



## Iraq's Oil Law: Parsing the Fine Print

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In May 2007, a draft Oil and Gas Law was sent by the Iraqi cabinet to Parliament, and according to government plans, it was to have been passed into law by the end of May. The law faces strong popular, technocratic, and political resistance—indeed in early June, the new Iraqi military was in the southern oilfields with a warrant to arrest leaders of the Iraq Federation of Oil Unions who oppose core sections of the law and who demand that no law is passed without consultation with civil society and themselves as principal elements within it. Parliament subsequently went into summer recess without considering the draft.

As it stands, the law would represent a momentous shift in state policy and a reversal of measures begun in Iraq as far back as 1961 which culminated in the nationalization of the oil industry in 1972–75. It is also a departure from practices that have been universal in the major oil-exporting countries since the 1970s whereby resources are publicly owned and production operations are mainly carried out by state-owned companies and managed nationally.

In all these cases, oil policy is part of a broader national economic policy and the oil sector is intended to be integrated with the rest of the economy in ways that go beyond its financial contributions. In permitting long-term contracts with international oil companies (IOCs) whereby foreign companies will control and manage Iraq's oil resources for up to 25 years, the draft law is a fundamental reversal of previous policies, not only of the ousted Ba'ath regime, but of an erstwhile national consensus.

This essay examines the draft Oil and Gas Law, focusing on the web of interests driving its formulation and the ideological underpinnings upon which it is based. The main argument put forward is that the law is weak on economic rationale and will serve to deepen ethnic and sectarian forms of economic and political organization, solidifying and calcifying communal factions by moving away from nationally-based control of the oil economy to a regionally and locally controlled oil industry.

In this respect, the new law does not only promise to shift the relationship between the public and private sectors, and between national and foreign companies, but it would also fundamentally alter the relationship between the central government and the regions and provinces. The law also threatens to unleash rapid and uncontrolled development of oil production without a program to diversify the economy or guarantee effective arrangements for the proper use of revenues.

### *Iraq's Oil: A Brief History*

Oil has been a prominent factor in Iraq's history over the past century. European rivalry over access to Iraq's potential oil resources predates World War I. In fact, the intense fighting in the country during that war and the establishment of the modern state and some of its boundaries owe much to those rivalries. Needless to say, oil has been a crucial aspect of Iraq's international relations and domestic politics throughout its recent history.

Yet oil is not synonymous with the Iraqi state and is not the genesis of the institutions that hold it together. Nor is oil responsible for Iraq's history of authoritarianism or the danger of fragmentation. However, control of oil and its integration into Iraq's economy have led to instability, regional tensions, and foreign intervention.

The control of oil has been integral to the national consensus that emerged in Iraq's anti-colonial struggle. During that period, the Iraq Petroleum Company (IPC) (a consortium combining British Petroleum, Shell, Exxon, Mobil, and Total, born after World War I) completely controlled Iraq's industry and reserves under 75-year concessions. The structure of the IPC mitigated against the rapid development of Iraq's oil, leaving it as the reserve of last resort. Consequently, Iraq's oil production growth was much slower than elsewhere in the region, especially in Kuwait and Saudi Arabia (but also in Iran, and subsequently in Libya, where more competitive concession regimes existed). Iraqi governments consistently pressed the IPC consortium for more rapid development of its resources and for greater local participation. It succeeded only modestly, as the consortium came under pressure elsewhere.

Following the 1958 overthrow of the British-installed monarchy, exasperation with the IPC impelled the post-revolutionary government to promulgate the landmark Law no. 80 of 1961, nationalizing unexploited reserves while leaving the then-existent industry intact. The populist military regime and thousands of left-wing activists perished in a Ba'ath Party-led military coup 13 months later, but the momentum for the development of a national oil industry did not stop.<sup>1</sup>

The Arab-Israeli war of 1967 put an end to attempts to backpedal on Law no. 80, and Iraq moved towards full nationalization of the IPC as part of the restructuring of the international oil industry during the 1970s. Nationalization was the Ba'ath Party's

biggest achievement and its principle claim to legitimacy: the oil concessions were the last vestige of colonial rule and their elimination was a popular cause which the Ba'athists sought to appropriate for themselves. Conveniently, nationalization coincided with a huge rise in petroleum revenues, which made the cause even more popular.

