair of the Oil and Gas Committee of the Kurdistan Parliament

Q1: Are the KRG's PSC legal or constitutional?

A: in the Constitution specify the model contract whether it should be PSC or TSC. That is left for the Federal Government and the KRG. However, Article 111 and 112 of the Federal Constitution allow the KRG to manage oil and gas from the fields discovered after the 2005, but oil and gas operation from the fields discovered before 2005 must be managed together with the Federal Government. Therefore, the model contract such as PSC has not been mentioned in the Constitution.

Q: The question is whether KRG's oil and gas contract are legal or illegal?

A: Yes, they are legal

Q 2: If they are legal on what basis they are legal and under what law?

A. in accordance to the KRG Oil and Gas Law of 2007. That law allows the KRG to sign contract with the IOC to invest in the petroleum sector in Kurdistan and if there is dispute between the IOC and the KRG, it should be referred to the International Arbitration.

Q: Referring the dispute between the KRG and IOC over oil and gas contract to the International Arbitration, is not against the Federal Constitution as it is against the principle of sovereignty?

A: That is the legal matter, it is a pure legal matter whether it breaches the sovereignty of Iraq or not. However, the KRG has a right to manage oil and gas operations from the fields discovered after the enforcement of the Constitution of 2005. In the event of arising dispute between the KRG and IOCs the dispute should be referred to the International Arbitration. this is because IOCs are foreign companies and they believe their rights are more protected with the International Arbitration.

Q: The Federal Government argues that the KRG's oil and gas contract are illegal, even the KRG does not have right to manage oil and gas operations.

A: The problem is the Federal Government and KRG interpret the Article 111 and 112 as they want and as they protect their interests. As I said before the KRG has a right to the manage oil and gas operations from the fields discovered after 2005, but management of the fields discovered before 2005 must be in co-operation with the Federal Government such as the Baba Gurgur fields which was discovered before 2005 that must be managed together with the Federal Government.

Q: There is any co-operation between the KRG and the Federal Government in managing the fields discovered before 2005?

A: No

Q; On what basis the Iraqi government interpret the constitution as it wants? does the Federal Government has a right to interpret the Constitution?

A: The Federal Constitutional Court has the right to interpret the Constitution. But the Iraqi government attempt to stop the KRG from exporting oil through the Federal Constitutional Court, but they lost the case. There is now a new case, which Nouri Maliki raised in 2014 against the KRG to exporting its oil and gas through Turkey to the Jihna Harbour. In that case Nouri Maliki demands \$26,000,000,000.00 from the KRG. There is a dispute between the KRG and Federal Government over the interpretation of the relevant articles of the Constitution. There is a legal gap due to the lack of Federal Oil and Gas Law. The Draft of Federal Oil and Gas Law is at the Iraqi Parliament. The Political parties tried to pass the Federal Oil and Gas Law twice, in 2007 and 2011, but they failed. The Constitution requires oil and gas management to be regulated by the national law.

Q: As you said there is serious dispute between the parties over the interpretation of the relevant articles of the Constitution, and the only authority in Iraqi to interpret the Constitution is the Federal Constitutional Court. Why the disputed parties have not taken up the matter to the Federal Court and ask the Federal Court to interpret the relevant articles of the Constitution?

A: The Iraqi Oil Minister lodged a lawsuit at the Federal Court against the KRG and the Natural Resources Minister, but the case has been delayed for political settlement. The disputed parties want to reach a political agreement on this

matter. there is now negotiation between the Federal Government and the KRG on this matter for example in the 2019 budget law the KRG is required to send 250000 bpd to the Federal Government and in return the Federal Government will send the KRG's share of the Federal budget. That means to politically settle the legal dispute

Q: Does the political settlement response to the KRG's unilateral management of oil and gas?

Answer: That will be subject to the terms of the settlement and how the disputed parties agree on the interpretation of the relevant articles of the Constitution. This will be subject for the negotiation in the upcoming days. The Technical Committee has been set up for the matter, and before that the KRG prime Minister visited Baghdad last week to discuss the same matter. The technical committees for KRG and Federal Government will meet next to discuss how to resolve the problem.

Question. The current case at the Federal Supreme Court now for the dispute over the management of oil and gas operation or is specifically over the interpretation of those two articles 111 and 112.

Answer: It is for the management of oil and gas by the KRG without co-operation with the Federal Government.

