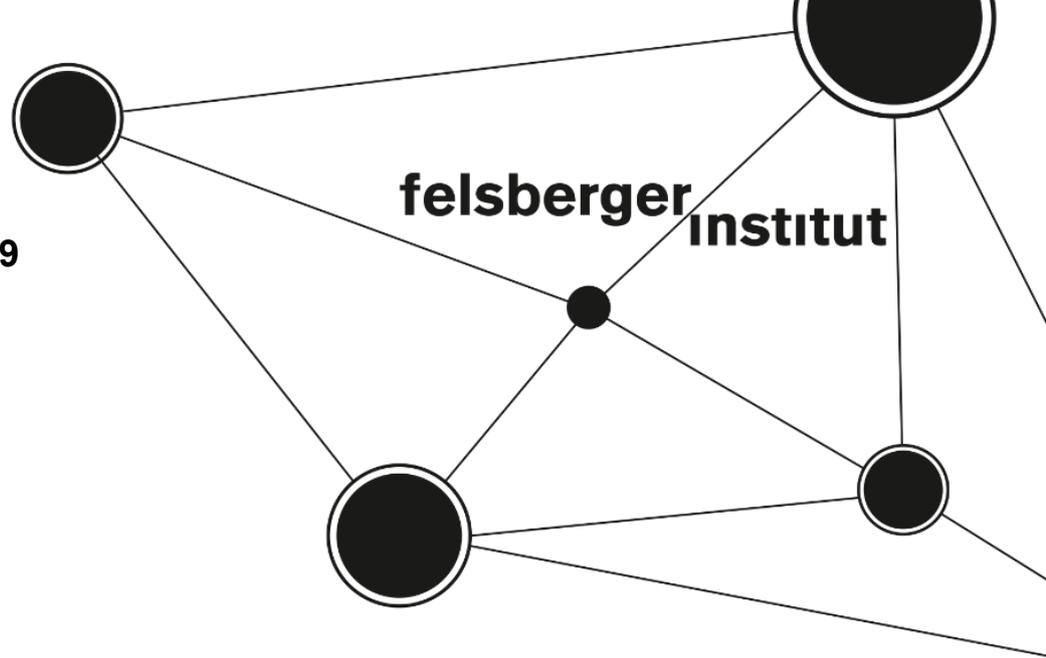


Working Paper No. 09
05/2017



Adding 'oil' to the fire?

International economic cooperation and the dynamics of contentions.
The case study of the Autonomous Region of Kurdistan in Iraq

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The Case Study of the Autonomous Region of Kurdistan

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FI Working Paper No. 9

Felsberg: edition eins, 2017

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Abstract: This paper scrutinises the complex interactions between local and international economic actors in the oil and gas sector of Iraq. While internationalisation and the opening up of the Autonomous Region of Kurdistan in the north of Iraq have played a particularly crucial role for the consolidation of the Kurdish position, they have been also responsible for ongoing spirals of contentions within the KRG (between the main parties in the Autonomous Region), as well as within Iraq (between regional and federal government). How the economic interactions have influenced the escalation and de-escalation of these conflicts can be seen comparatively throughout four key periods of time (2002-2007; 2007-2011; 2011-2014; 2014-ongoing).

1 Introduction

When Bush referred to Iraq as a beacon of light for democracy in 2005, he could not have been more wrong, given the bloody mayhem federal Iraq has been faced with over the last decade. However, on the other hand, the Autonomous Region of Kurdistan in the northern part of the country has apparently managed – despite ongoing violence – to constantly consolidate its position both internally and externally and to gain international support and recognition as a beacon of hope in the fight against terrorism and authoritarian practices. This consolidation has given the Kurdish government so much confidence, that the quiet but ever-present claims for independence are becoming louder and louder, straining relations with Baghdad even more and adding to the regional uncertainties.

While the author is aware of the current developments in the region, this paper is the result of the presentation given by the author at the International Conference “Rebuilding War Societies: Continuities and New Beginnings” held at the University of Sulaimani, between the 17th and 21st of October 2016¹. Thus, the scope of this paper’s analysis does not systematically include the events which unfolded after the autumn of 2016. Nevertheless, the conclusions and results presented in the

¹ For more details about the conference please visit:

[<http://foreign.univsul.edu.iq/addannouncement/internationalconferencerebuildingwarsocietiescontinuitiesandnewbeginningsatuniversityofsulaimanioctober17-212016>]; the programme of the conference can be found under: [<http://cis.uni-erlangen.org/relaunch/wp-content/uploads/2016/02/Final-Conference-Program.pdf>]

aforementioned conference paper are based on three years of research regarding the link between economic cooperation and the consolidation of collective identities in the Autonomous Region of Kurdistan, as well as in Iraq.

Relying on previous work on how the collective identity of the Kurdish Regional Government (KRG) has been consolidated over a series of phases, starting at the beginning of the 1990s, this paper focuses on the dynamics of contention between the KRG and the Iraqi Federal Government (IFG) resulting from the engagement of the actors in an energy-political claim-making process. These spirals of conflict have been deeply affected not only by the interaction between the two local actors mentioned, but mostly by the involvement of external actors and the international political economic relationships built by both the KRG and IFG between 2002 and 2016.

These dynamics can be best observed in a quadripartite comparison of successive phases: 2002-2007; 2007-2011; 2011-2014; 2014-ongoing. These four phases have emerged as a result of the process-tracing which has been conducted and are additionally structured by an intrinsic characteristic of the oil and gas sector - namely the petroleum operations. This time-period division and comparison has provided not only a deep understanding of the object of investigation, but most importantly the identification of qualitative changes and the underpinning of fundamental variance with explanations beyond the status of mere observations.

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2 Problem definition and state of research

While it might be argued that given the countless challenges Iraq has been facing since the 2nd Gulf War² of 1991, the Iraqi-Kurdish case represents, in contrast to the federal state and even the region,³ a '(more) success(ful) story' of rebuilding societal ties and administrative structures, the premises for these developments were laid during decades of persecution, suppression and infrastructural underdevelopment. Added to this is the latest decade of open, ongoing conflicts both nationally and regionally.