Events in Iraq during the 1970s brought about a dramatic transformation in the oil sector. Following nationalization, a major effort was made to increase oil production and export capacity, expand exploration, build substantial new refining capacity, establish petrochemical and other downstream industries, and, most significantly, enhance national proficiency across various stages of the industry. The contrast between the nationalized sector and its private predecessor was almost immediately obvious. In 50 years of sole control of Iraq's crude oil production, foreign companies failed to establish any commercial refining capacity within the country. Virtually all gas was flared and there was no local downstream oil-based industry. Reservoir and environmental management was poor and the foreign consortium refused to share essential technical information with local policymakers. After nationalization, Iraq's oil output rose rapidly: from 2 million barrels per day (MBD) in 1973 to 3.6 MBD in 1979—and, in just over a decade, Iraq's nationalized industry added 74 billion barrels of proven reserves to the 34 billion discovered by the consortium.<sup>2</sup>

Post nationalization, Iraq pursued a policy of maximizing production, even during the 1973 Arab embargo. The government aimed to recover Iraq's status as a leading producer commensurate with the country's wealth of reserves, and to maximize revenues, sometimes at the expense of OPEC solidarity. Investment in all areas of the industry continued to show substantial results until the Saddam Hussein regime engaged in the criminal folly of attacking Iran in 1980.

The Iran-Iraq War shifted the focus from production to protecting and repairing targeted oil facilities. Additional heavy public investment was made in refining capacity and in expanding and diversifying export outlets. Here, INOC acquitted itself well, replacing destroyed facilities and even managing to expand under high-risk conditions.

In the late 1980s, Iraq embarked again upon ambitious plans to expand production and export facilities, with a target of raising production capacity from 3.8 MBD in 1990 to 6 MBD in 1995. To achieve its objectives under poor market conditions and a tight financial situation, the Saddam Hussein regime prepared to abandon Iraq's independent policy and seek long-term production sharing contracts with major international oil companies, but professionals in the Iraqi oil industry succeeded in curtailing official zeal and protecting the national character of the industry.<sup>3</sup>

But instead of reaching these high targets, Iraq's oil industry suffered another blow as a result of Iraq's invasion of Kuwait and the war that followed. A United Nations report in 2000 described the oil industry as being in a "lamentable state": a result of heavy U.S. bombing during the 1991 Gulf War and subsequent sanctions. Throughout the 1990s, Iraqi engineers and technicians performed ingenuous feats of improvisation and plant cannibalization in order to keep operations going. Nevertheless, prudent reservoir management, efficiency, and safety were compromised to maintain short-term, unsustainable production levels demanded by political authorities.

Iraqi national control of oil resources was compromised by state policies to counteract international sanctions. In an attempt to muster political support on the UN Security Council, the Iraqi government agreed to "development and production" contracts that gave foreign companies privileged control over oil reserves. These included contracts with Chinese companies to develop

Al-Ahdab field, with the Russian Lukoil corporation to develop West Gurna, and agreements with French companies to undertake operations in Majnoon (Elf) and Ibn Omar (Total).<sup>4</sup>

### *The New Draft Law*

The significance of the new draft law extends far beyond these oil industry management issues. The draft and the entire legislative program linked to it are intertwined with the ethnic and sectarian political conflict consecrated by the political and military structures that have emerged under U.S. occupation. This legislation has the potential to dramatically alter the nature and functions of the Iraqi state, and the relationship between the state and society. Given the continuing occupation and prevailing sectarian strife, oil—which under earlier circumstances helped deepen and accelerate the socioeconomic integration of Iraq—may now contribute to undermining the country's integrity. Indeed, the new Oil and Gas Law, far from being a "gigantic achievement for all Iraqis...with a positive and decisive impact in reinforcing cohesion among all components of the Iraqi people,"<sup>5</sup> could well be a major destabilizing factor in Iraq and the entire region.

The Oil and Gas Law is not a single piece of legislation, but a composite of interlinked measures, at the center of which is the draft law presented to Parliament in May. Complicating the matter further, that draft itself mentions several other proposed laws and legal texts scheduled to have been dealt with simultaneously, none of which have been discussed openly in any detail. This is implicit in the joint-statement by the government of Iraq and the Kurdistan regional government asserting that these texts exist in rudimentary form. The Minister of Oil, Hussain Al-Shahristani, admitted in June 2007 that drafts are being discussed inside committees,<sup>6</sup> but there are no officially organized platforms or mechanisms for public discussion.

The draft Oil and Gas Law itself was not the subject of public consultation during its drafting phase. There were no invitations for hearings, no documents issued by parliamentary committees, no detailed official statements or the equivalent of Green Papers to generate a wider debate, and indeed most of the political parties have no identifiable policies of their own on this all-important subject. In part, this is to be expected given the weakness of political structures and party organizations, but it is also a product of the extremely violent conditions in which security is the most immediate concern.