Question: Is there any concern from the KRG over the Federal Court's partiality, like being bias to the Federal Government, or the structure of the Federal Court and the selection procedure of the Judges, like the share of Shia and Sunni in the Federal Court.

Answer: Share of Shia, Sunni and Kurds in the selection of the judges is organised but concerns from the KRG over the partiality of the federal Court, that question should be answered by the KRG.

Question: Regarding the Federal Oil and Gas Law of 2007 and amended in 2011. As you know that Law has not been ratified by the Iraqi Parliament. is there any agreement between the disputing parties to make new amendments to the Federal Oil and Gas Law to the extent that resolve the legal dispute between them over the management of oil and gas?

Answer: next week a technical committee from the KRG will meet the technical committee of the Federal Government to discuss the details of how resolve the problem.

Question: So, there is not any agreement yet on this matter?

Answer: No there is not agreement.

(Kurdish version)

چاوپێکەوتنی سێیه‌م له‌گه‌ڵ د. شێرکۆ جه‌ودهت ئەندامی لیژنەی نه‌وت و غاز له‌ په‌رله‌مانی کوردستان

پرسیار: ئایا گرێبه‌سته‌کانی نه‌وت و غاز ی حکومه‌تی هه‌ریه‌میاسایی یان ده‌ستورین؟

وه‌لام: ده‌ستوری دیاری نه‌کردوه که گرێبه‌ستان شەڕاکه‌ت له قازانج بن یان خزمه‌تگوزاری بن. ئه‌وه‌ی به‌جێهێشتوه‌وه بۆ حکومه‌تی هه‌ریه‌می حکومه‌تی فیدرالی. به‌لام ماده‌ی ۱۱۱ و ۱۱۲ یس ده‌ستور مافی داوه به حکومه‌تی هه‌ریه‌می که نه‌وت و غاز ده‌ربه‌یینه‌یت و به‌فروشنه‌یت له‌و کێلگانه‌ی له‌که‌دوای ساڵی ۲۰۰۵ دۆزراوه‌ته‌وه به‌بێ گه‌ڕانه‌وه بۆ حکومه‌تی فیدرالی. به‌لام به‌ریوه‌بردنی نه‌وت و غاز له‌و کێلگانه‌ی که له‌ پێش ۲۰۰۵ دۆزراوه‌ته‌وه ده‌یته‌ به‌هاوبه‌شی بێت له‌ نێوان حکومه‌تی هه‌ریه‌می و حکومه‌تی فیدرالی. له‌به‌رئه‌وه جۆری گرێبه‌سته و هه‌گرێبه‌سته شەڕاکه‌تی هاوبه‌ش له ده‌ستوردا دیاری نه‌کراوه.

پرسیار: پرسیارمه که ئه‌وه‌یه که ئایا گرێبه‌سته‌کانی نه‌وت و غاز، حکومه‌تی هه‌ریه‌می کوردستان یاسایی یان نایاسایی؟

وه‌لام: به‌لێ یاسایی.

پرسیار: ئه‌گه‌ر یاسایی له‌سه‌ر چ بنه‌مایه‌ک وه به پێی چ یاسایه‌ک؟

وه‌لام: به پێی یاسای نه‌وت و غاز ی حکومه‌تی هه‌ریه‌می کوردستان ساڵی ۲۰۰۷. ئه‌و یاسایه‌ک رێگه‌ده‌دات به حکومه‌تی هه‌ریه‌می کوردستان که گرێبه‌سته نه‌وت و غاز بکات له‌گه‌ڵ ئۆمپانیا بیاپه‌یه‌کان بۆ وه‌به‌ره‌ینه‌ی له نه‌وت و غاز ی حکومه‌تی هه‌ریه‌می کوردستاندا. وه ئه‌گه‌ر ناکۆکی هاته‌پێش له‌نێوان حکومه‌تی هه‌ریه‌می و کۆمپانیا بیاپه‌یه‌کاندا ئه‌وه ناکۆکیه‌که ده‌برێته لای ته‌حکیمی، نێوده‌وڵه‌تی.

پرسیار: گهرانهوهی ناکۆکی نیوان حکومەتی هەریم و کۆمپانیا بیانییهکان لەسەر گرتییەستەکان بۆ تەحکیمی نیودەولەتی دژ بەدەستوری فیدرانی، چونکە ناکۆکە لەگەڵ بنەمای سەرۆکی عێراق.

