

THE STATUS OF THE DRAFT IRAQ OIL AND GAS LAW

*Susan L. Sakmar**

I.	INTRODUCTION.....	290
II.	IRAQ'S PETROLEUM AND GAS RESERVES.....	291
	<i>A. How Much Oil and Gas Does Iraq Have?</i>	291
	<i>B. Challenges Confronting Iraq's Energy Infrastructure</i>	294
III.	BACKGROUND OF IRAQ'S DRAFT HYDROCARBON LAW	296
	<i>A. The Preamble, Iraq's Constitution and Chapter I</i>	297
	<i>B. Chapter II: Management of Petroleum Reserves</i>	298
	<i>C. Chapter III: Exploration and Field Development Operations</i>	301
	<i>D. The Annexes</i>	301
IV.	THE MAIN ISSUES OF CONTENTION	303
	<i>A. Federal and Regional Authority: The Preamble and Iraq's Constitution</i>	304
	<i>B. Management of Petroleum Reserves under Chapter II and Role of the FOGC</i>	306
	<i>C. Revenue Sharing</i>	306
	<i>D. Foreign Participation</i>	308

* Susan L. Sakmar received her LL.M. in International Law from Georgetown Law Center and her J.D. from the University of San Francisco Law School where she currently teaches International Trade Law as an adjunct professor. Her research is focused on Energy, International Trade, and Middle East economics. She is licensed to practice law in California and was a commercial litigator in San Francisco prior to teaching. She has also worked as an accountant for Chevron Corporation.

290 *HOUSTON JOURNAL OF INTERNATIONAL LAW* [Vol. 30:2

V.	IMPACT OF IRAQ'S HYDROCARBON LAW ON IRAQ'S REDEVELOPMENT PLANS	309
VI.	RECENT DEVELOPMENTS AND FUTURE PROSPECTS	310

I. INTRODUCTION

If you've read Daniel Yergin's Pulitzer Prize winning book, *The Prize, The Epic Quest for Oil, Money and Power*,¹ you know that the ultimate prize in Iraq is OIL. And Iraq has lots of it. In terms of numbers, Iraq's proven oil reserves are estimated at 115 billion barrels,² although there is general agreement that the actual number could be much higher.³ Even using a conservative estimate of an additional reserve base of 45 billion barrels, this would give Iraq total reserves of 160 billion barrels and would place Iraq's oil reserves second only to those of Saudi Arabia.⁴

Given the vast reserves Iraq possesses, it is widely agreed that Iraq's oil industry will be the driver of Iraq's reconstruction and future economy.⁵ Indeed, the Draft Iraq Oil and Gas Law (Draft Hydrocarbon Law) itself provides that "revenues from Oil

1. DANIEL YERGIN, *THE PRIZE, THE EPIC QUEST FOR OIL, MONEY AND POWER* (1991). "*The Prize* tells the panoramic history of oil – and the struggle for wealth and power that has always surrounded oil. [This] struggle . . . has shaken the world economy, dictated the outcome of wars, and transformed the destiny of men and nations." *Id.* at book jacket.

2. ENERGY INFO. ADMIN., DEPT OF ENERGY, COUNTRY ANALYSIS BRIEFS: IRAQ (2007), <http://www.eia.doe.gov/emeu/cabs/Iraq/Background.html> [hereinafter EIA IRAQ 2007 REPORT].

3. *Iraqi Oil Reserves Could Be Twice as Large, Report Says*, ASSOCIATED PRESS, Apr. 19, 2007, available at <http://www.msnbc.msn.com/id/18201990>; see also Vivienne Walt, *Iraqi Oil: More Plentiful than Thought*, TIME, Apr. 24, 2007, <http://www.time.com/time/world/article/0,8599,1614000,00.html> (valuing Iraq's oil reserves at 215 barrels).

4. KENNETH KATZMAN, CONG. RESEARCH SERV., IRAQ: POST-SADDAM GOVERNANCE AND SECURITY 27 (2007), available at http://assets.opencrs.com/rpts/RL31339_20070906.pdf; see also EIA IRAQ 2007 REPORT, *supra* note 2 (resulting from 45 billion barrels unexplored plus 115 barrels located).

5. KATZMAN, *supra* note 4, at 27.

and Gas represent the most important basis for redeveloping the country in general and the Iraqi economy.”⁶ This stated objective is perhaps the most important reason why the United States has been pushing for the Iraqi political structure to pass the Draft Hydrocarbon Law.⁷

Although the Iraqi Cabinet approved the Draft Hydrocarbon Law in February 2007, disagreement over various provisions and among various parties has prevented the Iraqi Parliament from approving the law.⁸ This Article analyzes the main provisions of the Draft Hydrocarbon Law and highlights the issues that must be resolved in order for the Iraqi government to pass the Draft Hydrocarbon Law.

II. IRAQ’S PETROLEUM AND GAS RESERVES

A. *How Much Oil and Gas Does Iraq Have?*

Due to years of conflict and underinvestment, much of the information about Iraq’s oil reserves and the capacity of its oil

6. Oil & Energy Comm., Council of Ministers, Draft Iraq Oil and Gas Law No. ___ of 2007 (Feb. 15, 2007) pmb., available at http://www.krg.org/uploads/documents/Draft%20Iraq%20Oil%20and%20Gas%20Law%20English__2007_03_10_h23m31s47.pdf [hereinafter Draft Iraq Oil and Gas Law]. It should be noted that there appears to be no “official” Iraqi version of the Draft Hydrocarbon Law although the United States appears to look to the version made available by the Kurdistan Regional Government (KRG) entitled The Draft Iraq Oil and Gas Law dated 15 February 2007. CHRISTOPHER M. BLANCHARD, CONG. RESEARCH SERV., IRAQ: OIL AND GAS LEGISLATION, REVENUE SHARING, AND U.S. POLICY 3 n.1 (2007), available at http://assets.opencrs.com/rpts/RL34064_20071002.pdf. (“In response to a June 2007 CRS inquiry, the U.S. Department of State referred to an English text of the draft legislation made available by the Kurdistan Regional Government as an official English draft version.”). The KRG version of the Draft Hydrocarbon Law, will serve as the source for this Article. After extensive research, the Author believes that the version posted on the KRG website is the version “agreed to” in February by the Iraqi Central Government. See E-mail from Ben Lando, Energy Editor, United Press Int’l, Founder, Iraq Oil Report, to Susan L. Sakmar, Adjunct Law Professor, Univ. of San Francisco School of Law (Oct. 25, 2007, 09:41:00 EST) (on file with author) (confirming the lack of an “official” draft and the status of KRG’s version). The Draft Oil Law can also be found at Oil & Energy Comm., Council of Ministers, Draft Iraq Oil and Gas Law No. ___ of 2007 (Feb. 15, 2007) pmb., available at <http://priceofoil.org/wp-content/uploads/2007/03/Iraqoillaw021507.pdf>.