² Counting the Iran-Iraq War.

³With the exception of Israel.

Nevertheless, while the consequences unleashed by the 2nd Gulf War can be seen as responsible for this state of perpetual mayhem across Iraq, the same event has constituted for the north, through the establishment of a no-fly zone, the moment in which the Kurdish dream of independence has started to gain a foothold in reality. For the Kurdish people this was essentially the beginning of *de facto* self-governance.

Up to that point, the areas now governed by the KRG were characterised by a historically limited and weak presence of the administrative apparatus compared to other regions of the Ottoman Empire and by a defective infrastructure under the Baath regime. Under these circumstances there were barely any developed industrial sectors in the area, but mainly agricultural activities⁴.

While natural resources were also to be found in the north - as can be seen today - these were not explored until recently. By contrast, the exploration of oil and gas wells in the rest of Iraq has been boosted since the 1920s⁵, an action which has led to unequal development within the country, not only in economic but also in social terms. These inequalities regarding geographical development were also accompanied by a disproportionate distribution of the country's income - to the detriment of the north - and were basically used by the Baath regime as a mechanism for oppression.

Despite the removal of the Baath regime from power in Baghdad, the north is still haunted by the fear of being generally disadvantaged and not only when it comes to income distribution from the oil business by the federal government. These historically grown animosities have not been neutralised even by the legal recognition of the mainly Kurdish provinces in the north as an autonomous body entitled to co-design the policies of Iraq. This status upgrade has empowered the KRG to such an extent that it has further engaged with the federal government in a claim-making process over extended rights of self-determination, without constructively strengthening trust-ties between the two governments.

⁴ Wehinger, Frank, 2011: Das politische System der Region Kurdistan im Irak seit 1991, in: Akude John/Daun, Anna [et. al][editors], 2011: Politische Herrschaft jenseits des Staates, Verlag für Sozialwissenschaften, p. 235-256: 241.

⁵ Tuzcu, Mustafa, 2011: Has a New Political Era Changed Iraqi Economy? Challenges for a Late Rentier State, Master of Arts in Law and Diplomacy Thesis, The Feltcher School, Tufts University.

While every claim-making process where actors with different positions and interests interact with each other pursuing the fulfilment of their own position to the detriment of the other involved parties is expected to be a controversial process, the disputes between regional and federal government regarding the oil and gas sector have been particularly fierce. This increased potential for conflict has been strengthened by several factors: (1) the historically grown inequalities between the Autonomous Region of Kurdistan and the central Iraqi state; (2) the apparently very rapid development of north Iraq in comparison to the rest of the war-torn Iraqi federation; but also (3) the conflicting nature of oil resources in dependent rentier states including the impasse between the neoclassical growth paradigm in the Middle East and North Africa (MENA) region and last but not least (4) the overall instability of the region. Given these circumstances, this paper will explore the effects that international economic cooperation with the KRG and IFG have had on the relationship of these two entities by portraying the resulting dynamics of contention.

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3 State of research, theoretical framework and methodology

Given Iraq's entanglement in different conflicts during the past three decades, it can be observed in a somewhat morbid comparison that not only much blood but also much ink has been spilled with regard to Iraq. Nevertheless, despite diverse and well-documented studies, monographs, articles, reports and journal essays, there are still many under-researched issues; one of these research gaps is being addressed by this paper.

Regarding the state of research, there are three different points of reference which this paper takes up: (1) the literature on the links between the Iraqi state and conflict; (2) the literature on the KRG as an emerging collective actor with power claims; and (3) political economic literature with a strong focus on hydrocarbons, rentier-based economies and Iraq.

Regarding the first pillar of literature, there is a certain trend to catalogue Iraq, especially after the 2003 intervention, as a failed/failing state⁶. Notable, however, in this regard, is the fact, that most researchers use the Westphalian and Eurocentric understanding of the state, ignoring the conditions under which the basis for the Iraqi state were laid down at the end of the first World War. Furthermore, the emergence of the new actor in the north of Iraq is often ignored by these analyses, with the focus centering on Baghdad, the toppling of the Saddam-regime and the Sunni-Shia confrontations.

On the other hand, the Autonomous Region of Kurdistan, is a relatively young research field. Most authors pose (geo-)political questions around the controversy of the Autonomous Region being a “de-facto” state with ambitions of independence⁷. The focus here falls on the power struggle and administrative developments within the region and Kurdistan, with an ethnic - Kurdish - undertone dominating the literature, despite the overwhelming richness of different religions and ethnicities living in the territory of the Autonomous Region. Beside two⁸ incipient studies on the building of a collective identity behind the collective actor KRG, only one author, Garreth Stansfield, underpins the link between the strengthening of a specific collective identity and engagement in international cooperation, in this particular case with the United Nations organs and further non-governmental organisations in the wake of the Food-for-Oil-programme and the establishment of the no-fly-zone⁹.

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Over and above the aforementioned studies offering a multi-faceted understanding of the case to be studied, a look at the political economic level reveals a deep knowledge gap: the available reports deal either with the economic system of central Iraq, without including the Autonomous Region in the equation, or with the economic

⁶ See for e.g. Steinberg, Guido, 2007: Der Irak zwischen Föderalismus und Staatszerfall. Interessen und Handlungsoptionen irakischer und regionaler Akteure, in: SWP, Juli, 2017; Ismael Tareq Y./Ismael Jacqueline S., 2015: Iraq in the twenty-First Century: Regime Change and the Making of a Failed State, Durham Modern Middle East and Islamic World Series, Routledge: New York; Fund for Peace, 2003: Iraq as a Failed State; Call, T. Charles, 2008: The Fallacy of the ‘Failed State’, Third World Quarterly, 29:8, pg. 1941-1507.

⁷ See for e.g. Natali, Denise, 2010: Kurdish Quasi-State: Development and Dependency in Post-Gulf War Iraq, Syracuse University Press.