Even after the government had announced that the draft had been submitted, the chairman of the Economics and Investment Committee told Reuters that Parliament had not received it. Two weeks later, at a meeting held in Dubai, in a show of feigned consultation with Iraq's oil experts living in exile, it emerged that members of Parliament had not even received copies of the draft. Subsequently, the Kurdistan regional government (KRG) of northern Iraq announced its objections to four integral annexes to the draft, claiming that it had not been aware of the content of those annexes.<sup>7</sup> The purported referral to Parliament occurred on the eve of an international conference held at Sharm Al-Sheikh, Egypt, where the Iraqi government pledged adherence to the so-called International Compact for Iraq, a UN-led initiative whose primary focus is "building a framework for Iraq's economic transformation and integration into the regional and global economy."<sup>8</sup> The compact links foreign assistance to Iraq—including already promised debt relief—to passage of the Oil and Gas Law. The compact itself also aroused constitutional objections that it was an international treaty made by the government without parliamentary approval. In both the law and the compact, U.S. pressure is the driving force, and, worryingly, only the Kurdistan regional government has expressed unreserved enthusiasm.

Before the draft law, the most elaborate prior government policy statement was offered in August 2004 by the interim prime minister, Ayad Allawi, effectively a U.S. appointee. The day after Allawi assumed office in June 2004, his Kurdish nationalist deputy, Barham Saleh, was selected to head the Supreme Council for Oil Policy.<sup>9</sup> The Allawi government's policy statement defined a number of parameters that have since remained policy, despite two major changes of government and the emergence of unstable coalitions with antagonistic sectarian alliances.

The main parameters are:

- The need to divorce government from running the oil industry and to commercialize its operations, leading to the application of strict financial constraints on the national industry and the setting of ambitious performance targets that are expected to drive the industry towards partnership with major international oil companies.
- The separation of presently utilized oil resources and existing operations from unexploited proven oil and gas reserves, making future development and production the domain of the private sector, particularly foreign companies, with or without Iraqi partners.
- Rapid growth of crude oil output levels with simultaneous plans to restore existing capacity and double it within seven years.
- Gradual privatization of wholesale and retail petroleum products, and distribution and service activities, with future refinery expansion left to the private sector and foreign companies.<sup>10</sup>

The most striking aspect of this strategy is its strong ideological underpinning combined with a measure of realism about what can or cannot be acceptable politically in Iraq within a particular time horizon. Although officially denied, this is a strategy of

assured but gradual privatization of the entire industry in all its stages, a strategy that is designed to address many of the political obstacles likely to come before it.

Middle East oil expert Walid Khadduri has argued that occupation authorities deliberately took no part in direct decisions that might have affected the restructuring of Iraq's oil industry to avoid accusations of a U.S. attempt to control Iraq's oil.<sup>11</sup> He states:

In the 13 month rule of the Coalition Provisional Administration (CPA), Ambassador Paul Bremer avoided proposing new oil policies or introducing any structural changes to the industry. The fact that the oil industry was left to operate on its own, with very little change in senior personnel, is in sharp contrast to the extensive and radical changes in the rest of the economy that included the promulgation by decree of new banking, investment and commercial laws, as well as the appointment of scores of expatriates to senior executive positions.<sup>12</sup>

The actions of occupation authorities reflected a willful absence of any program for rehabilitating Iraq's industrial sector, or toward policies that would boost the Iraqi economy from its post-Saddam predicament. Instead, coalition authorities preferred a sweeping, harsh "shock therapy" in dealing with the economy, and with the public sector industries in particular.<sup>13</sup> All the reigns of decision making were appropriated by the occupation administration, with the objective of exercising control rather than enabling proper functioning. Specifically, the Coalition Provisional Authority's financial policies of offsetting public sector bank assets against liabilities of wholly different companies reflected a clear intention to quickly dispose of these enterprises, with

little interest in seeking an appropriate process to achieve that aim.<sup>14</sup> This disregard paralyzed public sector industries by depriving them of liquidity, but subsequent political developments prevented the intended rapid privatization.

However, the different approach adopted towards the oil industry was predicated upon intervention of a longer-term nature. The occupation authorities attempted to control the oil industry without destroying it. This included direct security control and abortive attempts to enfranchise foreign companies and personnel.<sup>15</sup> More significantly, the CPA ensured policy oversight by placing senior international oil company executives and others as "advisors" to the Ministry of Oil, with an understanding that their roles included restructuring the ministry and developing strategic policy options.<sup>16</sup> A key figure in CPA policy appears to have been Phillip Carroll, advisor to the Ministry of Oil until October 2003, and a former chief executive officer of Shell Oil USA. Carroll apparently fought off early plans by American neoconservatives and their Iraqi allies to quickly privatize Iraq's oil, fearing that this would freeze out major international oil companies from deals, as local warlords and oligarchs took charge.<sup>17</sup>