وەلام: ئێمە بابەتیکی یاسایی بەختە کە ئایا دژ بە بنەماکانی سەرۆکی عێراق بێت یان نا. بەلام مافی بەریوەبردنی نەوت و غازێ هەیە لەو کێلگانی که دواى ۲۰۰۵ دۆزراونەتەوه. لەکاتی هەبوونی ناکۆکیدان لەنیوان حکومەتی هەریم و کۆمپانیا بیانییهکاندا یان باشتەر کێشهکانیان ببنە لای ئێمە ناکۆکیەکی دەبیست بیریته لای تەحکیمی نیودەولەتی، چونکە کۆمپانیا نیودەولەتییهکان پ تەحکیمی نیودەولەتی لەبەرئێمە پێیان وایە مافەکانیان لای تەحکیمی نیودەولەتی زیاتر پریزراوتره.

پرسیار: حکومەتی فیدرالی دەلیت گرتییەستەکانی نەوت و غازێ حکومەتی هەریمی کوردستان نایاسایی، تەنانت حکومەتی هەریم مافی بەریوەبردنی نەوت و غازێ نیە بە تەنها

وەلام: کێشهکە ئێمەیه که حکومەتی فیدرالی و حکومەتی هەریم مادهی ۱۱۱ و ۱۱۲ ی دەستور بهو شێوهیه تەفسیر دەکەن که خۆیان دیمانیوێت و که له بەرژموندی خۆیانە. وەک پێشوتر وۆتم حکومەتی هەریم مافی بەریوەبردنی نەوت و غازێ لەو کێلگانی هەیە کەلەدواى ۲۰۰۵ دۆزراونەتەوه، بەلام بەریوەبردنی ئەو کێلگانی که پێش ۲۰۰۵ دۆزراونەتەوه وەک کێلگانی بابەگورگور دەبیست بە هاوبەشی بێت لەگەڵ حکومەتی فیدرالی.

پرسیار: ئایا هیچ هەماهەنگیەکی هەیە لە نیوان حکومەتی هەریم و حکومەتی فیدرالی لەبەرئێمە نیو کێلگانی که پێش ۲۰۰۵ دۆزراونەتەوه؟

وەلام: نەخیر.

پرسیار: لەسەر چ بنەمایەکی حکومەتی فیدرالی دەستور تەفسیر دەکات بهو شێوهیهی کەدەبیوێت. ئایا حکومەتی فیدرالی دەسەلاتی تەفسیرکردنی دەستوری هەیە؟

وەلام: دادگای فیدرالی دەسەلاتی تەفسیرکردنی دەستوری هەیە، بەلام حکومەتی فیدرالی دەبیوێت پێگەڵەحکومەتی هەریم بگرتن لە هەناردەکردنی نەوت و غاز. حکومەتی فیدرالی هەولێدا لە پێگەیی دادگای فیدرالییهوه پێگە لە حکومەتی هەریم بگرتن که نەوت و غاز هەناردەنەکات بەلامکەیسەکە دۆراند. ئێستا کەیسێکی تری لەدژی حکومەتی هەریم تۆمار کردووە، کە نوری مالیکی سەرۆک وەزیرانی پێشووی عێراق لە دادگای فیدرالی تۆماری کردووە لەدژی حکومەتی هەریم که حکومەتی هەریم مافی ئێمەیه که نەوت و غاز هەناردە دەرەوه بکات لە پێگەیی تورکیا بۆبەندەری جی هان. لەکەیسەکەدا نوری مالیکی ۲۶۰۰۰۰۰۰۰ دۆلار لەحکومەتی هەریم دەکات. ناکۆکی هەیە لە نیوان حکومەتی هەریم حکومەتی فیدرالی لەسەر

تەفسىر كىردى دەستور. نەبوونى ياساى نەوت و غازى فیدرال بۆشایەكى ياساى دروست كىردە. رەشئوسى ياساى نەوت و غازى فیدرال لە پەرلەمانى عىراقە بەلام تائىستا لایەنكانى ناوپەرلەمان لەسەرى رىك نەكەوتون لەسالى ۲۰۰۷ و ۲۰۱۱ ھەولەرا كەياساكە پەسەندىكرىت بەلام رىكنەكەوتن و ياساكە تائىستا پەسەند نەكراوە. دەستور چۆنىاتى بەرئومەردى نەوت و غازى بەجى . ھىشتە بۆئەوى بە ياساىەكى نىشتەمانى رىكبخرىت