⁸ Mahir H. Aziz, 2011: The Kurds of Iraq: Ethnonationalism and National Identity in Iraqi Kurdistan, I.B. Tauris & Co Ltd; Carole O’Leary, 2007: Communalism and the Future of Iraq, in MacDonald and O’Leary [ed.]. Kurdish Identity: Human Rights and Political Status.

⁹ See: Stansfield, R.V. Gareth, 2003a: Iraqi Kurdistan: Political development and emergent democracy, Routledge Curzn Taylor & Francis Group; Stansfield, R.V. Gareth, 2003b: The Kurdish dilemma: the golden era threatened, in Dodge T/Simon S [ed.]: Iraq at the Crossroads: State and Society in the Shadow of Regime Change, Oxford: Oxford University Press, p.131-148, 2003b.

development of the KRG without relating the developments which are evolving in diverging directions to each other. Under these circumstances there are numerous reports portraying the status-quo of the oil and gas sector in the Autonomous Region of Kurdistan, mainly issued by IOCs that are involved. Nevertheless, these reports do not tend to discuss changes that occur analytically, but solely present facts as part of an inventory¹⁰.

The reports on the oil and gas activities monitored by the federal government are, however, more advanced, comparable also to the maturity of the sector. The figures of the hydrocarbon business are used in these cases as empirical examples for the theoretical functioning and malfunctioning of rentier states and rentier-based economies¹¹. These numbers exclude, however, the KRG figures. This particular point is of extreme importance for this paper, since the author aims to bridge this gap and place the increasing economic interactions of the KRG with international actors in its right context: the difficult and contentious context of regional-federal checks and balances and power struggles.

9

Theoretically, the paper draws on the field of Contentious Politics, a research area coined primarily by Charles Tilly and Sidney Tarrow¹². While it can be claimed, that the KRG is also developing a rentier-based economy mimicking the faults and errors of the central Iraqi economy, this paper focuses on the analysis of interaction between regional and federal government under the circumstances of the additional influence of external actors and does not compare mere macro-economic characteristics.

The Tilly and Tarrow approach merges three components typical of everyday social life into a complex relationship: a contention, a collective action and the field of the political, politics being understood here as a process around the interactions and transactions between the involved parties with regard to an object all parties raise a claim on. A contentious political situation is triggered by a claim, which cannot be

¹⁰See for eg. Al-Sharikh, Khaled, 2011: Erasing the Frontier: Turkey's Trade and Investment in Iraqi Kurdistan, NIMEP Insight, 2011, pg. 114-132; Erkmen, Serhat, 2012: Key Factors for Understanding Political Dynamics in Northern Iraq: A Study of Change in the Region, in: Uluslararası Hukuk ve Politika, 2012, Nr. 31; Charountaki, Marianna, 2102: Turkish Foreign Policy and Kurdistan Regional Government, Perceptions XVII, No. 4, Winter 2012, S. 185-208; Genel Energy plc, 2012: Annual Report 2011.

¹¹Tuzcu, 2011.

¹²Tilly, Charles/Tarrow, Sidney, 2006: "Contentious Politics", Oxford University Press.

resolved without objections, counter-claims or, metaphorically speaking, without a fight from either party. Each involved party pursues the settling of the claim debate to its own advantage by using different practices (including the usage of direct violence).

Particular for a Tillyan contentious political situation is that the parties involved in the making of the claim are not acting as individuals, but are always exponents of a collective. Imperative for entering the field of contentious politics is the involvement of a state-like entity, be it directly or indirectly through, for example, issuing laws, collecting taxes, etc. While there are many theoretical, philosophical and most of all legal debates around this concept, for Tilly and Tarrow the concept is reduced to the existence of “an organisation controlling the principal, concentrated means of coercion within a defined territory”¹³. This definition permits the qualification of both regional and federal government for this analysis.

While this theoretical construction has been received positively by academia, the methodology behind it has been met with caution. The field of contentious politics focuses on social interactions and proposes the identification of a palette of suggested social mechanisms for the interpretation of the interactions to be analysed¹⁴. However, as critics have repeatedly remarked, it is not quite clear, how these mechanisms can be systematically identified or how these given mechanisms have even emerged¹⁵.

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In order to circumvent falling into the realm of these biases, the paper has relied methodologically on theory-oriented process-tracing¹⁶, which has enabled the identification of the most important events over the analysed time span from 2002 to 2016. Another advantage of the process-tracing method, besides its applicability over longer periods of time, is also its contextual embeddedness. Concretely: The theoretical preliminaries of Tillyan Contentious Politics and the method of process-

¹³ Mc Adam, Doug/ Tarrow, Sidney/Tilly, Charles, 1996: To Map Contentious Politics, in: *An International Journal*, 1(1), pg. 17-34.

¹⁴ Mc Adam, Doug/ Tarrow, Sidney/Tilly, Charles, 2008: Methods for Measuring Mechanisms of Contention, in: *Qual. Sociol.*, Vol. 31, pg. 307-331.

¹⁵ Mahoney, James, 2001: Beyond correlational analysis recent innovations in theory and method, in: *Sociological Forum*, 16(3).

¹⁶ Collier, David, 2011: Understanding Process Tracing, in: *Political Science and Politics*, 44, No. 4 (Oct.), Berkeley, pg. 823 – 830.

tracing have enabled the identification of the first operative elements: the claim, the collective actors engaging in the process of the claim-making, as well as their collective actions. The subsequent analysis of these identified elements is based on a “thick description” following the reasoning of Clifford Geertz¹⁷. Consequently it can be summed up, that the methods for data interpretation are to a broad extent of a qualitative nature.

Regarding the methods of data collection, this paper relies mainly on extensive desktop research and background discussion with experts from the region. The heterogeneously analysed resources include primary and secondary literature such as: legislative texts, contracts, statistics, macro-economic indicators, academic treaties, reports, newspaper articles, etc. One important shortcoming of this paper results, however, from the inability to analyse all documents in the original language, the author having to rely mostly on English and to a lesser extent on Arabic documentation.

