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Kirkuk's Article 140: Expired or Not?

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Away from the headlines, Sunnis and Shiites are testing the waters of reconciliation in the Iraqi parliament with an agreement that may come at the expense of country's Kurdish population. The Kurdish political reaction to such an agreement could potentially exacerbate anti-Kurdish sentiment among many Arab parliamentarians, costing the Kurds some of the hard-earned political ground they have gained thus far.

Background: Kirkuk

Kurds -- like Turkmen and Assyrians -- have a historic claim to the oil-rich city of Kirkuk in northern Iraq that dates back centuries. The Baath regime was particularly wary of this fact and acted rigorously and somewhat successfully to extinguish these claims through a three-pillar policy: forced migration, Arabization, and Baathification. Simultaneously, the regime changed the area's administrative borders to include more Arab towns, eventually leading to a demographic change.

In 2003, Kurds worked closely with the U.S.-led coalition to address this issue in the Transitional Administrative Law (TAL). Article 58, paragraphs A and B state that the government "shall act expeditiously to take measures to remedy the injustice caused by the previous regime's practices in altering the demographic character of certain regions, including Kirkuk" -- specifically, by making "recommendations to the National Assembly on remedying unjust changes" in administrative boundaries. Paragraph C states in its entirety, "The permanent resolution of disputed territories, including Kirkuk, shall be deferred until after these measures are completed, a fair and transparent census has been conducted, and the permanent constitution has been ratified. This resolution shall be consistent with the principle of justice, taking into account the will of the people of those territories."

The 2005 Iraqi constitution included a last-minute provision -- Article 140 -- that states, "Article 58 of the TAL shall extend and continue to the executive authority elected in accordance with this constitution, provided that it accomplishes completely (normalization, census, and referendums in Kirkuk and other disputed territories to determine the will of their citizens) by a date not to exceed December 31, 2007." A major issue of debate about Article 140 is how it would affect the central government's control over Kirkuk's oil, one of Iraq's principal sources of wealth and power. While the Kurds consistently assure other Iraqis of their intention to remain an integral part of Iraq, many Iraqi Arabs remain skeptical.

Maneuvering in Parliament

In late 2007, the Kurdish regional parliament agreed to a proposal sponsored by Stefan de Mistura, the UN head of mission in Baghdad, to extend Article 140's December 31 deadline by six months. At the same time, the national parliament referred the article to the Constitutional Court, putting its status in question. Although the court has not yet made a decision on the matter, the missed deadline triggered a quiet but noticeable realignment in the parliament: on January 12, Ausama al-Nujayfi (a Sunni parliamentarian in former prime minister Ayad Allawi's secular bloc) announced that a total of 145 legislators (out of 275) now oppose Kurdish claims in Kirkuk.

According to al-Nujayfi, this faction also opposed two other actions by the Kurdistan Regional Government (KRG). One regards the previously signed KRG contracts with foreign oil companies. The delayed hydrocarbon law being debated in the parliament may, at least by some readings, supersede oil contracts signed by the KRG. A recent memorandum signed by a hundred experts in the Iraqi Ministry of Oil warned of "serious consequences" to the industry and Iraq's economy if these contracts were permitted to stand. Concurrently, Iraq's minister of oil threatened to boycott foreign companies involved in the contracts; on January 27, he halted oil exports to South Korea because its state-owned oil company contracted separately with KRG.

The second divisive issue is whether the 2008 national budget will allocate money for the KRG's peshmerga (former Kurdish militia and now "regional guards"), even though the KRG denies Baghdad any command and control over them.

The Kurdish position is that all three of the above points "are guaranteed in Iraq's new constitution." Kurdish politicians, recognizing the seriousness of the new Arab rhetoric, raced to express their discontent. On January 14, Mahmoud Authman, a prominent Kurdish parliament member, stated, "Kurds should have used their many cards

six months ago; we are considering using them now. . . . How can we be in a government with a prime minister pushing his oil minister to work against us?" The next day, KRG president Masoud Barzani emphasized that "there is no turning back, Article 140 must be executed within the next six months."

Significance of the New Alliance

Iraq's parliament has functioned on a three-year-old agreement between the coalition of several Shiite parties -- called the United Iraqi Alliance (UIA), comprising 128 members -- and the Kurdish Alliance (with fifty-eight members). Although the Kurdish bloc remains firm and continues to display remarkable discipline in its stance, the UIA has changed -- some of its members have already joined the new alliance, composed mainly of nationalist Iraqi Arabs. Al-Nujayfi presented the new bloc's purpose as safeguarding the people's hold over Iraq's oil and gas resources. Led by Allawi's bloc (with 25 members), this new 145-member alliance also contains several other factions: the Muqtada al-Sadr stream that split from the UIA; Dawa-Iraq, led by former Minister of State for National Security Abdulkarim al-Anizi; splinters from the mainstream Dawa party led by former prime minister Ibrahim al-Jafari; the Sunni National Dialog Front; and many other independents.

Given the fluidity of Iraqi politics, it is not yet clear whether this new alliance will last. Furthermore, for this group to enact legislation, it needs not only the simple majority required to approve a law but also a two-thirds majority to override the veto of President Jalal Talabani, the leader of one of the two parties governing the KRG.

Other issues are brewing below the surface as well. For instance, Saleh al-Mutlaq, a prominent Sunni Arab parliamentarian, mentioned on January 21 that in Mosul -- Iraq's third largest city, whose population is around 85 percent Arab -- thirty-six out of forty-one provincial council members are Kurdish, since most Arabs boycotted the 2005 provincial elections. Such reports are not helping the Kurds, even within the formerly supportive Shiite street.

Next Steps

The new Arab parliamentary alliance might reshape the political map and put the Kurds in a very delicate position. In a best-case scenario for the KRG, the Constitutional Court will rule in favor of implementing Article 140, regardless of the timeframe. The UN mission could then continue working closely with the Article 140 commission, which is charged with implementing normalization efforts. The commission would perhaps focus first on redefining the administrative borders of Kirkuk province to build a record of success before tackling the core issue of whether city itself is to become part of Kurdistan or remain as is. Meanwhile, recognizing that Baghdad does not possess the capacity or consensus to resolve both the Kirkuk and the hydrocarbon legislation simultaneously, the parliament might delay working on the former, and both the KRG and the oil ministry could then back off from the confrontation.

In contrast, a different ruling by the Constitutional Court, an escalating dispute over KRG oil contracts, or a coalescing of the new alliance in parliament could change Iraq's political environment in a way that deserves the attention of U.S. policymakers. Without careful calculations, differences between the KRG and Baghdad could turn into a violent contest, one in which the role of external players such as Turkey cannot be discounted.

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