پرسىار: ھەك ژەنابت ووتت ناكۆكى ھەيە لە ئىوان حكومەتى ھەرىم و حكومەتى فیدرالدا لەسەر تەفسىر كىردى مادە پەيومەردى دارەكانى دەستور بە بەرئومەردى نەوتو غاز وە تەن ھا لایەنىك كەسەلانى تەفسىر كىردى دەستورى ھەيىت دادگای فیدرالە. بۆچى تائىستا حكومەتى ھەرىم و حكومەتى فیدرال كىشەى تەفسىر كىردى مادەپەيومەردى دارەكانى تايىبەت بە نەوت و غاز نەومەردە لای دادگای فیدرال بۆ تەفسىر كىردى؟

وەلام: ھەزىرى نەوتى عىراقى سكاڵاى تۆمار كىردە لە دادگای فیدرالى لە دژى حكومەتى ھەرىم و ھەزىرى سامانەسروشتىەكانى حكومەتى ھەرىم، بەلام كەيسەكە بەردەوام دوا دەخريت بۆ ئەوى كەرىكەوتنى سىياسى لەسەر كىشەى نەوت و غاز بكرىت. ھەردوو لایەنى كىشەكە دەیانەوتت كە رىكەوتنى سىياسى بكرىت لەسەر كىشەى نەوت و غاز. ئىستا گەتوگۆ ھەيە لە ئىوانىندا بۆ نمونە لەياساى بوجەى فیدرالى بۆ سالى ۲۰۱۹ حكومەتى فیدرالى داوا دەكات كە حكومەتى ھەرىم رۆژانە ۲۵۰،۰۰۰ بەرمىل نەوت لە رىگەى حكومەتى فیدرالە ھەناردەبكاتە دەروە لەبەر امبەردا حكومەتى فیدرالى بوجەى حكومەتى ھەرىم دەنيرىت . بۆ كوردستان. ئەمەش چارەسەرى سىياسىە بۆ كىشەكە

پرسىار: ئایا چارەسەرى سىياسى دەبێتە وەلامىك بۆ ئەوى كە حكومەتى ھەرىم مافى ئەوى ھەيە كە بە تەن ھا نەوت و غاز بەرئومەيات؟

وەلام: ئەو دەمەستىتە سەر ناوەرۆكى رىكەوتنەكە و وە رىكەوتنى حكومەتى ھەرىم و حكومەتى فیدرالى لەسەر تەفسىرى مادە پەيومەردى دارەكانى دەستور. ئەمە بابەتى گەتوگۆكانى داھاتودەبىت. لىژنەى تەكنىكى پىكھاتوون بۆ ئەم مەسەلانە. سەرۆك ھەزىرانى حكومەتى ھەرىم سەردانى بەغداى كرد ھەفتەى پىشوو بۆ گەتوگۆكرىن لەسەر ئەوكىشانە. وە ھەفتەى داھاتوو لىژنەى تەكنىكى حكومەتى ھەرىمى كوردستان لەگەل لىژنەى تەكنىكى حكومەتى فیدرالى كۆدەبىتەو بۆ چارەسەركىردى . ئەمبابەتانە

پرسىار: ئایا ئەو كەيسەى كە ئىستا لە دادگای فیدرالىە لەسەر كىشەى بەرئومەردى نەوت و غازە يان تەن ھا تايىبەتە بە ناكۆكى حكومەتى ھەرىم و حكومەتى فیدرال لەسەر تەفسىر كىردى مادەى ۱۱۱ و ۱۱۲ پىس دەستور؟

وەلام: لەسەر بەرئومەردى نەوت و غازە لەلایەن حكومەتى ھەرىمەو بە تەن ھا و بەبى گەرانەو بۆ حكومەتى فیدرال

پرسىار: ئايا ھىچ نىگىرانىيەك ھەيە لەلاينە حكومتى ھەرىمەو لەسەر بىلايەنى دادگاي فيدرال يان لەسەر چۆنيەتى پىك ھاتەى دادگاي فيدرال تاييەت بە شىوھى ديارى كردن و ھەلبژاردنى دادمەكان، وەك بلىين بەشى شىعە و بەشى سونە و بەشى كورد لە دادگاي فيدرالدا.

وہلام: بەشى شىعە و سونەو كورد لەبەرچاوكىراوہ لە ديارىكردنى دادمەكاندا. بەلام ھەيوونى نىگىرانى لەلای حكومتى ھەرىم دەبارەى سەر بەخۆى بوونى دادگاي فدرالى ئەبىت ئەو پرسىارە لە حكومتى ھەرىمى كوردستان بكرىت.