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4 Energy-political claim-making in Iraq

4.1 Petroleum Operations

Since 1929¹⁸ Iraq has started to develop all three sectors of the oil and gas sector: the upstream, the midstream and the downstream. Searching for potential underground crude oil and natural gas fields, drilling of exploratory and, later, operating wells are part of the upstream sector and constitute lengthy procedures, sometimes of more than 20 years.

While there may be some overlaps between the midstream and the downstream, the former is mostly in charge of the transportation part of the explored resources either by truck, oil tanker, barge, rail or pipeline, as well as of storage and some marketing activities and thus also includes infrastructural elements. Marketing activities are also conducted as part of the downstream sector as well as the refining of petroleum

¹⁷ Geertz, Clifford: „Dichte Beschreibung. Beiträge zum Verstehen kultureller Systeme“, Suhrkamp, Frankfurt am Main 2003 (zuerst 1983).

¹⁸ Tuzcu, 2011.

crude oil and purifying of raw natural gas and the subsequent distribution of these derived products.

As can be seen by the mere listing of the different links in the chain of the petroleum operations, the activities associated with the oil and gas sector are numerous, complex and involve high returns. Given the fact, that Iraq started building its oil and gas sector in the late 1920s, it can be said that the sector enjoys a high level of establishment and the existence of a certain level of know-how may also be assumed.

The establishment of this industry as portrayed above and the availability of know-how (either by the Iraqi state or by the foreign international oil companies that have been active in that region for over a century) were absolutely lacking in the Autonomous Region of Kurdistan by the beginning of the new millennium. Nevertheless, in only two decades the KRG has managed - especially through interaction with international economic actors - to build up the oil and gas sector in the north too, even if mainly restricted to the upstream and midstream operations.

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The claim of rapid development in under two decades can best be underpinned by looking at the map, which displays changes over the course of time, portraying hydrocarbon exploration in the Autonomous Region of Kurdistan. The KRG is subdivided into approx. 48 exploration blocks based on surface structure. Prior to the latest Iraqi constitution coming into force in 2005, there were only a few contracted blocks (7) with even fewer already explored fields with proven oil reserves inside the Autonomous Region of Kurdistan(5). The first contract was signed in 2002 with Genel Energy for the Taq-Taq field¹⁹.

During the first two waves of contracts being signed the situation changed dramatically in only two months (from September to November 2007). Within only 60 days a considerable number of international oil companies began interacting and

¹⁹ Mackertich, David/Samarrai, Adnan, 2013: The history of hydrocarbon exploration in Iraqi Kurdistan: 1901 to 2012, pg.11 Available at: [<http://www.petroceltic.com/~media/Files/P/Petroceltic-V2/pdf/Mackertich-Samarrai-2013-Geol-Soc-Zagros-conference-presentation.pdf>], Last accessed on 29.03.2017.

working with the KRG and laying the basis of an international economic cooperation. Thus, the number of contracted blocks increased from 15 to 32²⁰.

The concession of exploration rights over nearly half of the blocks in a very short period of time of approximately 5 years proves to have been extremely helpful for the development of the oil sector: nearly all blocks were contracted by 2012 and a total of 30 fields of oil, gas and condensate opened up for further exploration and production. But what value do these discoveries have compared to the Iraqi and global reserves?

According to the latest OPEC reports regarding the world proven crude oil reserves by country, Iraq is believed to sit on a conventional crude oil well of approx. 140-144 billion barrels, thereby occupying the fourth place in a global ranking after Venezuela (with approx. 300 billion barrels) and regional challengers Saudi Arabia (with approx. 266 billion barrels) and Iran (with approx. 158 billion barrels)²¹. Nevertheless, it is speculated, that the potential crude oil reserves in Iraq might be twice as great as currently assumed²². If the speculation proves to be right, this would catapult Iraq to the leading position worldwide with wide-ranging effects on the recalibration of the energy-political balance of power within the region. This fragile balance in the region is already strained by two aspects: firstly, Iraq's intention to produce and export more crude oil barrels a day after a long period of international sanctions and secondly, the volatile oil prices, both aspects putting pressure on all OPEC members and their revenues.

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When switching the perspective from the regional dimension to the local circumstances in Iraq, we find, that "Iraq's resources are not evenly divided across sectarian-demographic lines. Most known hydrocarbon resources are concentrated in the Shiite areas of the south and the ethnically Kurdish region in the north, with few resources in control of the Sunni minority in central Iraq."²³ While the south and the central wells have been exploited since the 1920s, the northern area shows many untouched and uncharted areas, leaving the richness of those local natural resources

²⁰Mackertich/Adnan, 2013.

²¹OPEC, 2016: Annual Statistical Bulletin 2015.

²²Al-Saadi, Sabri Zire, 2010: Political Economy of Iraq's Growing Oil Power. A Crucial Phase, in: Culture and Conflict Review, Spring, Vol 4, No. 1.

²³US Energy Information Administration (EIA), 2013: Country report – Iraq. Last Updated April 2, 2013.

as an object of further speculation. The figures regarding the volume of oil reserves inside the Autonomous Region of Kurdistan vary depending on the source or on the inclusion of the highly disputed and oil-rich city of Kirkuk to the Autonomous Region. Oil fields around Kirkuk are estimated at around 10 billion barrels of oil²⁴. According to the statement of the Kurdish prime minister, Masoud Barzani, the KRG sits on reserves of approx. 45 billion barrels of crude oil, a volume representing one third of the overall proven Iraqi oil resources. The Autonomous Region of Kurdistan, however, makes up only one tenth of the entire Iraqi territory²⁵.

These figures and data discrepancies are fuelling quarrels, not as a critique to the methods of data gathering, but in contesting the power and competency of the authorities and their jurisprudence. Given the tight link between the question of power over resources and the characteristics of rentier states, relying merely on rents from the selling of natural resources for financing the states' functioning, the claims around energy-economic issues become highly political. Thus, the energy-political claim-making of the KRG and IFG enters the area of Contentious Politics.

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4.2 Phases of contention

As seen above, in a very short time span several steps have been taken towards the exploration of the ground in the territory of the Autonomous Region of Kurdistan. While the geographical and petrological processes are only the first activities in the chain of the petroleum operations, and are time consuming, as soon as put into gear other activities of the upstream and midstream would have to follow.

