**A tale of Two Cities: The Autonomous Status of Iraqi Kurdistan and the Moroccan Initiative for an Autonomous Sahara Region**

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**Background**

Since the creation of the Iraqi state, the Kurds have asked for autonomy in their areas. This ranged from calls for decentralisation in the 1960s, to autonomy in the 1970s and 1980s, to federalism in the 1990s.

The central government of Baghdad always used the Kurdish demand as a tool to either sideline the Kurds or label them as separatists, traitors, saboteurs, etc. to justify attacks against them. This meant that 400 Kurdish villages were razed to the ground, 182,000 civilians were buried alive in mass graves in the south of Iraq, and many other internationally banned practices were inflicted on the Kurds such as use of chemical weapons and other banned weapons.

After the first Gulf War, the Kurds carried out an uprising and later Saddam retaliated in a brutal way that led to the fleeing of millions to the freezing mountains and the neighbouring countries, Iran and Turkey. This caused a threat of creating another refugee crisis in the Middle East, especially Turkey. The UK, France and the USA created a no-fly zone and the Kurds returned to their areas. At the same time, the Kurdish leadership went to Baghdad and attempted to strike an autonomy deal with Saddam. When the talks failed in Saddam withdrew his administration from what is known today as the Iraqi Kurdistan Region. He was hoping to create an administrative vacuum and pressure the Kurds to go back to him. The Kurds conducted an election and created an administration that was later split into two as a result of the civil war that lasted about four years.

In 2003, the Kurdistan Region of Iraq helped the US and the allies to topple the regime of Saddam Hussein. Later, the Kurds were active participants in creating the new Iraq and establishing its foundations. In 2005, the country adopted a new constitution that recognised Iraq as a federal state and Iraqi Kurdistan as a federal region within it.

Today, the Kurdistan Region is a constitutional entity within federal Iraq. But it has many issues to settle with the Baghdad government. The difference in interpreting the Constitution and understanding the concept of federalism, as well as managing the natural resources; revenue sharing; the control over the security forces in the Region; and also the disputed territories between the Region and the centre are all issues that led to a turbulent relationship between Baghdad and Erbil leading to serious problems in the last few months.

**A Tale of Two Cities**

When it is that time of the year, a festivity in Kurdistan or a religious occasion in Baghdad, the checkpoint to the south of Erbil, the capital of the Kurdistan Region, is heaving with thousands of visitors from the south, escaping the strict environment of the centre and the south trying to have an in-country holiday in Kurdistan. When you enter Kurdistan from the south, you feel that you are entering a different country: if you are not from the Region, you need to have a sponsor or get a residency permit for a number of days. This is mostly because of the unstable security situation in the south and the fear of security breaches in the Region.

The new chapter of the story of relations between the two cities dates back to the fall of the Saddam regime at the hand of the American forces in 2003. Historically, Iraq was a heavy-handed centralised state run out of Baghdad and its government. As a result, a strongman was always needed to do so.

Since 2003, the country's notorious strongman was toppled, the new ruling power, the Americans and the Governing Council[[2]](#footnote-2) tried to be as diverse and as inclusive as possible. But the experiment failed to run the country. They have however managed to agree on a blueprint for the country to help the transition to democracy, the Transitional Administrative Law (TAL). The document that was negotiated and signed by all 25 members of the Council was the first of its kind that turned Iraq from a centralised state to a federal one and recognised the Kurdistan Region of Iraq as a federal Region within Iraq.

The signing of the document was a leap for the Region and it triggered the federalisation process of the country in the eyes of the Kurds. But in reality, it paved the way for a new government that included the Kurds: for the first time in the history of Iraq a Kurd, Jalal Talabani, became the President of the country.

This paved the way for the Constitution that further consolidated the federal nature of the country and the issues that were seen as a translation of the federal vision for the country. But the problems between Baghdad and Erbil started as soon as the euphoria of the new Iraq dissipated. In short, the problems between the two cities are over four main areas, all of which are related to the understanding and interpretation of the federal relationship between the Kurdistan Region and the centre.

Those issues are about the borders, the security, the economy and the status of the Region in Iraqi politics and whether the Kurds who are in Baghdad are partners in ruling Iraq or representatives of the Kurdistan Region and its demands as stated in the Constitution.

**Article 140 and Disputed Territories in Iraq**

One of the most sticking points between Baghdad and Erbil is the delineation of the borders of the Kurdistan Region. Today, the current borders of the Kurdish Region are the demarcation line between Saddam's Iraq and the areas controlled by the two main Kurdish parties, KDP and PUK, since 1991.

The Kurdish areas that were under Saddam's control were systematically “Arabized” by expelling the Kurds and replacing them with Arabs from the south who were offered financial incentives to stay in what is today called the disputed territories.

Article 140 of the Constitution, passed in October 2005 by a popular vote, places the responsibility on the government to conduct normalisation and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens.

By normalisation, it means a process in which those who were expelled from these areas and those who were brought in to settle will go back to their homes with proper compensation through the Property Claims Commission and other governmental and judicial bodies. But those who are in power say that reversing Arabization is not possible and some say that it would be as unjust as Arabization itself.

Many committees were formed aiming to start the process and the Property Claims Commission was established but the process was very slow and did not achieve quick results. The issue dragged on and it became a permanent item on the agenda of the negotiations about the dispute between Erbil and Baghdad.

The Constitution set a time limit on the implementation of Article 140: 31 December 2007. Erbil argues that this is neither here nor there because the spirit of the text is about implementation of the provisions on normalisation and not the time limit. The key defect in the implementation of Article 140 is the lack of a systematic procedure to get the process underway.