پرسىار: دەبارەى ياساى فيدرالى نەوت و غازى سالى ۲۰۰۷ و ھەموار كردنى لە سالى ۲۰۱۱. وەك ئاگادارىت تائىستا ياساكە لە پەرلەمان پەسەند نەكراوہ. ئايا گىچ رىكەوتنىك لەنێوان لاينەكاندا بۆ سەر لەنێو ھەموار كردنى ياساكە بە شىوھىيەك كە چارەسەرى ناكوکىيەكانى نێوان حكومتى ھەرىم و حكومتى فيدرال بكات لەسەر بەرپىو مېردنى نەوت و غاز.

وہلام: ھەفتەى داھاتوو لىژنەى تەكنىكى حكومتى ھەرىم و حكومتى فيدرال كۆدەبنەوہ بۆ تاوتويىكردنى كىشەكان و چۆنيەتى چارەسەريان.

پرسىار: كەواتە ھىشتا ھىچ رىكەوتنىك نەكراوہ لەسەر ئەم كىشە؟

وہلام: نەخىر ھىشتا ھىچ رىكەوتنىك نەكراوہ

Annex 3 The PSCs KRG has signed with IOCs between 2002 and present:

- (a) **Ain Sifni**
 - a. [PSC – Hunt Oil – 08/09/2007](#)
 - b. [Assignment Novation and First Amendment Agreement – 26/07/2011](#)
 - c. [Hunt Oil Guarantee – 26/07/2011](#)
 - d. [Hunt Oil LOR – 26/07/2011](#)
- (b) **Akri Bijeel**
 - a. [PSC – GKP/MOL – 06/11/2007](#)
 - b. [GKP/MOL Assignment – 22/10/2007](#)
 - c. [GKP/MOL Assignment and Novation Agreement – 30/10/2007](#)
 - d. [GKP/MOL Amendment Agreement – 01/08/2010](#)
- (c) **Arbat**
 - a. [PSC – Shamaran – 28/08/2009](#)
 - b. [Amendment Agreement – 01/08/2010](#)
- (d) **Atrush**
 - a. [PSC - Atrush - GEP - 10/11/2007](#)
 - b. [First Amendment Agreement - 01/08/2010](#)
 - c. [Marathon Guarantee - 20/10/2010](#)
 - d. [Marathon LOR - 20/10/2010](#)
 - e. [TPI Assignment, Novation and Second Amendment Agreement - 20/10/2010](#)
- (e) **Baranan**
 - a. [PSC – Talisman – 15/06/2009](#)
 - b. [Assignment Agreement – 26/07/2011](#)
 - c. [Murphy LOR – 26/07/2011](#)
 - d. [Talisman LOR – 26/07/2011](#)
 - e. [Talisman/Murphy Guarantee – 26/07/2011](#)
 - f. [Murphy TPI Assignment – 26/07/2011](#)
- (f) **Barda Rash**

- a. [PSC – Komet – 20/06/2008](#)
 - b. [Afren LOR – 27/07/2011](#)
 - c. [Komet/Afren First Amendment Agreement – 27/07/2011](#)
 - d. [Komet LOR – 27/07/2011](#)
 - e. [Termination Agreement – 27/07/2011](#)
 - f. [First Amendment Agreement and Completion Certificate – 07/09/2011](#)
- (g) **Bazian**
- a. [PSC - KNOC - 10/11/2007](#)
 - b. [Assignment Agreement - 17/11/2008](#)
 - c. [Deed of Assignment and Novation - 12/12/2008](#)
- (h) **Ber Bahr**
- a. [PSC - Genel Enerji - 31/03/2009](#)
 - b. [GKP Assignment Agreement - 16/07/2009](#)
 - c. [Assignment Novation and Amendment Agreement - 16/07/2009](#)
 - d. [Third Amendment Agreement - 01/08/2010](#)
- (i) **Bina Bawi**
- a. [PSC - Oil Search/A&T - 06/03/2008](#)
 - b. [PSA - A&T - 29/03/2006](#)
 - c. [EPSA - A&T - 26/02/2007](#)
 - d. [Deed of Assignment and Novation - 01/04/2009](#)
 - e. [OMV/A&T/Hawler Energy Assignment and Second Amendment Agreement - 01/08/2010](#)
- (j) **Central Dohuk**
- a. [PSC - Murphy/Petroquest - 14/10/2010](#)
 - b. [Murphy LOR - 14/10/2010](#)
- (k) **Chia Surkh**
- a. [PSC - Longford/Petoil/Genel Enerji - 11/06/2009](#)
 - b. [First Amendment Agreement - Longford/Petoil/Genel Enerji - 01/08/2010](#)
- (l) **Dinarta**
- a. [PSC - Dinarta - HESS - 17/06/2011](#)
 - b. [Dinarta - Petroceltic LOR - 26/07/2011](#)
 - c. [Dinarta - Guarantee - 27/07/2011](#)
 - d. [Dinarta - HESS LOR - 26/07/2011](#)