Looking at the steady growth of interactions between international oil companies and the KRG has so far only portrayed an overall picture. Even if the observations have been made over time, this noticeable increase in interactions and economic activities does not reveal much about the way these developments have been brought about and even less about the dynamics of the processes. Furthermore, no step taken by the KRG in this domain has remained without consequences, nor without a counter-

²⁴ International Monetary Fund (IMF), 2015: Iraq, prepared by Kaba Gvenetadze and Amgad Hegazy, 14.07.2015: 7.

²⁵ Rahim, 2013.

reaction by the IFG. These spirals of action - reaction and potential clashes between contrary interests will be analysed in the sections below.

4.2.1 First phase (2002-2007)

While it may be claimed, that the dynamics of conflict between regional and federal government can actually only be observed after the coming into force of the new Iraqi constitution granting the Kurdish region an autonomous status, this paper has chosen 2002 as the starting point for this analysis. This has two main reasons. Firstly, the year 2002 marks the moment when the first exploration contract was signed with a foreign - meaning international - oil company setting a precedent and basically opening the market for internationalisation.

This was made possible by another milestone of 2002, the initiation of the merging of the two parallel administrations loyal to the two major parties in the Autonomous Region, which emerged after the so-called Brother War of 1994-1998. While the formal closing of the rift between the Barzani family around the KDP with its power centre in Erbil and the Talabani family around the PUK in Sulaymaniyya was agreed in 1998 with the signing of the Washington Agreement, it was only in October 2002 when concrete action followed the agreement with both parties returning to the Kurdish National Assembly and retaking parliamentary activities²⁶. Thus, the year 2002 marks also the first step towards the unification of the two administrations, ministries and security apparatuses and the beginning of a new era of inner Kurdish relationships.

Nevertheless, the inner Kurdish process did not get that much attention at national level at that time, being overshadowed by the events of 2003, the toppling of the Saddam regime and the US-led international intervention. The beginning of upstream activities in a solo run in the Kurdish region became relevant and contested on the national level following the constitution coming into force in 2005, when the Kurdish energy-political solo efforts ignited a constitutional dispute.

²⁶ Stansfield, 2003b: 145.

While the federal government is in charge of foreign policy, international relations, defence, national security, economic, monetary and fiscal policies, the regional government is autonomous in its decisions regarding social duties and police security activities. The administration of natural resources falls, however, into the area of joint competence of both federal and regional government, as laid down in the fourth chapter of the constitution. According to Art. 111 of the Iraqi constitution “Oil and gas are owned by all the people of Iraq in all the regions and governorates.²⁷” Art. 112 adds “The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by law.²⁸”

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Based on these two provisions the IFG claims to have the responsibility and right to undertake the management of oil and gas extracted in the entire territory of Iraq, including the Autonomous Region of Kurdistan. At the same time it undertakes to comply with the provision of distributing the revenues obtained by the selling of hydrocarbons in a proportionate manner to the population number of the different governorates and the still existing development imbalances.

Nevertheless, this interpretation of the two articles has brought back bitter memories for the KRG and deepened mistrust in a too powerful central state, based on previous experiences under the Baath regime. Fearing that history would repeat itself and they would be unable to pursue their own interests in expanding the freshly obtained rights of self-determination if the IFG had been in charge of monitoring all oil and gas activities, the KRG rejected the federal interpretation of the constitution and pushed for the enforcement of an understanding, which would be in their favour.

²⁷Iraqi constitution, 2005, Section 4, Art. 111.

²⁸Iraqi constitution, 2005, Section 4, Art. 112; own emphasis.

The KRG clung to the word “present” in Art. 112 and claimed, that the central government would only be entitled to oversee and manage the oil and gas fields existing at the moment the constitution became effective²⁹. As we have seen in the section above, these were almost non-existing in the Autonomous Region of Kurdistan in 2005.

The KRG would be entitled to 17% of Iraq’s state revenues on a regular basis. After deducting several additional expenses, this would add up to approx. 11% to be transferred to the KRG for conducting their administrative duties³⁰. Nevertheless, this chain of events offered the IFG great leverage over the regional government and created on the other side a massive dependency of the KRG on the federal government. The IFG has frequently tried to put pressure on the KRG by delaying or completely cutting the revenue share of the KRG, thereby jeopardising the uninterrupted conducting of state business in the Autonomous region.

The new interpretation offered by the KRG would suppose, that the fields to be exploited after 2005 would fall, however, under the sole administration of the KRG, meaning that in the event of the first oil being exported from Kurdish territory, the KRG would have direct access to the revenues and would only have to transfer the surplus to the federal government, in reverse order to the usual procedure. Thus, the KRG could theoretically determine on their own how much they want to gain a month by adjusting the volume of crude oil exported and have immediate access to the money without the interference of the federal government.

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4.2.2 Second phase (2007 - 2011)

Due to the lengthy nature of the exploration activities, the constitutional dispute which arose during the first, incipient phase, was primarily fought on a theoretical level, since the KRG did not have yet the capacity to extract oil and offer it for sale on the international market. As long as these capabilities did not exist, the KRG would have

²⁹ Özden Leyla, 2009: Der Föderalismus im Irak. Die Nachkriegsordnung in der Kontroverse, Frankfurt a.M.Ö Peter Lang; IMF, 2015.

³⁰ Knights, Michael, 2014: Here’s What the Big Iraqi-Kurdish Oil Deal Really Means, in: Business Insider, 04.12.2014, Available at: [<http://www.businessinsider.com/what-the-big-iraqi-kurdish-oil-deal-really-means-2014-12?IR=T>], Last accessed on 29.03.2017.

to rely on proportional money transfers from the IFG and be thus dependent on the central state despite its autonomy status.

One way of settling this constitutional dispute would have been through the passing of a new piece of legislature regarding the oil and gas sector, which would address who the responsible authorities for the management of the business as a whole were³¹. Due to fierce, violent battles fought on the territory of the central state, an overall state of unrest, and civil-warlike conditions, the central government was not able to find a parliamentary majority for passing such legislation.