The relatively cautious CPA oil policy persisted through two succeeding governments. This caution is consistent with the preference of major oil companies for a stable and firm fiscal and legal framework for long-term involvement in the country. Western oil companies clearly favored making long-term contractual agreements in Iraq only after denationalization of the country's resources, a change that would not have been entirely legal until the new constitution was formally adopted. Notably, only small, obscure companies have rushed to sign contracts with the Kurdistan Regional Government, and these would be candidates for subsequent takeovers. On the other hand, the major companies appear to await the completion of constitutional

change and the development of institutional, regulatory, and fiscal frameworks in order to identify appropriate authorities with which they can enter into long-term agreements.<sup>18</sup> The U.S. insistence on Iraqi adherence to timetables, first for the constitutional process, and more recently on specific “benchmarks” (including promulgation of the Oil and Gas Law), can be viewed in this context.

A timetable for the Oil and Gas Law appeared first as part of the International Monetary Fund’s standby agreement with Iraq in December 2005. In its letter of intent, the government committed itself to “prepare a draft petroleum law in line with the new constitution and international best practice by end-December 2006 (this law would define the fiscal regime for oil and establish the contractual framework for private investment in the sector).”<sup>19</sup> The same document also commits Iraq to “restructure oil sector operations toward putting oil sector enterprises on a full commercial basis and with the ministry of oil and industry regulator.” That commitment put into operation the early Allawi government’s oil policy principles, now also implicit in controversial constitutional articles.

#### *Oil and the 2005 Constitution*

The 2005 constitution, however, introduces a major complication into Iraq’s oil policy. Whereas the government of former Prime Minister Allawi outlined a centralized, business-oriented policy, the constitution is federalized, and oil policy responsibility is spread across different levels of government in ways that remain in dispute. The main areas of dispute concern Articles 110–15, which identify exclusive and shared areas of jurisdiction, define ownership of hydrocarbon resources, and relationships between the different levels of government. However, the constitution is ambiguously drafted, leaving plenty of room for widely differing interpretations of the main articles concerning oil and gas resources. For example, Article 111

states that: “Oil and gas are owned by all the Iraqi people in all the regions and governorates.” The wording leaves the article open to conflicting interpretations as to whether all the oil and gas is jointly and equally owned by the Iraqi people or not. The Kurdistan Regional Government evidently interprets the article to mean that resources within its territory fall under the sovereignty of the regional government.<sup>20</sup> This leaves the meaning of “ownership” wide open, which the highest judicial council, *Majlis al-Shura*, attempted to clarify to the disaffection of Kurdish nationalist parties.

Article 112 of the constitution establishes the federal government’s prime responsibility over the management of the “present” fields. But, there is a dispute as to whether Article 115—which establishes the ascendancy of regional authorities in matters that are not specified as being within the sole jurisdiction of the federal government—applies to oil and gas in these cases. Furthermore, the confusion extends to the definition of what is meant by “present,” and whether that means fields that are known to exist, or fields that are in various stages of development, or fields in full production.<sup>21</sup>

This definition is now a matter of contention between the federal government and Kurdish authorities. The draft Oil and Gas Law contains three annexes defining the status of 78 known fields according to three categories: “producing,” “close to production contract,” and “far from production contract.”

The three-category classification used in the draft law and its annexes has no parallel in the constitution itself. In the absence of effective constitutional courts, the loose wording and lack of clear definitions in the text open wide avenues for differing interpretations that will allow horse-trading among sectarian and ethnically based political factions. This factional conflict has been deepened by these flimsy constitutional arti-

cles. In essence, many politicians now engaged in backroom bargaining are ultimately embroiled in a resource conflict—rather than a conflict of ideas and visions. What has been lost is even a minimal sense of a common national interest, or for that matter any sense of what are the “communal” interests. Indeed, the appropriation of community representation—whether in the form of unwritten rules or in sectarian balances (such as the alleged government of national unity, or unstable regional and provincial powers)—are forms of power and authority that are not conducive to transparency and accountability.

The constitutional articles concerning oil and gas have been criticized on a number of other counts. One complicating factor is that Iraq has some provinces that are very rich in oil and others that have none. But oil does not cut neatly along sectarian/ethnic lines: there are resource-rich and resource-poor provinces in every part of Iraq, within the main ethnic and sectarian communities and across them. In the absence of a national project, the main conflicts that are likely to emerge in the fight for oil will cut across communities. The insistence of Kurdish authorities on regional control of resources and the unsettled boundaries between the Kurdistan region and neighboring provinces is a serious source of instability. Even if compromises are reached regarding such flashpoints like Kirkuk, the constitutional provisions on oil are likely to lead to a multiplicity of other problems across the country.