- (m) **Duhok**
- a. [PSC – DNO – 13/03/2008](#)
 - b. [Amendment and Relinquishment Agreement – 10/09/2008](#)
 - c. [Assignment Agreement – 31/03/2009](#)
 - d. [Assignment and Amendment Agreement – 31/03/2009](#)
 - e. [Third Amendment Agreement – 01/08/2010](#)
- (n) **Erbil**
- a. [PSA Annex A – DNO – 25/06/2004](#)
 - b. [PSA Annex C – DNO – 25/06/2004](#)
 - c. [PSA – DNO – 25/06/2004](#)
 - d. [PSC – DNO – 13/03/2008](#)
- (o) **Garmian**
- a. [PSC - Western Zagros - 25/07/2011](#)
 - b. [Western Zagros Guarantee - 25/07/2011](#)
 - c. [Western Zagros LOR - 25/07/2011](#)
- (p) **Harir**
- a. [PSC - Marathon - 20/10/2010](#)
 - b. [Marathon LOR - 20/10/2010](#)
 - c. [Marathon Guarantee - 20/10/2010](#)
- (q) **Hawler**
- a. [PSC - Norbest - 10/11/2007](#)
 - b. [KEPCO/KNOC Assignment Agreement - 17/11/2008](#)
 - c. [AOG Guarantee - 09/08/2011](#)
 - d. [AOG LOR - 09/08/2011](#)
 - e. [Confidentiality and Release Agreement - 09/08/2011](#)
 - f. [KNOC LOR - 09/08/2011](#)
 - g. [Norbest LOR - 09/08/2011](#)
 - h. [Second Amendment Agreement - 09/08/2011](#)
 - i. [Certificate of Completion Executed - 10/08/2011](#)
 - j. [Deed of Assignment and Novation](#)
- (r) **Kurdamir**
- a. [EPSA - Western Zagros - 04/05/2006](#)
 - b. [EPSA - Western Zagros - 26/02/2007](#)
 - c. [PSC - Western Zagros - 28/02/2008](#)
 - d. [Completion Agreement - 19/06/2008](#)

- e. [Talisman Third Party Agreement - 19/06/2008](#)
- f. [Talisman Third Party Agreement Annex A - 19/06/2008](#)
- g. [Amendment Agreement - 25/07/2011](#)
- h. [Completion Certificate - 25/07/2011](#)
- i. [Talisman/Western Zagros Guarantee - 25/07/2011](#)
- j. [Talisman LOR - 25/07/2011](#)
- k. [Western Zagros LOR - 25/07/2011](#)
- l. [First Amendment Agreement to TPPA - 25/07/2011](#)
- (s) **Mala Omar**
 - a. [PSC - OMV - 06/11/2007](#)
 - b. [First Amendment Agreement - 01/08/2010](#)
 - c. [Certificate of Completion - 31/08/2010](#)
- (t) **Miran**
 - a. [PSC - Heritage - 01/10/2007](#)
 - b. [Heritage/Genel Enerji Assignment Agreement - 31/03/2009](#)
 - c. [Heritage/Genel Assignment and Novation Agreement - 31/03/2009](#)
 - d. [Third Amendment Agreement - 01/08/2010](#)
- (u) **Piramagrun**
 - a. [PSC - Repsol - 26/07/2011](#)
 - b. [Repsol Guarantee - 26/07/2011](#)
 - c. [Repsol LOR - 26/07/2011](#)
- (v) **Pulkhana**
 - a. [PSA - PetOil Petroleum and Petroleum Products International Exploration and Production Inc - 10/01/2003](#)
 - b. [PSC - Shamaran/Petoil - 28/08/2009](#)
 - c. [Amendment Agreement - 01/08/2010](#)
- (w) **Qala Dze**
 - a. [PSC – Repsol – 26/07/2011](#)
 - b. [Repsol LOR – 26/07/2011](#)
 - c. [Repsol Guarantee – 26/07/2011](#)
- (x) **Qara Dagh**
 - a. [PSC - Niko/Vast/Groundstar - 28/04/2008](#)
 - b. [Niko Assignment Agreement - 28/04/2008](#)
 - c. [Assignment Novation and Amendment Agreement - 28/04/2008](#)
 - d. [Second Amendment Agreement - 01/08/2010](#)