On the other hand, this parliamentary majority has emerged in the territory of the Autonomous Region of Kurdistan despite inner rifts between the Kurdish parties. The passing of the Oil and Gas Law on a regional level in 2007 followed only months after the merger of the first ministries of the previous PUK and KDP administrations. The most important ones, namely Finance, Peshmerga, Interior and Exterior, were merged only in 2009, which means, that the consensus on the Oil and Gas law was found amid a situation of mutual mistrust among the Kurdish political elite.

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As it has already been seen, the adoption of the 2007 law has dramatically changed the landscape of the Kurdish oil and gas sector. Within only two months the number of signed contracts and block concessions has doubled. While the KRG has often been criticised for offering deals – so-called “Giveaway-Deals³²” - especially lucrative for the IOCs to the detriment of the “Iraqi people”, to whom the resources belong according to the constitution, the timing of this boom cannot be regarded as a mere coincidence. The most obvious conclusion being, that many IOCs felt comfortable to invest - despite all the risks and uncertainties revolving around uncharted territories in the vicinity of ongoing armed conflicts - once the question of the legality of the contracts was addressed, one way or another. The 2007 Oil and Gas Law of the KRG seemed to offer the right incentive for the IOCs to take into consideration operating in a grey zone of the law, since the Kurdish Oil and Gas Law would not be transferable on a federal level.

³¹ Devine, Richard/Al-Amin, Safwan, 2015: Oil and gas regulation in Iraq: overview, in: Thomas Reuters, Practical Law, Global Guide 2014/2015, Energy and natural resources.

³² Wells, Peter, 2009: Iraq’s Technical Service Contracts- A Good Deal For Iraq?, www.Iraqoilforum.com.

The 2007 Oil and Gas Law of the KRG foresaw the founding of public oil companies such as the Kurdistan Exploration and Production Company (KEPCO), the Kurdistan National Oil Company (KNOC) and further operational organisations in charge of administrating the sector: Kurdistan Oil Marketing Organisation (KOMO), Kurdistan Organisation for Downstream Operations (KODO) or the Kurdistan Oil Trust Organisation (KOTO), entitled to collecting revenues³³. The establishment of these new bodies marks the professionalisation of the sector, a process followed closely by the internationalisation of the market through the growing presence of IOCs. While the bodies constituted an innovation in the territory of the Autonomous Region of Kurdistan, they had corresponding homologous entities on a federal level, such as the Iraq North Oil Company (INOC), Iraq South Oil Company (ISOC), Iraq Midland Oil Company (IMOC) and the State Organisation for Marketing of Oil (SOMO)³⁴.

The 2007 Oil and Gas Law was designed to provide a legal basis for the handling of so-called Product Sharing Contracts (PSCs), which the KRG signed with different IOCs. On the other hand, the IFG used to offer Technical Sharing Contracts (TSCs), which would pay the contracting party the same amount of money independent of the volume of crude oil extracted. In the case of rising oil prices, for example, the central government would be the sole beneficiary of the extra profit. The IOCs function in the central Iraqi way of doing business as technical assistance providers³⁵.

The KRG, on the contrary, allowed the IOCs through the PSCs to profit proportionally from the amount of crude oil extracted. Additionally, the KRG offered reductions or cuts to corporate and income tax for up to 15 years depending on the deal, making the PSCs very attractive, also given the rate of return of 34-56%³⁶. As mentioned before, the IOCs willing to invest in the north would not find an established infrastructure compared to the more familiar south. At the same time, the Kurdish PSCs were signed for potential oil wells compared to the already tapped ones managed by the central government.

³³ KRG, 2007: Oil and Gas Law, Chapter 5, Art. 10-14.

³⁴ KRG, 2007: Chapter 6, Art. 15, par. 4.

³⁵ Wells, 2009.

³⁶ Wells, 2009.

Not surprisingly, this new solo action of the KRG did not remain without a response from the IFG. The Iraqi Energy Minister of that time, Shahrستاني, referred more than once to the PSCs as being illegally signed, since they bypassed the involvement and approval of the central government. Additionally, the federal government also criticised the way the PSCs were contracted. While the IOCs had to compete in public, televised bidding rounds for their TSCs, the KRG negotiated on a bilateral basis, away from the public, with each of the IOCs separately, resulting in non-transparent agreements³⁷.

The KRG defended itself against these allegations by accusing the central government of being backward and reminiscent of the former brutal regime of Saddam Hussein. In the words of the KRG minister of natural resources of that time, Ashti Hawrami, SOMO was “an instrument of the power of Saddam Hussein in the 1980s to get all the money³⁸”. This analogy could be illustrated by the fact, that the laws regulating the oil and gas sector in central Iraq were adopted during the 1970s and 80s³⁹ after Iraq’s hydrocarbon sector began to be nationalised in 1972. While Iraq did adopt a new constitution in 2005, the majority of the laws could not be rewritten and replaced in such a short time⁴⁰. Thus, the KRG tried to portray itself outwardly as the provider of a new, stable, investor-friendly framework, in stark contrast to old-fashioned practices, which were almost dictatorial in nature.

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These disputes heated up even more after 2009, the year the drilling in the Autonomous Region of Kurdistan brought to the surface sufficient crude oil for it to be exported. More than half of the global crude oil exported is transported and traded by sea, the strait of Hormuz, being one of the most important and vital supply passages worldwide. The Autonomous Region of Kurdistan, however, is a landlocked territory, with the nearest access to an ocean, being the port of Ceyhan in Turkey. In the absence of a pipeline bypassing the control of the IFG, such as the one connecting

³⁷ Steinberg, 2007.

³⁸ Kern, Nathaniel /Reed, Matthew M, 2014: Iraq, Turkey and the New Kurdistan Pipeline Deal, in: Foreign Reports Bulletin, Middle East Policy Council, pg. 1.