7. KATZMAN, *supra* note 4, at 27.

8. BLANCHARD, *supra* note 6, at 3–4.

industry is outdated.⁹ Moreover, there appears to be a wide range of estimates about Iraq's known and potential reserves.¹⁰ According to the Energy Information Administration (EIA), the statistical agency of the U.S. Department of Energy, Iraq currently has the world's third largest petroleum reserves, estimated at 115 billion barrels.¹¹ Iraq also has one of the lowest extraction costs in the world.¹² Iraq's production costs are less than \$2 per barrel.¹³ In 2001, the International Energy Agency (IEA) focused on Iraq's oil reserves in its World Energy Outlook (WEO) 2001.¹⁴ The IEA's WEO 2001 indicated that Iraq had 78 billion barrels of proven reserves and 51 billion barrels of undiscovered reserves, for a total of 129 billion barrels.¹⁵ At the time, OPEC estimated Iraq's proven reserves at 112.5 billion barrels.¹⁶

Despite these differences in estimates, most "[e]xperts agree that Iraq may be one of the few places left where vast reserves, known and unknown, have barely been exploited."¹⁷ For example, "[s]ome analysts [have] estimate[d] that exploration in the largely unexplored Western Desert could lift proven reserves to 180 billion barrels."¹⁸ In April 2007, the "Colorado energy

9. *Id.* at 1.

10. *Id.*

11. EIA IRAQ 2007 REPORT, *supra* note 2.

12. MUSTAFA M.F. AL-JARRAH, FORMER DIR. GEN. FOR IRAQ DEV. PROGRAM, UPSTREAM AND DOWNSTREAM INTEGRATION, ADDRESS BEFORE THE IRAQ OIL, GAS, PETROCHEMICAL & ELECTRICITY SUMMIT 3 (Sept. 2007), <http://www.iraqdevelopmentprogram.org/idp/events/iog/presentations/petrochemical1.pdf>.

13. *Id.*

14. INT'L ENERGY AGENCY, WORLD ENERGY OUTLOOK 104 (2001), *available at* <http://www.iea.org/textbase/nppdf/free/2000/weo2001.pdf> [hereinafter IEA's WEO 2001].

15. *Id.*

16. *Id.*

17. EIA IRAQ 2007 REPORT, *supra* note 2. According to a presentation by Mr. Thamir Ghadhban on the Iraqi Oil Industry at the Iraq Development Program's Summit in Dubai, "Iraq is one of the least explored countr[ies] among major oil producers . . . Only 155 exploratory wells were drilled to investigate 115 structures . . . [There is a] very high success ratio of 70%." THAMIR GHADHBAN, FORMER OIL MINISTER & CHAIRMAN OF IRAQ'S OIL COMM'N, IRAQ OIL INDUSTRY: PRESENT STATUS & FUTURE OUTLOOK 7, (Sept. 2007), <http://www.iraqdevelopmentprogram.org/idp/events/iog/presentations/oilcommission.pdf>.

18. IEA's WEO 2001, *supra* note 14, at 104.

consultancy firm, IHS, stunned some of Iraq's politicians and oil engineers by declaring that the country's oil reserves were about 215 billion barrels – about double the estimates that have held for Iraq for years.”¹⁹ Some reports have even suggested that Iraq could have an *additional* 214 billion to 240 billion barrels not yet proven.²⁰ In short, the most recent projections have estimated that “Iraq's oil reserves could be nearly twice as large as previously estimated, containing more than 200 billion barrels.”²¹

Even if the low end estimate from the U.S. Geological Survey of 160 billion barrels²² is used, Iraq would be a *major* oil power. Given the lack of available and reliable data and the underexplored state of Iraq's oil fields, it is difficult to assess the accuracy of all of the recent estimates.²³ Even if the low-end of the range (115 billion known, plus 45 billion estimated from USGS = 160 billion barrels) is used,²⁴ however, Iraq would be a *major* oil power. With potential reserves of 160 billion barrels, Iraq would rank second in reserves behind only Saudi Arabia's 260 billion barrels of proven reserves²⁵ and ahead of neighboring Iran, which has reserves of about 136 billion barrels.²⁶

In terms of the geographical location (see Figure 1) of Iraq's reserves, about 65% of Iraq's proven oil reserves are found in southern Iraq, primarily in the southernmost governorate of Al Basrah.²⁷ Significant reserves are also “located in the northern

19. Walt, *supra* note 3.

20. Oliver Krause, *Top Iraqi Officials Arrive in Dubai to Discuss Draft Oil Law*, DOW JONES NEWSWIRES, Apr. 17, 2007, http://www.rigzone.com/news/article.asp?a_id=43956.

21. *Iraqi Oil Reserves Could Be Twice as Large*, *supra* note 3; Walt, *supra* note 3.

22. *Iraqi Oil Reserves Could Be Twice as Large*, *supra* note 3. The low estimate of 160 billion barrels is the 115 billion known plus 45 billion estimated additional reserves. *Id.*

23. See Mark Gongloff, *Playing for Iraq's Jackpot*, CNNMONEY, Apr. 16, 2003, http://money.cnn.com/2003/04/16/news/economy/war_oil_primer/index.htm (stating that Iraq's Western Desert and other regions have hardly been explored).

24. EIA IRAQ 2007 REPORT, *supra* note 2.

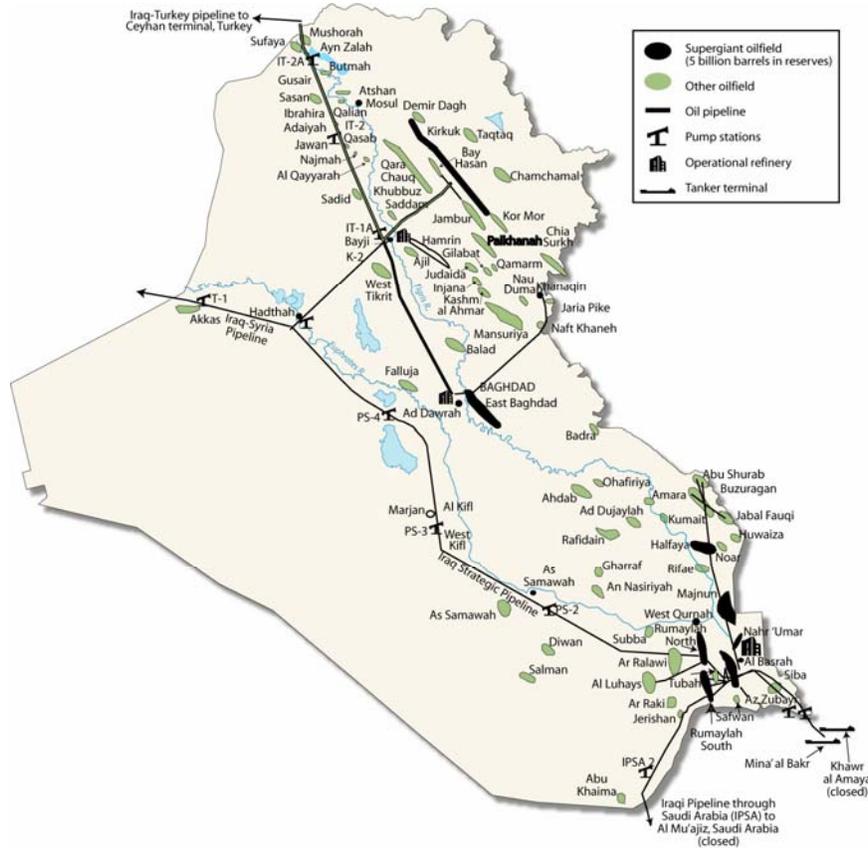
25. LAWRENCE KUMINS, CONG. RESEARCH SERV., IRAQ OIL: RESERVES, PRODUCTION, AND POTENTIAL REVENUES 3–4 (2006), available at <http://fpc.state.gov/documents/organization/66443.pdf>.