On questions of efficiency, the idea that oil management or regulation can be carried out efficiently at regional or local levels has been widely criticized by several Iraqi experts.<sup>22</sup> In many cases, their criticisms came too late, and their impact on formulating the constitution was minimal. The constitution was drafted quickly in a tense atmosphere, and passed only days after an official draft was announced, and almost immediately began a process of revision. The articles dealing with oil resource management

received little early discussion, but they have been widely criticized since.

First among criticisms, Iraqi provinces are small and do not individually have the managerial and technical competence to conduct their own oil operations, or to engage effectively in negotiating and contracting on the international level. Some proponents of devolving contractual authority incorrectly assume that international oil contracts are standard issue, and are not based upon the negotiating or economic strength of the parties.<sup>23</sup> Those same arguments emphasize the weakness of current Iraqi national institutions, which have hemorrhaged expertise as a result of wars and sanctions and undermined the capability to manage and develop the country’s resources, even on a service contract or joint venture basis. In other words, Iraq will likely be forced to rely on contracts preferential to foreign oil companies. Favorable terms are extremely unlikely to materialize absent sovereignty and stability, particularly as political and security risks are reflected in the contracts.<sup>24</sup> This would apply even more strongly to likely regional arrangements.

Second, pooling resources nationally is not only more effective managerially, but more conducive to informed public participation in a highly technical area, and therefore aids transparency. Proponents of devolved management argue that decentralization will provide better local access to information and forestall the temptation of dictatorship. Despotism has indeed left a mark on Iraqi politics and won’t be prevented by creating smaller rentier institutions.

If anything, devolving control of oil resources to lower levels of government and opening the oil sector to unregulated international involvement is likely to lead to a proliferation of local resource conflicts. This is the case at present, as local control exacerbates oil smuggling, a major source of revenue for militias and warlords.

Third, known oil and gas reserves are not neatly confined within provincial or

regional boundaries, nor national boundaries either. Where fields are controlled locally, there is greater chance of conflict over joint field management. Added complications arise when locally managed fields straddle international borders. A number of existing fields and proposed exploration blocks straddle governorate boundaries and the problem is likely to grow in the future.

Fourth, it would be impossible to carry out effective resource development and exploitation without a coordinated national plan that takes into account broad economic and environmental parameters that consider the impact on major facilities that necessarily remain integrated. Pipelines, terminals, storage depots, and ancillary services are shared assets, and of course the environment is a shared concern. These shared facilities require large-scale and long-term investment, more likely undertaken by a regulated state monopoly than by the private sector in a free market. The notion that a free market will coordinate unconnected long-term plans of this kind in a country emerging from protracted destruction is not credible.

Fifth, beyond the crude oil sector, a vision of an industry integrated with the rest of the economy—and not a mere external enclave with all the attendant ramifications of a rentier economy—will require an integrated national approach. The crude oil sector will never alone offer a broad range of opportunities for the population. Its contribution to local employment will be of secondary importance in most parts of the country. Its major contribution—beyond providing funds for subsidies, collapsing services, and incomes for a proportion of the labor force—would be in promoting investment. Thus, a shift toward decentralized planning of oil resources will bring weaker investment opportunities, and incongruence between the resource development cycle, financial flows, and investment requirements.

In terms of outcome, the decentralization of resource control would likely result in a rapid acceleration of exploration and production as regions and governorates vie with each other for a larger market share. This is already evident in the speed with which the Kurdistan Regional Government is negotiating and signing production-sharing agreements with international companies. Fuad Qasim al-Amir, a noted Iraqi oil expert, argues that the situation has the makings of a huge and unprecedented rush for oil that would be damaging and wasteful.<sup>25</sup> Apart from the Kurdistan region, some politicians in other parts of Iraq have been urging constituents in their areas to demand more rapid development of oil resources. One such example is U.S.-appointed minister of oil Ibrahim Bahr al-Uloom's recent advocacy in Nasiriyya.

The rapid and competitive development would be almost guaranteed under the draft law by Articles 5.11 and 10.D.3, which together require a two-third majority in order to reject any locally negotiated contract—an outcome that is highly unlikely given the composition of the Federal Oil and Gas Council (Article 5.C.1.6) which privileges regional and sectarian identities over professional competence. In other words, the decentralization of control and decision making is likely to open the gates to much faster exploration and development than would otherwise be the case.

This is clearly not an optimum outcome for a country with 18 governorates, and the largest un-utilized reserves in the world. It would be supreme folly to simultaneously attempt to develop oil resources in every part of the country. In particular, there is no economic rationale for separating policy decisions on currently utilized resources from other reserves and potential discoveries, beyond political expediency.