³⁹ The Oil and Gas legislation applicable in Federal Iraq includes following provisions: Organisation of Ministry of Oil Law No. 101/1976; Preservation of Hydrocarbon Resources Law No. 84 of 1985; Ministry of Oil Regulation Law No. 21 of 1978; Iraqi Revolutionary Command Council Order No. 1075 of 1976 regarding the authority to negotiate and sign petroleum contracts; Revolutionary Command Council Order No. 167 of 1985 regarding oil pipelines.

⁴⁰ Devine/Al-Amin: 2015; Jiyad, Ahmed Mousa, 2012: Regimes Governing the Development of and Revenues from Upstream Petroleum Sector in Iraq, Background Paper.

Kirkuk with Turkey, but managed by INOC, the KRG operated the first Kurdish oil exports to Turkey by truck.

4.2.3 Third phase (2011-2014)

The oil and gas sector in the Autonomous Region of Kurdistan continued consolidating after the first oil exports. While there were already several international oil companies investing in the region, these were small and middle-range enterprises. Nevertheless, the year 2011 witnessed a game-changer, when the first major, internationally renowned companies entered the market. The ice was broken by Exxon Mobile in 2011, which was followed by the engagement of Total, Chevron and Gazprom in 2012⁴¹. The Genel Energy CEO of that time, Tony Hayward, speaks about the consolidation of the sector and the business with regard to this occurrence⁴².

The dispute around the legality of the contracts, which determined the chain of actions and reactions during the second phase of conflict, has also continued after 2011, in a more exacerbated tone. The IFG had initiated punitive measures against the IOCs willing to cooperate with the KRG even after the third bidding round of 2010. IOCs, which already had ongoing contracts with the KRG were expelled from the competition for new TSCs with the central government. The measures undertaken to prevent further cooperation with the regional government in the north were strengthened even more for the fourth bidding round in 2012. A clause in the new contracts with the central government prohibits the IOCs from working with the federal government to undertake future cooperation agreements with the KRG.

Despite this clear reaction of the IFG and intention to limit the consolidation and scope of the Kurdish oil and gas sector, almost all blocks had been contracted in the Autonomous Region of Kurdistan by 2012. Furthermore, the KRG went along with another project, advancing in the chain of petroleum operation: the erection of a pipeline only passing through the territory of the Autonomous Region, which would be under the sole control of KRG-administered companies without any interference or even monitoring by the IFG. The first section was projected to connect the oil field of

⁴¹ Rahim, 2013.

⁴² Swing, Brian, 2014: Tony Hayward Gets His Life Back as Kurdish Pipeline Opens, in: Bloomberg, May 21, 2014.

Taq Taq and Khurmala Dome and was built between 2012 and 2013. Throughout the year 2013, work was concentrated on the section between Khurmala Dome and Fish Khabur on the border to Syria and Turkey⁴³.

The inauguration of the pipeline in 2014 has been regarded as a further game-changing event and catalogued as a ground-breaking development for the region and consolidation of the KRG as a recognised actor at international level. These solo runs of the KRG did not stop, even after the IFG had inserted punitive language into the 2013 and 2014 budget⁴⁴. Moreover, the first billion barrels were exported by the KRG through the pipeline in May 2014, even after a complete budget cut by the IFG⁴⁵. This event constituted an all-time low in the relationship between regional and federal government. The central Iraqi side made clear it is willing and able to follow up on what had until that point been only rhetorical deterrence and threats, while the other side made even clearer its defiance and absolute claim of extended rights of self-determination.

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The IFG did not stop at cutting the regional government's budget, but also engaged in the pursuit of every possible legal way of disrupting KRG's solo exports, for example through blacklisting the tankers carrying crude oil bought from the Kurdish pipeline⁴⁶. In an arbitration case in Texas, the IFG raised the claim, that the crude oil being transported by a tanker in the absence of federal approval would be transporting stolen goods, and thus the crude oil would be contraband material. Based on this argument, that particular tanker was not granted permission to enter US waters⁴⁷.

Nevertheless, the crude oil had already been sold by the KRG and had already crossed half the globe by that time. This means, that such legal actions have not made it impossible for the KRG to sell the crude oil itself, with enough actors being willing to risk a deal, but such actions would put as much pressure as possible on the potential buyers. With increasing difficulties infinding buyers, the KRG has been also

⁴³ Economist Intelligence Unit, 2013: Country Report – Iraq, October 2013.

⁴⁴ Knights, 2014.

⁴⁵ Congressional Research Service, 2014: Memorandum: Kurdish Oil exports and U.S. Policy by Robert Pirog, Specialist in Energy Economics, September 2014, pg. 2.

⁴⁶ Rudaw, 2016b: Iraq blacklists three tankers for carrying Kurdish crude, 31.8.2016. Available at: [<http://www.rudaw.net/english/middleeast/iraq/310820161>], Last accessed on 29.03.2017.

⁴⁷ Congressional Research Service, 2014: 3

forced to sell the crude oil at considerably discounted prices⁴⁸, given the fact, that it does not have enough storage capacity. Under the conditions of accumulated debt, selling a product under its market value affects not only the KRG, but also the entire market.

4.2.4 Fourth phase (2014 - ongoing)

The inauguration of the Kurdish oil pipeline pushed the exports of crude oil from exclusively Kurdish wells to approximately 300,000 barrels per day. Nevertheless, the oil and gas sector of Iraq was hit by a twin shock shortly thereafter⁴⁹: on the one hand the expansion of DAESH in the Iraqi territory which is also challenging the Kurdish area of influence and on the other hand the dramatic fall of oil prices, both events provoking a serious forfeit in revenues for the KRG.

Fighting DAESH has resulted in more expenses for the KRG with the Peshmerga forces, the internally displaced persons as well as the refugees from central Iraq and Syria, under the conditions of a budgetary cut by the central government. Furthermore, the exports of 300,000 barrels per day would provide the KRG with approximately 380 million dollars monthly, calculated at the rate of 70\$ per barrel. With the drop in the oil price at the end of 2014, the revenues have been more modest. Either way, the KRG has far greater costs resulting from running a functioning administration. Just covering the salaries for the civil servants has been calculated to amount to about 670 million dollars every month⁵⁰.