- (y) **Qush Tapa**
 - a. [PSC - KNOC - 21/06/2008](#)
- (z) **Rovi**
 - a. [PSC – Reliance – 22/12/2006](#)
 - b. [PSC – Reliance – 06/11/2007](#)
 - c. [First Amendment Agreement – 01/08/2010](#)
 - d. [OMV/Reliance Second Amendment Agreement – 01/08/2010](#)
 - e. [Second Amendment Agreement Certificate of Completion – 31/08/2010](#)
- (aa) **Safen**
 - a. [PSC – Marathon – 20/10/2010](#)
 - b. [Marathon LOR – 20/10/2010](#)
 - c. [Marathon Guarantee – 20/10/2010](#)
- (bb) **Sarsang**
 - a. [PSC – Hillwood – 06/11/2007](#)
 - b. [First Amendment Agreement – 26/08/2010](#)
 - c. [Marathon Guarantee – 20/10/2010](#)
 - d. [Marathon LOR – 20/10/2010](#)
 - e. [TPI Assignment, Novation and Second Amendment Agreement – 20/10/2010](#)
- (cc) **Shaikan**
 - a. [PSC – GKP/MOL – 06/11/2007](#)
 - b. [First Amendment Agreement – 01/08/2010](#)
- (dd) **Shakrok**
 - a. [PSC – Hess/Petroceltic – 26/07/2011](#)
 - b. [Hess LOR – 26/07/2011](#)
 - c. [Guarantee – 26/07/2011](#)
 - d. [Petroceltic LOR – 26/07/2011](#)
- (ee) **Sangaw North**
 - a. [PSC - Sterling - 10/11/2007](#)
 - b. [Sterling/Addax Deed of Assignment and Novation - 15/09/2008](#)
 - c. [KNOC Assignment Agreement - 17/11/2008](#)
 - d. [Sterling/Addax/KNOC - Deed of Assignment and Novation - 12/12/2008](#)
- (ff) **Sangaw South**

- a. [PSC - KNOC - 21/06/2008](#)
- (gg) **Sarta**
 - a. [PSC - Reliance - 22/12/2006](#)
 - b. [PSC - OMV - 06/11/2007](#)
 - c. [First Amendment Agreement - 01/08/2010](#)
 - d. [Second Amendment Agreement - 01/08/2010](#)
 - e. [Certificate of Completion - 31/08/2010](#)
- (hh) **Shakal**
 - a. [PSA - PetOil Petroleum and Petroleum Products International Exploration and Production Inc - 10/01/2003](#)
 - b. [PSA - Shakal/Trilax/Petoil - 25/02/2007](#)
 - c. [PSC - Shakal/Oil Search/Petoil - 06/03/2008](#)
 - d. [Amendment Agreement - 01/08/2010](#)
- (ii) **Sheikh Adi**
 - a. [PSC - GKP - 16/07/2009](#)
 - b. [First Amendment Agreement](#)
- (jj) **Shorish**
 - a. [PSC - OMV - 06/11/2007](#)
 - b. [Amendment Agreement - 01/08/2010](#)
 - c. [First Amendment Completion Certificate - 31/08/2010](#)
- (kk) **Sindi Amedi**
 - a. [PSC – Perenco – 02/10/2007](#)
 - b. [Assignment Novation and Amendment Agreement – 24/08/2011](#)
 - c. [First Amendment Completion Certificate – 24/08/2011](#)
 - d. [First Amendment Guarantee – 24/08/2011](#)
- (ll) **Sulevani**
 - a. [PSC - Petroquest - 14/10/2010](#)
- (mm) **Taq Taq**
 - a. [PSA - Genel Enerji - 20/01/2004](#)
 - b. [PSA - Genel Enerji - 21/11/2006](#)
 - c. [PSA Annexes A, B, C - 21/11/2006](#)
 - d. [PSC - Genel Enerji/Addax - 26/02/2008](#)
 - e. [First Amendment Agreement - 01/08/2010](#)
 - f. [Taq Taq: PSA Attachments - Genel Enerji - 2002](#)
 - g. [Taq Taq: PSA - Genel Enerji - 2002](#)