### *The Shift to Foreign Control*

Both by design and willful neglect, the articles of the draft law introduce new terms for



contracting with major oil companies that could potentially shift resource control from national to foreign hands—and ultimately hand over the country’s assets to international companies. In the first place, the division of fields into the three main categories specified in the law’s annexes appears designed to restrict the exclusive rights held by the Iraqi national oil company to present “fully operating fields.”

This is borne out by the wording of Article 8.d, which leaves open the possibility that fields “discovered but partially or entirely not yet developed” be developed with the help of “reputable companies.” Here, the article does not specify the nature of the contracts that would allow international oil companies a role in oil operations. And, by not stating explicitly that the operation of companies should be limited to technical service contracts, the law appears to pave the road for production-sharing contracts.

The operations of foreign companies are identified in Article 9.b as rights granted under exploration and production contracts. Various other contract models are listed as possible forms of licensing operations, including field development and production contracts, and risk exploration contracts. The term “production sharing agreement” (PSA) was removed from an earlier draft of the law following strong objections, including a conference in Basra convened by the General Union of Oil Employees (the precursor to the Iraqi Federation of Oil Employees), in cooperation with other civil society groups and Basra University. Nevertheless, the government has not been able to convince the critics that “exploration and production contracts” are indeed different from PSAs.

Joint management will give foreign oil companies an effective veto and guarantee profits. The granting terms of licenses give foreign corporations immunity from Iraqi courts, and bestow upon them equal status to that of the government for a period of to 12 years before production, and up to 25

years thereafter. Additionally, the royalty provisions for holders of exploration and production rights (set at 12.5 percent) under Article 34 could be viewed as authorizing an excessively high rate of profit. This, along with allowing international oil companies the right to recoup operation costs in the initial term of a contract may amount to relinquishing the national assets.

The full range of measures associated with the law threaten to further undermine a national oil industry that has been severely damaged by decades of war, international sanctions, and a chaotic and failed occupation. In particular, the law:

- Opens the way towards privatizing, in all but name, much of Iraq’s national oil and gas wealth, and transferring control of those resources and a significant part of the benefits from them to foreign companies.
- Places greater emphasis on new foreign investments and threatens to neglect established nationally-owned facilities and plants, thereby accelerating the process of privatization even further into already established and developed fields.
- Separates the crude oil production sector from the downstream activities of refining, transportation, and distribution, hinders diversification into petrochemical and energy-intensive industries, and obstructs synergies with the domestic power sector. In other words, the law places the greatest emphasis on crude-oil exports driven by foreign company profit maximization, rather than optimal national wealth management and market stability considerations.
- Prevents the development of an independent national oil production services industry in a range of engineering, drilling, construction, maintenance, and environmental services, and hinders the training and development of Iraqi skills.

- Weakens Iraq's ability to participate in future OPEC production quota prorationing, and therefore its ability to contribute to market stabilization in Iraq's own interest and in the interests of both producers and consumers.
- Undermines Iraq's reconstruction and development efforts by weakening the country's national coordination effort for the rehabilitation of devastated infrastructure, and by diverting vital financial resources from investment to consumption purposes.
- Undermines national businesses and production activities by the proposed associated law for the monetary distribution of oil revenues to individuals and households, a politically motivated effort to limit the strength of the central government. This will produce inflation and draw in imports, crowding out domestic production already hampered by the catastrophic state of the infrastructure.
- Weakens the supervisory and regulatory roles of the Ministry of Oil by taking authority away and creating multiple levels of decision-making and technical bodies whose remit is vague and contradictory.
- Creates potential conflict between different levels of state authority and potentially different regulatory standards between regions and governorates. Vague legal formulations will cause conflict rather than establishing a basis for effective management, and the formulation of the Federal Oil and Gas Council has been imbued with ethnic and sectarian dimensions that detract from the body's policymaking remit.
- Opens a Pandora's box of conflicts where fields straddle governorate and regional boundaries. This is especially problematic where governorates might apply different regulatory standards and negotiate with different companies.

All these problems are likely to arise from the adoption of the Oil and Gas Law, and it is not surprising that opposition to the draft is widespread inside the new political establishment.

The draft Oil and Gas Law is only one of a set of legal measures, the implementation of which would complete the restructuring of Iraq's oil industry. Unfortunately, the law was kept secret for a long time until it was leaked and posted on the Internet. Other crucial legislative measures implicit in the draft were also kept out of the public domain.