The falling oil prices have not only inconvenienced the KRG, but also hit the profitability of the exports operated by the IFG. Furthermore, the Iraqi pipeline connecting Kirkuk to the federal pipeline network was damaged during the fight with DAESH and is not functioning, cutting the access of SOMO to the oil-rich fields around Kirkuk⁵¹.

⁴⁸ IMF, 2015: 9.

⁴⁹ IMF, 2015: 1.

⁵⁰ Knights, 2014.

⁵¹ IMF, 2015:6.

Under these circumstances, the historical low in the relationships between regional and central government after the realignment of 2005 has been followed by another first, a signed agreement in November 2014 between KRG and IFG to the mutual benefit of both. For the first time since the establishment of the oil and gas sector in the Autonomous Region of Kurdistan Baghdad has obtained through the agreement the possibility of monitoring through SOMO how much crude oil actually leaves the Kurdish territory. However, the agreement has been limited to only 250,000 barrels per day. An additional volume of 300,000 bpd would go through the supervision of SOMO, but from the Kirkuk oil fields⁵². The production from three oils wells: Baba Gurgur, Havana and Bay Hasan will be thus exported through Kurdistan's pipeline to the Turkish port of Ceyhan⁵³. This move has boosted Iraq's overall production and exports and has brought in substantial revenues for the federal budget⁵⁴.

While Kirkuk is one of the territories most disputed between regional and federal government, and it is *de jure* still under the administration of the IFG, the Peshmerga forces, which have defended the city from the DAESH insurgency, also took *de facto* control over the city, without any plans to renounce it any time in the near future. Despite this apparently symbiotic agreement between regional and federal governments over the managing of the oil sector around Kirkuk, this collaboration will, nevertheless, be very brief, with massive contention on the subject expected at a later point.

The benefits for the KRG were also not to be neglected. While SOMO would be entitled to monitor the export of 250,000 barrels per day, everything exceeding this volume would be exempt from the involvement of the central Iraqi supervision. Nevertheless, this would still mean a substantial cut in the sole control of the oil production in the Autonomous Region of Kurdistan. However, the IFG also committed itself to re-establish the flow of payments from the central budget, terminating the period of budget cuts and thus easing the budget pressure on the KRG. At the same

⁵² Knights, 2014.

⁵³ Rudaw, 2016a: Baghdad-Erbil oil deal significant, says Iraq spokesman; 30.8.2016. Available at: [<http://www.rudaw.net/english/kurdistan/300820161>], Last accessed on 29.03.2017; Rudaw, 2016c: Iraqi PM confident new oil deal with Erbil can solve pending disputes, 31.8.2016. Available at: [<http://www.rudaw.net/english/middleeast/iraq/31082016>], Last accessed on 29.03.2017.;

⁵⁴ IMF, 2015:9

time, money from the federal budget would be allocated for the Peshmerga in the north⁵⁵.

These agreements between federal and regional governments seem to be a novel occurrence in the relationship between the two actors regarding the oil and gas sector. While the cooperation might have resulted out of need and vulnerability, it will also set a precedent, which will have repercussions in the future: on the one hand, by giving in to concession to the KRG, the IFG has tacitly recognised the solo efforts of the KRG as not being illegal; on the other hand, the KRG is faced with the challenge of having enforced their will to a certain extent, without managing, however, to become self-reliant by only developing an economic sector. Nevertheless, the joint fight to recapture Mosul⁵⁶ and defeat ISIS is a double-edged sword: while the cooperation can support the emergence of new fields for the two actors to collaborate in, it can also open up old wounds, which have not had enough time to heal yet.

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5. Conclusion

The relationship between the Kurdish Regional Government and the Iraqi Federal Government has never been easy. Founded on historically grown resentments and a new internal order in the wake of an international intervention and the toppling of the regime, the first years of interactions between regional and central governments have been marked by constant conflict. One field, where these disputes have been extremely visible is the oil and gas sector, where the KRG has been actively engaged in building up its own oil and gas sector as part of a claim-making process aiming at the broadening of their rights of self-determination.

Tracing the process over a period of approximately 14 years, between 2002 and 2016, has shown that the interactions between regional and federal government can be best analysed within 4 phases. During the first three phases (2002-2007; 2007-2011; 2011-2014) there have been numerous actions and reactions from both sides: starting with the passing of an Oil and Gas Law by the KRG aiming at structuring and

⁵⁵ Knights, 2014.

⁵⁶ Iddon, Paul, 2016: Mosul, US influence and the Erbil-Baghdad oil deal, Rudaw, 05.09.2017. Available at: [<http://www.rudaw.net/english/analysis/05092016>], Last accessed on 29.03.2017.

legalising the allocation of blocks to IOCs for exploration and drilling, through the first exports of crude oil by truck and up until the KRG building its own, new pipeline circumventing the territory of the Federal Iraq. Each phase, however, strained the already complicated relationship even more.

After an all-time low between the two actors, which led to complete budget cuts by the IFG and a budgetary crisis in the Autonomous Region of Kurdistan, the two parties engaged in a different dynamic, stepping out of the domain of contentious politics and entering an agreement. The cooperation has, however, been nurtured mainly by external factors such as the devastating drop in oil prices on a global level, an event also coupled in the region with the emergence of a common enemy - DAESH.

Given the previously burdensome experiences and the constantly louder calls for independence by the KRG, the basis for this cooperation is particularly fragile. Moreover, as soon as the offensive for recapturing Mosul has been concluded and victory against DAESH is proclaimed, many disputed issues between the two actors will re-emerge, such as the status of the oil-rich city of Kirkuk or further constitutionally disputed areas, where the KRG managed to gain *de facto* control over areas which were previously federally controlled. The rapidly changing conditions, the ongoing spirals of violence and the continuous dynamics of conflict inside Iraq and the whole region demand, however, that the topic of the interaction between regional and federal governments in Iraq not be neglected, despite this first approach and cooperation, but that it should be closely monitored.

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