26. Walt, *supra* note 3.

27. BLANCHARD, *supra* note 6, at 1.

governorate of Al Tamim.”²⁸ As stated above, the Western Desert is largely unexplored but could contain significant reserves.²⁹

Figure 1 – Location of Iraq’s Oil Reserves and Infrastructure³⁰



B. Challenges Confronting Iraq’s Energy Infrastructure

Although Iraq has significant oil reserves, Iraq faces numerous challenges turning these reserves into commercial

28. *Id.*

29. See *supra* text accompanying note 17.

30. BLANCHARD, *supra* note 6, at 2.

production. As a result of two Gulf Wars and more than a decade of sanctions, the realization of Iraq's ultimate production potential will require much work in the oil fields and significant investment in new energy infrastructure.³¹ Indeed, the amount of reconstruction efforts needed to boost Iraq's oil, gas, and electricity sectors could be well over \$30 billion.³² "In addition, the World Bank estimates that at least \$1 billion in additional revenues needs to be committed annually to the oil industry just to sustain current production."³³

According to the Congressional Research Service (CRS), a think tank that provides reports to members of Congress,³⁴ before the current Iraq war, it was widely asserted by Administration officials that Iraq's vast oil and gas reserves³⁵ "would fund much, if not all, reconstruction costs."³⁶ Although Iraq's oil industry infrastructure suffered little damage during the initial days of the U.S.-led invasion, Iraq's oil facilities and pipelines have been the insurgency's main targets.³⁷ Additionally, there is a lack of information regarding the condition of Iraq's currently producing reservoirs and it is possible that these reservoirs have been damaged over the years by suboptimal production practices.

31. EIA IRAQ 2007 REPORT, *supra* note 2.

32. *Id.*

33. *Id.*

34. About Open CRS, <http://www.opencrs.com/about.php> (last visited Jan. 25, 2008). These reports are not made public until released by a member of Congress, and even then, the public cannot easily obtain them. *Id.* A number of entities, such as Open CRS, seek to collect and publish as many reports as possible. *Id.* Open CRS, and the Author of this Article, "believe[] that it would be far preferable for Congress to make available to the public all CRS Reports." *Id.*

35. While garnering far less attention than its oil reserves, Iraq also has fairly significant gas reserves. According to a presentation made by Mustafa M.F. Al-Jarrah, then Director General within the Iraqi Ministry of Industry & Minerals, Iraq has 110 trillion cubic feet (Tcf) of proven natural gas reserves and 250 Tcf probable reserves. Al-Jarrah, *supra* note 11. An analysis of Iraq's gas industry is beyond the scope of this paper, but it should be noted that the Draft Hydrocarbon Law recognizes that Iraq's natural gas is a "valuable . . . resource of increasing importance in the economic development of the Republic of Iraq and the Middle East." Draft Iraq Oil and Gas Law, *supra* note 6, art. 23.

36. KATZMAN, *supra* note 4, at 27.

37. *Id.*

According to U.S. military reports, other challenges to Iraq's oil industry (and development in general) include the smuggling of "as much as 70% of the output of the Baiji refinery, [which] cost[s] Iraq as much as \$2 billion in revenue per year."³⁸ In addition, the northern export route is operating at only half its prewar capacity or about 300,000 barrels per day.³⁹ Although high oil prices have somewhat compensated for the shortfall, a Government Accountability Office (GAO) report released August 2, 2007 found that Iraq's oil production may be 100,000–300,000 below prior estimates due to "inadequate metering, re-injection, corruption, theft, and sabotage."⁴⁰

III. BACKGROUND OF IRAQ'S DRAFT HYDROCARBON LAW⁴¹

In 2006, "a three member Oil and Energy Committee working under the auspices of the Iraqi cabinet prepared draft hydrocarbon framework legislation to regulate Iraq's oil and gas sector. A political negotiating committee subsequently edited their draft."⁴² "In February 2007, the Iraqi Cabinet approved a framework hydrocarbon law [Draft Hydrocarbon Law] that provides the structure and principles for foreign investment in Iraq's energy sector."⁴³ The Draft Hydrocarbon Law is part of a legislative "package" that also includes "three companion pieces of legislation addressing revenue sharing, creation of [the Iraqi National Oil Company (INOC)] and reorganization of the Iraqi Ministry of Oil."⁴⁴

38. *Id.*

39. *Id.*

40. *Id.*

41. The purpose of this Recent Development Article is to highlight the main provisions of the Draft Hydrocarbon Law and to focus on the primary provisions that have raised issues and concerns that are hindering the ultimate passage of the Draft Hydrocarbon Law. This Article is not intended to be a complete analysis of the entire Draft Hydrocarbon Law.

42. BLANCHARD, *supra* note 6, at 3.

43. U.S. DEP'T OF STATE, SECTION 2207 REPORT ON IRAQ RELIEF AND RECONSTRUCTION FUNDS, EXECUTIVE SUMMARY 1 (Apr. 2007), available at <http://www.state.gov/documents/organization/85765.pdf>.

44. *Id.*

Spanning thirty three pages, the Draft Hydrocarbon Law is the centerpiece of the legislative package and consists of a preamble, eight chapters, and forty-three articles.⁴⁵

A. The Preamble, Iraq's Constitution and Chapter I

The Preamble of the Draft Oil Law sets forth broad statements of policy and includes numerous references to the Iraqi Constitution which was passed in 2005.⁴⁶ Perhaps most important of all is the following pronouncement:

WHEREAS, Article 111 of the said Constitution declares that Oil and Gas are owned by all the people of Iraq in all the Regions and Governorates;⁴⁷

The Preamble recognizes Iraq's vast petroleum resources, both discovered and undiscovered,⁴⁸ and also recognizes the importance of those resources in terms of the future redevelopment of the Iraqi economy.⁴⁹ The Preamble further recognizes that Iraq's redevelopment will require substantial funding⁵⁰ and participation from the international sector.⁵¹

Chapter 1 of the Draft Oil Law sets forth Fundamental Provisions such as Article 1 which states that "[o]il and gas are owned by all the people of Iraq in all the Regions and Governorates"⁵² and Article 2 which provides that the Draft Oil

45. Draft Iraq Oil and Gas Law, *supra* note 6.

46. *Id.* pmbl. The Iraqi Constitution of 2005 is available on the website of the Kurdish Regional Government, <http://www.krg.org/articles/detail.asp?lngnr=12&smap=04030000&rn=107&anr=12329> (last visited Jan. 25, 2008).