These include:

1) A law governing the collection and geographical disbursement of federal state revenues, including their apportionment among the various levels of state. The law's remit also sets distribution among current and future spending, transfer payments, disbursement, and the servicing Iraq's international commitments, and the question of a fiscal stability or a futures fund;

2) A law to reconstitute the Iraqi National Oil Company, probably as a holding company that would absorb the current regional companies and parse such assets as drilling, pipelines, oil projects, tankers, etc. In essence, this law would open the way to privatizing or liquidating sections of this public sector industry and open access to new, private, multinational companies entering upstream and controlling oil reserves and production;

3) A law redefining the role of the Ministry of Oil which would likely remove strategic policy and planning functions, and reorganize the ministry such that it could not undertake its historic role of providing input into national policy, thus discharging sector and project planning to the Federal Oil and Gas Council, its regional counterparts, or to the private sector;

4) Further likely legislation gradually opening up the downstream sector of oil refining, product distribution, and petrochemicals that now are under the remit of

the Ministry of Oil. In effect, this would confirm the commercialization of all activities and separate all major strategic decisions into narrow sectoral boundaries, opening each industry to foreign investment—which would have considerable implications for the power sector, and for the diversification into petrochemicals and energy intensive industries.

The Oil and Gas Law would seal the brutally painful adjustment from a low-price, high-energy consumption, domestic economy to full integration with international markets—making anything other than a marginal difference between domestic and international energy prices impracticable. In other words, Iraq's hoped-for competitive trade advantage would be wiped out as the country is pushed into the World Trade Organization's open trading system.

The cabinet's approval of the draft was not an easy decision; it took many months of redrafting and wrangling behind closed doors in a committee in which the main coalition blocs of the Parliament were supposedly represented. Some, but not all, of the committee membership is known, and it is clear from the public discourse of committee members, and from a series of memoranda published by an array of leading Iraqi experts (each with decades of managerial and technical experience in the oil industry), that there is a wide gulf between expert opinion and policymakers. There also exists a gulf of a completely different kind among the policymakers themselves: while civil society groups and professionals are concerned with jobs, development, and sovereignty, politicians wrangle over who has the right to sign deals with foreign companies.

The complaint of the technocrats and experts is articulated most strongly by Tariq Shafiq, one of the three original team members charged with drafting the law.<sup>26</sup> Shafiq makes the point that present, proven Iraqi reserves can move towards and sustain a production level of 10 million barrels per day

over much of the next 20 years—without need for further exploration.<sup>27</sup> In other words, there is no need for risky long-term contracts with foreign companies. Instead, Iraq needs to develop known commercially risk-free resources, consolidate national resource management, and utilize service contracts with foreign companies. Only this will enhance the capability of the domestic industry and help it modernize for the future. ●

## Notes

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1. M. S. Hasan, *Nahwa Ta'mim al-Naft al-Iraqi 1967 [Towards the Nationalization of Iraqi Oil]* (Beirut: Dar al-Tali'a, 1967).

2. Issam Al-Chalabi, "Qira'a fi Sina'at al-Naft fi al-Iraq wal-Siyasat al-Naftiya," ["A reading of the Oil Industry and Oil Policies in Iraq"], paper presented to the Forum on the Future of Iraq, Markaz Dirasat al-Wihda al-'Arabiyya, Beirut, July 25–28, 2005, p. 11.

3. *Ibid.*, p. 10.

4. Fouad Qasim al-Amir, "Discussion on the Iraq Oil Law," *al-Ghad*, February 2007. See [www.al-ghad.org/2007/02/20/discussion-on-the-iraq-oil-law/](http://www.al-ghad.org/2007/02/20/discussion-on-the-iraq-oil-law/).

5. Extract from the joint statement of the central government of Iraq and the Kurdistan Regional Government on the issue of oil legislation, February 21, 2007.

6. *Al-Hayat*, May 25, 2007, Beirut.

7. Fouad Qasim al-Amir, "Marra Thalitha: Mulaahadhat hawala Qanun al-Naft wal-Gas," ["For a Third Time: Observations on the Draft Oil and Gas Law"], *al-Ghad*, May 2007. See [www.al-ghad.org/wordpress/wp-content/uploads/2007/05/fouad-al-amir-oil-gas-3.doc](http://www.al-ghad.org/wordpress/wp-content/uploads/2007/05/fouad-al-amir-oil-gas-3.doc). See also *Statement from Minister of Natural Resources*, Kurdistan Regional Government-Iraq at [www.al-ghad.org/2007/04/30/krq-rejects-iraq-oil-law/](http://www.al-ghad.org/2007/04/30/krq-rejects-iraq-oil-law/).

8. United Nations, Department of Public Information, News and Media Division, "United Nations, Iraq Jointly Announce Launch of Five-Year Interna-

tional Compact,” Press release IK/552, 27, July 2006, New York, at <http://www.un.org/News/Press/docs/2006/ik552.doc.htm>.