(nn) **Tawke**

- a. [PSA – DNO – 25/06/2004](#)
- b. [PSC - DNO - 13/03/2008](#)
- c. [Confirmation Agreement - 10/09/2008](#)
- d. [Indemnity Agreement - 10/09/2008](#)
- e. [Amendment and Relinquishment Agreement - 10/09/2008](#)
- f. [Assignment and Amendment Agreement - 31/03/2009](#)
- g. [Border Adjustment Amendment - 30/07/2009](#)
- h. [Sixth Amendment Agreement - 01/08/2010](#)

(oo) **Taza**

- a. [PSC - Oil Search/Shamara - 27/07/2011](#)
- b. [Guarantee - 27/07/2011](#)
- c. [Shamara LOR - 27/07/2011](#)
- d. [Oil Search LOR - 27/07/2011](#)
- e. Amended K42 Option Agreement - 28/08/2009
- f. Oil Search K42 Option Agreement - 16/07/2009
- g. Oil Search K42 Option Agreement PSC Annex - 16/07/2009

(pp) **Topkhana**

- a. [PSC - Talisman - 19/08/2011](#)
- b. [Option Agreement - 19/06/2008](#)³⁸⁹

³⁸⁹ The full texts of all the contracts are available at <http://cabinet.gov.krd/p/p.aspx?l=12&p=1> .

Annex 4 Relevant Articles from Iraqi Constitution of 2005

Article 1:

The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq.

Article 13:

First: This Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception.

Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.

Article 109:

The federal authorities shall preserve the unity, integrity, independence, and sovereignty of Iraq and its federal democratic system.

Article 110:

The federal government shall have exclusive authorities in the following matters:

First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing, and ratifying debt policies and formulating foreign sovereign economic and trade policy.

Second: Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq's borders and to defend Iraq.

Third: Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank.

Fourth: Regulating standards, weights, and measures.

Fifth: Regulating issues of citizenship, naturalization, residency, and the right to apply for political asylum.

Sixth: Regulating the policies of broadcast frequencies and mail.

Seventh: Drawing up the general and investment budget bill.

Eighth: Planning policies relating to water sources from outside Iraq and guaranteeing the rate of water flow to Iraq and its just distribution inside Iraq in accordance with international laws and conventions.

Ninth: General population statistics and census.

Article 111:

Oil and gas are owned by all the people of Iraq in all the regions and governorates.

Article 112:

First: The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law.

Second: The federal government, with the producing regional and governorate governments, shall together formulate the necessary strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encouraging investment.

Article 114:

The following competencies shall be shared between the federal authorities and regional authorities:

First: To manage customs, in coordination with the governments of the regions and governorates that are not organized in a region, and this shall be regulated by a law.

Second: To regulate the main sources of electric energy and its distribution.

Third: To formulate environmental policy to ensure the protection of the environment from pollution and to preserve its cleanliness, in cooperation with the regions and governorates that are not organized in a region.

Fourth: To formulate development and general planning policies.

Fifth: To formulate public health policy, in cooperation with the regions and governorates that are not organized in a region.

Sixth: To formulate the public educational and instructional policy, in consultation with the regions and governorates that are not organized in a region.

Seventh: To formulate and regulate the internal water resources policy in a way that guarantees their just distribution, and this shall be regulated by a law.

Article 115:

All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute.

Article 117:

First: This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region.

Second: This Constitution shall affirm new regions established in accordance with its provisions.

Article 121:

First: The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government.

Second: In case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region.

Third: Regions and governorates shall be allocated an equitable share of the national revenues sufficient to discharge their responsibilities and duties, but having regard to their resources, needs, and the percentage of their population.

Fourth: Offices for the regions and governorates shall be established in embassies and diplomatic missions, in order to follow cultural, social, and developmental affairs.

Fifth: The regional government shall be responsible for all the administrative requirements of the region, particularly the establishment and organization of the internal security forces for the region such as police, security forces, and guards of the region.

Article 140:

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

Second: The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this Constitution, provided that it accomplishes completely (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007.

Article 141:

Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution.

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19. UN Security Council's Resolution 661

³⁹⁰ The full text of the law is available at <http://cabinet.gov.krd/uploads/documents/Kurdistan.>

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