47. Draft Iraq Oil and Gas Law, *supra* note 6, pmbl., para. 2.

48. *Id.* pmbl., para. 4 ("WHEREAS, the Iraq Republic is endowed with rich Oil and Gas resources, a great portion of which is already discovered and ready for Development whilst more Petroleum resources are yet to be discovered.").

49. *Id.* pmbl., para. 7 ("WHEREAS revenues from Oil and Gas represent the most important basis for redeveloping the country in general and the Iraqi economy . . .").

50. *Id.* pmbl., para. 6 ("WHEREAS the Iraqi people find themselves at the crossroad to a new and more prosperous future which will require quick and substantial funding of reconstruction and modernization projects.").

51. *Id.* pmbl., para. 9 ("WHEREAS, the rehabilitation and further development of the Petroleum industry will be enhanced by the participation of international and national investors of recognized technical, managerial and operational skills as well as robust capital resources to help upgrade and develop national expertise and efficiency in the Petroleum sector.").

52. *Id.* art. 1.

Law “applies to Petroleum Operations in all the territory of the Republic of Iraq.”⁵³ Article 3 provides that the Draft Oil Law seeks “to build upon existing co-operation between the relevant Ministries in the Federal Government” and enhance “coordination and discussions among the Federal, Regional, and Producing Governorates’ authorities.”⁵⁴

B. Chapter II: Management of Petroleum Reserves

Chapter II is arguably the most important Chapter in the Draft Hydrocarbon Law, and it contains a number of important provisions. Article 5 sets forth the various governmental entities and their roles in the Iraq oil regime as follows:

1. The Council of Representatives (CoR): The CoR will “enact all Federal legislation on Crude Oil and Natural Gas” and will “approve all international petroleum treaties . . . that Iraq signs with other countries.”⁵⁵
2. Council of Ministers (CoM): The CoM is “responsible for recommending proposed legislation to the CoR on the development of [Iraq’s] Petroleum resources.”⁵⁶ The CoM is responsible for creating the Federal Oil and Gas Council.⁵⁷ The CoM also formulates policy related to all aspects of petroleum operations,⁵⁸ and ensures that the Federal Oil and Gas Council and Ministry adopt appropriate and effective mechanisms for coordinating with regional authorities.
3. Federal Oil and Gas Council (FOGC): The FOGC “assist[s] the CoM in creating Petroleum policies and related plans.”⁵⁹ It puts legislation pertaining to exploration and production before the CoM.⁶⁰ The Prime Minister or his nominee is president of the

53. *Id.* art. 2.

54. *Id.* art. 3.

55. *Id.* art. 5.

56. *Id.*

57. *Id.* art. 4.

58. *Id.*

59. *Id.* art. 5.

60. *Id.*

FOGC.⁶¹ The FOGC includes other key officials such as the Federal Government's Ministers of Oil, Finance, and Planning; the Director of the Iraq Central Bank; as well as oil industry experts.⁶² The FOGC has a number of enumerated powers including setting policies and Exploration plans, reviewing Exploration and Production contracts, approving the transfer of rights among holders of Exploration and Production rights, and broadly ensuring that Iraq's resources are developed and managed in a manner that is in the best interests of the Iraqi people.⁶³

4. Ministry of Oil: The Ministry of Oil has "authority for proposing Federal policy, laws and plans" and "creating legislation to implement Federal plans."⁶⁴ The Ministry of Oil represents Iraq in regional and international forums and is empowered to negotiate petroleum treaties with other countries and organizations.⁶⁵ Additionally, it is responsible for ensuring adherence with laws and regulations.⁶⁶

5. Iraq National Oil Company (INOC): The INOC "can participate in Exploration and Production operations inside Iraq" and is "obligated to sell its share of Crude Oil to the [Iraq] Oil Marketing Company."⁶⁷ The INOC also has the right to participate as a commercial partner in international projects related to the transportation, marketing and sale of Oil and Gas and can participate in Exploration and Production contracts outside of Iraq subject to approval by the CoM.⁶⁸

Article 6 creates the INOC and provides that it is fully owned by the Iraqi Government and based in Baghdad.⁶⁹ The "INOC is financially and administratively independent and runs

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* art. 6.

on [a] commercial bas[i]s.”⁷⁰ The INOC will operate existing producing fields referenced in Annex 1 and will participate in the development and production of discovered but not yet developed fields in Annex 2.⁷¹ The “INOC shall also own, manage and operate the Main Oil and Gas Pipeline Network and [Iraq’s] export ports.”⁷² Oversight of the INOC will be by a board comprised of members from the Federal Government, the Regions, and the Producing Governorates.⁷³

Article 7 provides that the Ministry of Oil shall be reorganized and a new department created to specialize in “planning, developing and following up the process of obtaining rights.”⁷⁴ The department “must include in each and every negotiation[] representatives from the related Producing Governorates.”⁷⁵

Article 9 provides that “the rights for conducting Petroleum Operations shall be granted on the basis of an Exploration and Production contract . . . entered [into] between the Ministry (or the Regional Authority) and an Iraqi or Foreign Person” upon a showing of technical competence and financial capability.⁷⁶ The FOGC will approve the type of model Exploration and Production contracts and will select the “appropriate model contract types according to the nature of the Field or Exploration area to provide maximum returns to the people of Iraq.”⁷⁷ “The Model Contracts may be based upon Service Contract, Field Development and Production Contract, or Risk Exploration Contract provided they are adapted to . . . serve the best interest of the Republic of Iraq.”⁷⁸

70. *Id.*

71. *Id.*

72. *Id.* art. 6.

73. *Id.*

74. *Id.* art. 7.

75. *Id.* art. 7. Article 4 of the Draft Hydrocarbon Law defines a “Producing Governorate” as “any Iraqi Governorate that produces Crude Oil and natural gas continually on rates more than one hundred and fifty thousand (150,000) barrels a day.”
Id. art. 4.

76. *Id.* art. 9.

77. *Id.* art. 5.

78. *Id.* art. 9.

Article 11 refers to the Constitutional provisions that provide that Iraq's oil wealth belongs to all of its citizens but Article 11 does not contain specific guidelines or a mechanism for revenue sharing.⁷⁹ Rather, Article 11 provides that "the Council of Ministers must submit a draft federal revenue law to the Council of Representatives."⁸⁰ This is one of the companion pieces of legislation yet to be decided.⁸¹

C. Chapter III: Exploration and Field Development Operations

Article 13 provides the holder of an Exploration and Production contract the "exclusive right to conduct Petroleum Exploration and Production in the Contract Area" for a period to be determined by the FOGC "varying from fifteen (15) to twenty (20) years" with the possible extension of five (5) years.⁸² INOC and other holders of Exploration and Production contracts will "pay a royalty on Petroleum produced from the Development and Production Area, at the rate of twelve point five percent (12.5%) of Gross Production measured at the entry flange to the Main Pipeline."⁸³

D. The Annexes

The Draft Hydrocarbon Law originally granted regional authorities licensing powers over various oil fields specified in four Annexes.⁸⁴ The Draft Hydrocarbon Law merely lists these four annexes in the table of contents⁸⁵ and official versions of

79. *Id.* art. 11; CONSTITUTION OF IRAQ arts. 106, 111, 112, 121, available at <http://krg.org/articles/detail.asp?lngnr=12&smap=04030000&rn=107&anr=12329>.