9. *Middle East Economic Survey*, vol. 47, no. 37, September 13, 2004. Saleh—who has no economics training, but is an articulate politician and a strong adherent of neoliberal ideas—has remained at the center of economic policy making ever since, swapping positions but not losing influence. In the present government of Nouri Al-Maliki, which took office after elections under the new constitution, Saleh remains deputy prime minister, in charge of overseeing economic affairs and also heads the committee drafting the Oil and Gas Law and related legislation. The continuity of oil policy and of personnel in charge of its formulation is therefore a matter of considerable interest, especially given the controversial nature of the measures being proposed.

10. *Ibid.*

11. Walid Khadduri, “The Iraqi Oil Industry: A Look Ahead,” *Middle East Economic Survey*, vol. 47, no. 48, November 29, 2004.

12. *Ibid.* Khadduri was writing in November 2004 and referring to the period of CPA rule, but there have since been substantial personnel changes and the introduction of former expatriates as senior managers.

13. It appears that four years into the occupation, the U.S. military has, for its own operational purposes, been reviving public sector industries that had earlier been shut down. Rajiv Chandrasekaran, “Defense Skirts State in Reviving Iraqi Industry,” *Washington Post*, May 14, 2007. See [www.washingtonpost.com/wp-dyn/content/article/2007/05/13/AR2007051301165.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/05/13/AR2007051301165.html).

14. Ali A. Allawi, *Iraq: Winning the War, Losing the Peace* (New Haven: Yale University Press, 2007), p. 125.

15. Partap Chatterjee, *Iraq Inc.: A Profitable Occupation* (New York: Seven Stories Press, 2005).

16. Greg Muttitt, *Crude Designs: The Rip-Off of Iraq’s Oil Wealth* (Platform with Global Policy Forum, Institute for Policy Studies, New Economic Foundation, Oil Change International and War on Want, November 2005).

17. Greg Palast, “Secret US Plans for Iraq’s Oil,” *BBC Newsnight*, March 17, 2005. See

<http://news.bbc.co.uk/2/hi/programmes/newsnight/4354269.stm>.

18. International Tax and Investment Center (ITIC), *Petroleum and Iraq’s Future: Fiscal Options and Challenges* (ITIC: Washington, DC, Fall 2004) p. 21.

19. International Monetary Fund, “Iraq: Letter of Intent, Memorandum of Economic and Financial Policies,” December 6, 2005, p. 10. See [www.imf.org/external/np/loi/2005/irq/120605.pdf](http://www.imf.org/external/np/loi/2005/irq/120605.pdf).

20. See Tariq Shafiq, “Kurdistan Regional Government Hydrocarbon Law: A Commentary,” *Middle East Economic Survey*, vol. 49, no. 37, September 18, 2006.

21. See, for example, Tariq Shafiq, “Iraq’s Draft Energy Law,” letter to the editor of *Middle East Economic Survey*, dated May 15, 2007 (personal communication).

22. See, for example, Kamil al-Mehaidi, *Geographical Distribution of Iraqi Oil Fields And Its Relation with the New Constitution*, Revenue Watch Institute, at [www.iraqrevenuewatch.org/reports/052706.pdf](http://www.iraqrevenuewatch.org/reports/052706.pdf); Mohammed Ali Zainy, “Qanoun al-Naft al-Iraqi Bayna Mitraqat al-Safaqat al-Siyasiyya wa Sindan al-Dustour” [“The Iraqi Oil Law: Between the Hammer of Political Bargains and the Anvil of the Constitution”], unpublished, circulated April 25, 2007; Shafiq, *op cit*, May 15, 2007. See also Fouad Qasim al-Amir, “Hawla Musawwadat Qanoun al-Naft wa al-ghaz,” [“On the Draft of the Oil and Gas Law”], *al-Ghad*, February 2007. See also Kamil Mahdi, “Fima Bayna al-Siyasa al-Iqtisadiyya al-Wataniyya wa al-Da’wa li-Iqtisam al-Mawarid,” [“Between a National Economic Policy and the Call for Resource Apportionment”], *Al-Hayat*, Beirut, July 27, 2005.

23. Sarbaz Hawrami, George Yaku, and Zaki Fattah, “Management of New Natural Resources In the Kurdistan Region of Iraq,” Appendix 5, *Managing Iraq’s Petroleum*, Iraq Revenue Watch Workshop, Revenue Watch Institute, at [www.iraqrevenuewatch.org/reports/061906.pdf](http://www.iraqrevenuewatch.org/reports/061906.pdf).

24. See Greg Muttitt, “Nationalizing Risk, Privatizing Reward: The Prospects for Oil Production Contracts in Iraq,” *International Journal of Contemporary Iraqi Studies*, vol. 1, no. 2, June 2007, pp. 143–72.

25. Al-Amir, “Marra Thalitha.”

26. Two members of the team subsequently dis-

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27. Shafiq, "Iraq's Draft."