80. Draft Iraq Oil and Gas Law, *supra* note 6, art. 11.

81. See BLANCHARD, *supra* note 6, at 5–6 (pointing out that negotiations have begun on this piece of legislation, but as of June 2007, no agreement has yet been formed).

82. Draft Iraq Oil and Gas Law, *supra* note 6, art. 13.

83. *Id.* art. 34. The other chapters of the Draft Hydrocarbon Law: Chapter IV: Transportation, Chapter V: Gas, Chapter VI: Regulatory Matters and Chapter VIII: Miscellaneous Provisions do not appear to be the subject of any significant controversy, and therefore will not be discussed in this Article.

84. BLANCHARD, *supra* note 6, at 6.

85. The four annexes are: Annex 1: Present Producing Fields Allocated to the Iraq National Oil Company; Annex 2: Discovered (Undeveloped) Fields Allocated to the Iraq National Oil Company; Annex 3: Discovered (Undeveloped) Fields Outside the

the draft annexes do not appear to have been made publicly available.⁸⁶

According to one article from the *Dow Jones Newswire*, the annexes “detail[] dozens of untouched oil fields loaded with proven reserves and scores of exploration blocks.”⁸⁷ The Dow Jones article provides fairly precise details about the four annexes:

[Annex 1] details the 27 fields already in production, including the South and North Rumala fields and Majnoon in the south which is in need of further development.

[Annex 2] names 25 fallow oil fields with proven reserves positioned near those that already pump crude. On paper, they are the easiest to develop because of their proximity to existing infrastructure [and] include Rattawi, Siba and Howzah in southern Iraq, Mansouriyia, Nahrawan and Himreen in the center and Ismail, Makhmour and Qarah Jwaq in the north.⁸⁸

The yet-to-be established Iraq National Oil Company would control the fields listed in the first two Annexes and could “either develop the fallow fields itself or can negotiate with foreign companies to bring them on stream.”⁸⁹

“[Annex 3] lists 26 fields scattered across the country, which aren’t close to producing fields, making them a costlier challenge to develop.”⁹⁰ “They are found in the provinces of Muthanna, Anbar, Suleimaniya, Kirkuk and Najaf, among others.”⁹¹ An unnamed Iraqi oil expert indicated that under Annex 3, “the Kurdistan Regional Government can negotiate and sign preliminary contracts with foreign companies to develop oil

Operations of the Iraq National Oil Company; and Annex 4: Exploration Areas. Draft Iraq Oil and Gas Law, *supra* note 6, tbl. of contents.

86. BLANCHARD, *supra* note 6, at 6.

87. Hassan Hafidh, *Iraq Oil Law Details Untouched Fields, Blocks-Document*, DOW JONES NEWSWIRES, Mar. 5, 2007, available at http://www.rigzone.com/news/article.asp?a_id=42120.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

fields located in its own territory, while the oil ministry in Baghdad does the same for fields elsewhere.”⁹² “These contracts will need to be approved by a federal oil and gas council.”⁹³

“[Annex 4] names 65 blocks to be explored, with the majority in the Western Desert within the Sunni-held and strife-torn Anbar province northeast of Baghdad.”⁹⁴ In 2007, Representatives of the Kurdish Regional government expressed opposition to the draft annexes and threatened to withdraw support for the legislative package in the Council of Representatives.⁹⁵ As a result of the Kurdish opposition, the annexes were removed from the Draft legislation submitted to the Iraqi cabinet.⁹⁶ To meet the demands of the Kurdish negotiations, the management of specific fields will allegedly be decided by the member of the FOGC.⁹⁷

IV. THE MAIN ISSUES OF CONTENTION

In April 2007, top Iraqi officials met in Dubai, United Arab Emirates (UAE) to debate ways to move the Draft Hydrocarbon Law forward.⁹⁸ At that time, the main source of contention appeared to be the failure of the legislation to clarify “the terms for foreign oil companies’ participation, and whether they would be allowed to take majority stakes in some Iraqi oil fields.”⁹⁹

As more details have emerged, it appears that the ultimate passage of the Draft Hydrocarbon Law by the Iraqi Parliament has been delayed due to disagreements over the following main points of contention: (1) federal and regional authority under the Preamble and Iraq’s Constitution; (2) management of petroleum reserves under Chapter II; (3) revenue sharing; and (4) foreign participation.¹⁰⁰

92. *Id.*

93. *Id.*

94. *Id.*

95. BLANCHARD, *supra* note 6, at 6.

96. *Id.*

97. *Id.*

98. Krause, *supra* note 20.

99. *Id.*

100. See BLANCHARD, *supra* note 6, at 6, 10–13 (outlining the core issues surrounding the Draft Hydrocarbon Law). Negotiations subsequent to the February 2007

A. *Federal and Regional Authority: The Preamble and Iraq's Constitution*

According to Iraqi insiders, the contentious debate over the passage of the Draft Hydrocarbon Law seems to have “more to do with the overall political situation than with the law’s specific content.”¹⁰¹ “It has become a political battleground between those who want a more unified Iraq and those who want a looser, more decentralized federation.”¹⁰² Many Iraqis are looking to the law for “what it can contribute to reconciliation, security, and welfare, but the political leaders see it as a test of who will govern in the future and how.”¹⁰³

The Draft Hydrocarbon Law and the Constitution support the view that power, and thus the ultimate control over all of Iraq’s oil industry, is to be concentrated in the Federal government.¹⁰⁴ “[T]he constitution’s ambiguity about the roles and powers of federal, regional, and governorate authorities has contributed significantly to the ongoing impasse” between the Government of Iraq and the Kurdish Regional Government

passage sought to clarify some of these issues.

On July 3, 2007, Iraqi Prime Minister Nouri al Maliki announced that the Council of Ministers had approved a final version of the framework law and had forwarded the bill to the Council of Representatives for consideration. The Council of Ministers’ Shoura Council reportedly amended provisions of the bill to ensure their consistency with provisions of the Iraqi constitution. However, Kurdish officials have protested the changes, arguing that they are substantive, rather than semantic, and have tentatively withdrawn their support for the legislation. The boycott of cabinet and parliamentary proceedings by various Iraqi entities at the time of the cabinet’s approval of the law added to the existing controversy surrounding the proposed legislation.

Id. at 3–4.

101. CHRISTINA PARAJON, U.S. INST. OF PEACE, THE IRAQ HYDROCARBON LAW: HOW AND WHEN? (2007), available at http://www.usip.org/pubs/usipeace_briefings/2007/0605_iraq_hydrocarbon.html.

102. *Id.*

103. *Id.*

104. See Draft Iraq Oil and Gas Law, *supra* note 6, art. 5 (ordering the creation of the Federal Oil and Gas Council and outlining its duties); CONSTITUTION OF IRAQ, *supra* note 79, art. 112, (establishing that “[t]he federal government . . . shall undertake the management of oil and gas extracted” and “formulate the necessary strategic policies to develop the oil and gas wealth”).

(KRG).¹⁰⁵ Frustrated by delays and disagreements over amendments to the Draft Hydrocarbon Law, the KRG approved its own oil law in August 2007 and has approved a number of oil contracts with various foreign oil companies,¹⁰⁶ including U.S.-based Hunt Oil.¹⁰⁷

Under the Oil and Gas Law of the Kurdistan Region (KRG Oil Law),¹⁰⁸ the KRG has insisted that Kurdistan's oil belongs to the people of Kurdistan, although the KRG apparently is amenable to sharing some of Kurdistan's oil wealth with the central government via some sort of production/revenue agreement.¹⁰⁹ "Some analysts believe that the Kurdish moves signal the KRG's intention to begin large scale oil development activities regardless of progress on federal legislation."¹¹⁰ Moreover, the "KRG opposes proposals to require federal approval of its existing or future contracts."¹¹¹ There is no doubt that the KRG's actions have elevated tensions with the Iraqi government, and the Iraqi Oil Minister, Hussein al Shahrstani, has stated that:

[T]he national government considers contracts signed by the KRG to have "no standing" and threatened that "if for any political reason the [hydrocarbon framework] law is delayed, we'll go ahead and start discussions with international oil companies" at the national level.¹¹²

105. BLANCHARD, *supra* note 6, at 10.

106. *Id.* at 9.

107. *Id.* (citing Bloomberg News, *Dallas Oil Company Approved to Drill in Kurdistan*, N.Y. TIMES, Sept. 10, 2007, at C2).

108. Oil and Gas Law of the Kurdistan Region – Iraq Law No. (22) – 2007, art. 3, available at http://www.krg.org/uploads/documents/Kurdistan%20Oil%20and%20Gas%20Law%20English_2007_09_06_h14m0s42.pdf. The KRG Oil Law provides:

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.

Id.

109. *Id.*

110. BLANCHARD, *supra* note 6, at 9.

111. *Id.*

112. *Id.* (alteration in original) (footnotes omitted).

In response, representatives of the KRG expressed the opinion that Al Shahrstani's views were "irrelevant to what the KRG is doing legally and constitutionally in Kurdistan."¹¹³

B. Management of Petroleum Reserves under Chapter II and Role of the FOGC

One of the most important provisions of the Draft Hydrocarbon Law is the creation of the Federal Oil and Gas Council (FOGC) under Chapter II. The purpose of the FOGC is "to assist the Council of Ministers in creating Petroleum policies and related plans [and legislation]."¹¹⁴ According to the CRS Report, "the FOGC would become the most powerful body in Iraq's oil sector"¹¹⁵ and would have the power to review all Exploration and Production contracts.¹¹⁶ Of particular concern to some is the fact that foreign energy experts or industry representatives could be chosen to participate on a "Panel of Independent Advisors" provided for under Chapter II.¹¹⁷

In terms of the composition of the FOGC, "the seats on the FOGC are reserved for hydrocarbon experts, and producing governorates."¹¹⁸ In light of the potential for the majority Shiite Arab community to dominate the make-up of Iraq's cabinet and the "ineligibility of Sunni Arab governorates to qualify for seats on the FOGC based on the other specified terms, some Sunni Arabs fear their interests will not be adequately represented in the powerful [FOGC] council."¹¹⁹

C. Revenue Sharing

There are numerous concerns related to revenue sharing under the Draft Hydrocarbon Law. These concerns revolve around the importance of oil to Iraq's overall economy, the uneven geographic concentration of Iraq's oil wealth primarily in

113. *Id.*

114. Draft Iraq Oil and Gas Law, *supra* note 6, art. 5(c).

115. BLANCHARD, *supra* note 6, at 4.

116. Draft Iraq Oil and Gas Law, *supra* note 6, art. 5(c).

117. BLANCHARD, *supra* note 6, at 4.

118. *Id.*

119. *Id.*

the North and South, and the “legacy of communal favoritism practiced under Saddam Hussein.”¹²⁰

Article 112 of Iraq’s Constitution requires the Iraqi government to distribute 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.¹²¹

The Sunni Arab minority-dominated areas of Iraq are particularly concerned about revenue sharing, as these Western areas have few proven reserves (although there have been suggestions that a great concentration of reserves might exist in this largely unexplored region).¹²² In light of these concerns and the concern that Iraq’s oil will be exploited by international companies, numerous Sunni groups have criticized the Draft Hydrocarbon Law.¹²³

A separate Draft Revenue Sharing Law (Draft Revenue Law) has been prepared as one of the companion pieces of legislation to be presented with the entire Draft Hydrocarbon legislative package.¹²⁴ According to the Draft Revenue Law, which has been published on the KRG website:¹²⁵

The federal government would have priority to allocate the funds in the accounts to support national priorities such as defense and foreign affairs, “provided that this does not impact the balance and needs of the governments of the Regions and the Governorates which are not organized in a region.” The remainder of

120. *Id.* at 11.

121. CONSTITUTION OF IRAQ, *supra* note 79, art. 112.

122. See BLANCHARD, *supra* note 6, at 14 (explaining why Sunni Arabs are concerned with ensuring equitable distribution of oil export revenue).

123. *Id.*

124. *Id.* at 6.

125. Draft Law of Financial Resources, June 20, 2007, available at http://www.krg.org/pdf/English_Draft_Revenue_Sharing_law.pdf.

the accounts would be distributed to regions and governorates automatically, on a monthly basis, based on agreed population-density-based percentages until a census can be completed. The Kurdistan Regional Government would receive a 17% share of the remaining funds deposited in two accounts at the Central Bank of Iraq branch in Irbil.¹²⁶

It is unclear whether the Draft Revenue Law will survive as written. One Iraqi politician has reportedly referred to the provisions in the draft as “political blackmail” by Kurdish politicians.¹²⁷

D. Foreign Participation

The contract provisions of the Draft Hydrocarbon Law (mainly Articles 9 and 13)¹²⁸ have “attracted significant attention because they would allow foreign participation and therefore represent, in principle, a reversal of the nationalization of Iraq’s oil sector.”¹²⁹ “The sovereign control of Iraq’s oil resources and revenues remains a subject of intense scrutiny, debate, and sensitivity in Iraq.”¹³⁰ Although some Iraqis oppose any form of foreign participation, most observers recognize the need of some foreign participation in Iraq’s oil industry to boost oil production and further the redevelopment of the country.¹³¹ The precise type of contracts to be employed remain a subject of debate, and some “support foreign participation in the form of technical service contracts, [while] . . . others favor production sharing agreements (PSAs), which would grant international companies exploration and

126. BLANCHARD, *supra* note 6, at 6–7 (citing Ben Lando, *Iraqis Make Progress on Sharing Oil Sales*, UNITED PRESS INT’L, June 21, 2007, available at http://www.upi.com/Energy/Briefing/2007/06/21/iraqis_make_progress_on_sharing_oil_sales/5151).

127. *Id.* at 7.

128. Draft Iraq Oil and Gas Law, *supra* note 6, arts. 9, 13.

129. BLANCHARD, *supra* note 6, at 5 & n.4. “Iraq completed the nationalization of its oil resources in 1975, and oil exploration, production and exports were managed . . . by state-run entities.” *Id.* at 12.

130. *Id.* at 12.

131. *Id.* at 12–13.

production rights over specific areas for specified periods, subject to the terms of negotiated contracts.”¹³²

While internal Iraqi politics appear undecided on the amount and type of foreign participation, the world’s energy sector at large also seems to have concerns over which foreign energy firms might receive preference for contracts to explore Iraq’s vast reserves. Some energy companies have expressed concern that the Draft Hydrocarbon Law will “favor U.S. firms because the draft does not give preference to development contracts signed during the Saddam era, such as those signed with Russian and Chinese firms.”¹³³

V. IMPACT OF IRAQ’S HYDROCARBON LAW ON IRAQ’S REDEVELOPMENT PLANS

It is widely accepted that the ultimate passage of Iraq’s Draft Hydrocarbon Law is central to the development of Iraq’s oil and gas sector as well as the development of Iraq’s overall economy.¹³⁴ On September 2–4, 2007, the Iraq Development Program (IDP)¹³⁵ held the “world’s first event organised to consider the future of Iraq’s abundant energy resources through direct consultation with the international private sector.”¹³⁶ The Iraq Oil, Gas, Petrochemical & Electricity Summit was held in Dubai and brought together senior officials and industry leaders

132. *Id.* at 12.

133. KATZMAN, *supra* note 4, at 27; *see also* Mike Eckel, *Putin Attributes Iraq War to U.S. Oil-Reserve Grab*, SEATTLE TIMES, Oct. 19, 2007, at A15. (explaining that Russian President Vladimir Putin recently suggested that U.S. involvement in Iraq “was aimed at seizing control of Iraq’s vast oil wealth”).

134. EIA IRAQ 2007 REPORT, *supra* note 2, at 4.

135.

The Iraq Development Program is an initiative organised to aid the development of Iraq as an economic force, improve the country socially and benefit its people as they establish themselves as part of the international community. Part of the Development Program network, it aims to promote the role of business in Iraq and enable the necessary transfer of technology from the international community into Iraq.

Iraq Development Program, <http://www.iraqdevelopmentprogram.org> (last visited Jan. 25, 2008).

136. IRAQ DEV. PROGRAM, IRAQ OIL, GAS, PETROCHEMICAL & ELECTRICITY SUMMIT (2007), <http://www.iraqdevelopmentprogram.org/idp/events/iog/iogpereport.htm> [hereinafter IOGPE SUMMIT].

from the Iraq and Kurdistan governments,¹³⁷ including top Iraqi official, Thamir Ghadhban,¹³⁸ as well as representatives from the American Chamber of Commerce – Iraq, and leading energy companies.¹³⁹ This summit was held when the passage of the Draft Hydrocarbon Law seemed more certain.¹⁴⁰ It was noted that “Iraq’s unstable security situation presents a significant barrier to large-scale investment by most international entities.”¹⁴¹ Future events are planned by the Iraq Development Program¹⁴² and it remains to be seen how constructive these events will be in the absence of a final Hydrocarbon Law.

VI. RECENT DEVELOPMENTS AND FUTURE PROSPECTS

On October 17, 2007, the Iraqi central government indicated that while it could probably “muster the political majority” needed to pass the Draft Hydrocarbon Law, the government wanted the oil law “to unify Iraqis, not to divide Iraqis.”¹⁴³ As

137. *Id.* Presentations were given by Iraqi and Kurdistan officials including, Iraqi Minister Kareem Waheed al-Aboudi, KRG Minister of Electricity Hoshyar Sowaily, Chairman of Iraq Oil Commission Thamir Ghadhban, and Deputy Head of the Iraq Energy Committee Abdulhadi Al-Hasani. *Id.*

138. Ben Lando, *Interview: Top Iraq Oilman Thamir Ghadhban*, UNITED PRESS INT’L, Sept. 19, 2007, available at http://www.upi.com/International_Security/Energy/Analysis/2007/09/19/interview_top_iraq_oilman_thamir_ghadhban/2154. According to Ben Lando, UPI Energy Editor and founder of the Iraq Oil Report, a leading source of news about Iraq’s oil law, Mr. Ghadhban is rumored to be in line to head the Iraq National Oil Company when it is finally reestablished. Prime Minister Nouri al-Maliki’s Right-Hand Man on Energy, Thamir Ghadhban, <http://iraqoilreport.com/2007/09/19/> (Sept. 19, 2007).

139. IOGPE SUMMIT, *supra* note 136. The Summit was sponsored by energy giants such as Chevron, Statoil, Marathon Oil, ConocoPhillips, BP, and Schlumberger as well as other major companies. *Id.*

140. *Id.* (discussing a session held at the Summit where Iraqi parliament members expressed expectations of the law passing after the parliament returned from recess).

141. BLANCHARD, *supra* note 6, at 12.

142. *See, e.g.*, Iraq Development Program, Iraq Defence, Security & Communications Summit, <http://www.iraqdevelopmentprogram.org/idp/events/idsc/index.htm> (last visited Jan. 25, 2008) (discussing an upcoming event that the Iraq Development Program, in partnership with the Iraq government, will be holding in February 2008).

143. *Deputy PM says Iraq Some Way off Oil Law Agreement*, REUTERS UK, Oct. 17, 2007, available at <http://uk.reuters.com/article/oilRpt/idUKL1742188320071017> (quoting Iraqi Deputy Prime Minister Barham Salih).

such, the government would wait to seek passage of the law until there was “broad acceptance.”¹⁴⁴ As of the date this Article goes to press, the Draft Hydrocarbon Law is still being debated with “no final vote scheduled” for the contentious legislation.¹⁴⁵

In terms of the KRG Oil Law and the contracts with foreign oil companies, it is too soon to say whether the law or the contracts will stand. As of the date this Article goes to press, the KRG continues to insist that its contracts with foreign oil companies are valid. Deputy Prime Minister Barham Salih, a Kurd, has stated that, “[i]t is not up to the ministry of oil to decide the legality of such contracts, it is for the constitutional court in Iraq to decide the legality or illegality of such contracts.”¹⁴⁶ For its part, the Federal Government has maintained that the KRG contracts are NOT valid and has warned companies, especially companies currently importing oil from Iraq, that the Federal Government will halt crude exports unless the KRG deals are canceled.¹⁴⁷

In an effort to counteract the KRG oil deals, the Iraqi Federal Government recently invited major international oil companies to submit tenders of interest to help develop the Iraqi oil industry.¹⁴⁸ Acknowledging that the Draft Oil Law is unlikely to be passed anytime soon, Iraqi Oil Minister Hussain Shahrstani told the Financial Times that Iraq “was now determined to push ahead with plans to raise production from a current 2.5m barrels per day [bpd] to 6m bpd in five years” and that the prequalification of oil companies for oil development licenses should lead to the award of contracts next year.¹⁴⁹ The federal government has also indicated that any company that

144. *Id.*

145. Yochi J. Dreazen, *Gates Pushes Iraqi Government on Power Sharing*, WALL ST. J., Feb. 11, 2008, at A8 [hereinafter *Gates Pushes Iraqi Government*].

146. *Deputy PM says Iraq Some Way off Oil Law Agreement*, *supra* note 143.

147. *See Iraq halts oil exports to S. Korea over Kurd deal*, REUTERS, Feb. 29, 2008, available at http://www.business24-7.ae/cs/article_show_mainh1_story.aspx?HeadlineID=1530 (reporting Iraq oil ministry halting of KRG contract exports to South Korea and warnings to other customers to cancel deals with KRG).

148. Roula Khalaf & Dino Mahtani, *Iraq pushes ahead with oil plans*, FINANCIAL TIMES, Feb. 5, 2008, available at http://www.ft.com/cms/s/0/e7df26bc-d416-11dc-a8c6-0000779fd2ac.html?nclick_check=1.

149. *Id.*

has signed a deal with the KRG will be “blacklisted” from participating in any federal contracts.¹⁵⁰

Although the terms for any “model contract” need to be worked out, the initial proposal is for foreign oil companies to participate in “technical support agreements” to help increase Iraqi oil production by 500,000 bpd in the short term while allowing Iraq to retain full ownership and control over the oil resource.¹⁵¹

Over 70 companies registered to compete for the Iraqi oil contracts and the Iraqi Oil Ministry is expected to announce which companies will be allowed to bid for future contracts in March 2008.¹⁵² While the oil companies have expressed a strong interest in participating in the Iraqi oil contracts, they will most likely require more legislative certainty and security before committing to any substantial investment in Iraq.¹⁵³

Indeed, at the recent energy conference sponsored by Cambridge Energy Research Associates, CERAWEEK 2008, Shell Gas and Power Executive Director Linda Cook indicated that while Shell was interested in business opportunities in Iraq, the conditions would have to be right “meaning safety and security of our own staff plus making sure that we’re doing it in accordance with the laws that would be enacted by the country including the new oil law which has yet to be put through final legislative approval.”¹⁵⁴

While there is definitely a power struggle between the Iraqi federal government and the KRG¹⁵⁵ over control of Iraq’s oil and

150. Roula Khalaf, Dino Mahtani & Steve Negus, *Iraq sidesteps oil law impasse*, FINANCIAL TIMES, Feb 6, 2008, available at <http://search.ft.com/ftArticle?ct=0&id=080206000001>.

151. Khalaf & Mahtani, *supra* note 148.

152. *FACTBOX: Over 70 firms register for Iraq oil contracts*, REUTERS, Feb. 18, 2008, available at <http://www.reuters.com/article/email/idUSL1745190220080218?sp=true>.

153. Khalaf & Mahtani, *supra* note 148.

154. Ben Lando, *Exxon, Shell: Iraq Oil Law Needed for Deal*, UNITED PRESS INT’L, Feb. 13, 2008, available at http://www.upi.com/International_Security/Energy/Briefing/2008/02/13/exxon_shell_iraq_oil_law_needed_for_deal/9680/.

155. BLANCHARD, *supra* note 6, at 8–9. Recent conflicts between the KRG and Turkey have further complicated matters in Iraq. See Daniel Dombey, Demetri Sevastopulo & Vincent Boland, *US Alarm over Turkey’s Iraq Incursion Plan*, FIN. TIMES,

the laws that will govern Iraq's oil industry, there also appears to be a more general power struggle going on within Iraq. According to a recent article, "fighting within the sects has increased, as rival groups jockey for *power, influence and money*."¹⁵⁶

In the United States, some officials contend that creating "mini-states" and dividing the country between the three main factions—Shiites, Sunnis, and Kurds—offers the best chance of restoring order in Iraq.¹⁵⁷ "Some U.S. commanders believe the [fighting] groups are jockeying to be in dominant positions if Iraq is partitioned into three homogenous ministates."¹⁵⁸

"The intrasectarian violence has been particularly acute in Shiite areas of Baghdad and oil-rich southern Iraq, where cleric Muqtada al Sadr's Mahdi Army and Supreme Islamic Iraqi Council leader Abdul-Azis al Hakim's Badr Corps have been battling over oil, smuggling routes and patronage jobs."¹⁵⁹

As of the date this Article goes to press, the Iraqi government is being pressed by the United States to pass a "power-sharing bill that U.S. officials see as key to reconciling Iraq's feuding sectarian groups."¹⁶⁰ The bill would give Iraq's embattled Sunni minority more power within the Shiite-

Oct. 17, 2007, at 4 (explaining that Turkey's parliament could authorize a large-scale incursion into the northern Iraq Kurdish region in an attempt to crack down on Kurdish separatists of the PKK); Chip Cummins & Russell Gold, *Iraq War Fuels Oil's Surge*, WALL ST. J., Oct. 17, 2007, at A3 (explaining that Turkey's threat adds to "regional destabilization amid the tightest oil market in a generation" and that the "outlook for improving Iraqi [oil] production remains troubled, as domestic problems continue, Iraqi lawmakers keep arguing about national energy policy and tensions ratchet up along its borders."). As of the date this Article was written, Turkey had deployed 60,000 Turkish soldiers to the Kurdish/Turkey border and had threatened to take military action against the PKK. Volkan Sarisakal & Christopher Torchia, *Turkey Sends More Troops to Iraq Border*, AOL NEWS, Oct. 23, 2007, <http://www.aol.in/news/story/2007102302020001401668/index.html>. A detailed discussion of the KRG's recent dispute with Turkey is beyond the scope of this paper.

156. Yochi J. Dreazen, *Fighting Within Sects Complicates U.S. Iraq Plans*, WALL ST. J., Oct. 25, 2007, at A12 (emphasis added).

157. *Id.* Senate Foreign Relations Committee Chairman Joseph Biden is a proponent of this plan. *Id.*

158. *Id.*

159. *Id.*

160. *Gates Pushes Iraqi Government*, *supra* note 145.

dominated central government. Progress on the bill has been slow, however, largely due to the significance of the proposed changes which in essence would determine “whether Iraq becomes a loose federation of largely self-governing regions” or whether Iraq “will retain holdovers from the centralized state familiar during the rule of Saddam Hussein.”¹⁶¹

While it is difficult to predict when the Draft Hydrocarbon Law will be passed and whether passage of the oil law, or any other laws, will resolve the “epic quest for oil, money and power”¹⁶² in Iraq, one thing is easy to predict: if Iraq’s oil production ever ramps up to its potential, Iraq could be one of the *largest* oil producers in the world. So, keep your eye on *the prize*.

161. *Id.*

162. YERGIN, *supra* note 1.