The other aspect of the issue is that the Kurds often find themselves alone when it comes to Article 140; but at times like the recent attempts to oust Prime Minister Nouri Maliki, the Kurds tend to have many allies amongst the other blocs that the are not with Maliki.

This issue was used by Maliki in the past and he formed a Military Command in these areas called the Dijla Operations Command. This created a huge problem with the Kurdistan Regional Government (KRG) and it was almost the start of the latest round of tensions between Baghdad and Erbil.

**Dispute over Oil and Gas**

Oil is at the top of the outstanding issues between Baghdad and Erbil. Every now and then, we hear the news of a new oil contract signed by Kurdistan Region. Then immediately afterwards, we hear Deputy Prime Minister for Energy Hussein Shahristani declaring it illegal. Then the Region takes another step that angers Baghdad and Baghdad in return tries to punish the Region by cutting fuel supplies.

The latest in the oil and gas cycle of Baghdad and Erbil is that the Region started to export oil to Turkey through a pipeline and Baghdad started to threaten Turkey and the Kurdistan Region. The latest was cutting the budget for the Region, including the salaries of all the civil servants in the Region.

The key cause of the dispute between the two cities is the absence of a Hydrocarbon Law that regulates the country's natural resources and the relationship between the centre and the Region(s). Article 112 of the Constitution states that,

The federal government, with the producing governorates and Regional Governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country... and this shall be regulated by a law.[[3]](#footnote-3)

This clause gave the Kurdistan Region the power to manage the undiscovered or unextracted oil and gas. But in the absence of a law to regulate the oil and gas policy and management, the issue has become a permanent point of dispute.

This situation gave Baghdad the space to rely on the former Oil and Gas Law, which dates back to the old regime, while Erbil is relying on the new constitutional principle in managing its natural resources. As a result, Baghdad claims that many Kurdish oil-related activities are illegal, trying to convince international oil companies not to sign contracts with the Region. In response, Erbil defends its position through the constitutional legacy; to this end, the KRG sought legal advice from the respected London-based law firm Clifford Chance, which said that “the oil contracts that the Region is signing are in conformity with the Constitution.”[[4]](#footnote-4)

The other issue here is that the dispute between the two cities is really about the philosophy of the new Iraq and its perception in the public imagination. The dispute over oil and oil policy reflects that. According to the Kurds, if the decision on oil is left to Baghdad and the whole country is treated as one unit, then the Kurdistan Region would be left behind and oil and gas development would only start in the Region when the last barrel of oil is taken out of the south, because it is a lot more cost-effective if oil is extracted and transported in the southern deserts than in the northern mountains.

The Kurds argue that if this policy was applied, then “the Region would be at a great disadvantage from a financial and developmental point of view compared to the rest of the country.”

The Region would also be at the mercy of Baghdad: the stories of Baghdad cutting oil supplies from Kurdistan during Saddam's days are still alive in many people's memories. More recently Maliki's steps to cut the budget of the Region were a stark reminder of the Saddam's blockade and, as an indirect result, the Region started to export oil to Turkey. This is a step that the Kurds defend and that Baghdad calls illegal.

**Security and Peshmerga Forces,**

The security forces of Kurdistan are also another point of dispute between the two cities. On the one hand, the TAL provided that, based on Article 54 on the Iraqi Constitution, the Peshmerga forces continue to be part of the Iraqi security forces and should be paid through the central budget. The dispute with Baghdad is over the numbers and the command structure.

According to Erbil, the Peshmerga and security forces are for internal security, defending the Region. Hence they should stay under the Region's leadership command. Baghdad disagrees, saying that they should be under the command of the central government. Baghdad also questions the number of the forces in the Region. Like the two other disputed issues, this issue has been hanging since 2005.

As a result, in any government formation or a crisis or agreement, the three Kurdish issues mentioned above were translated into a list of demands by the Kurds to Baghdad as conditions for being part of the governance process. The Kurdish team that ended up in the governing body in Baghdad had the Kurdish demands as a priority and almost neglected the wider issues that concerned the whole country. The federal and liberal nature and behaviour of the country was the first casualty of the Kurdish focus on their demands.

**Baghdad Reverts Back to a Strong Central Rule**

As a result, Baghdad gradually reverts back to strong central rule with all kinds of oppressive and undemocratic ways of running the affairs of the country. This has led the president of the Kurdistan Region, Massoud Barzani, to declare on 21 March 2012 that Maliki is controlling everything and is trying to consolidate all powers in his hand. This has been reiterated by many other politicians in central and southern Iraq like Ayad Allawi of the al-Iraqiyah list. Maliki’s old allies are now reaffirming this stance; almost all of them seem to be in agreement that he is heading to becoming another Saddam.

This development triggered a new process to oust the Iraqi Prime Minister through a vote of no-confidence but the attempt was unsuccessful. Today, the President of the Region and other Iraqi politicians find themselves in a limbo: they can’t oust Maliki and they can’t work with him.

Looking deeply into the root causes of these and other issues that have created the turbulent relationship between the two cities, one can see that both Baghdad and the Kurdistan Region are exploring their limits given the two completely different political visions the two have for Iraq. One, Baghdad, is thinking central, the other, Erbil, is thinking federal. One is looking east, the other is looking west. One wants to be in an Islamist state, the other wants to be in liberal and secular one. It is this strong politicisation of the issues that kept relations between the two cities in the hands of a number of politicians, who start the crisis, negotiate the settlement and cut the final deal only for a new crisis to start again after a while.

The main reason for this is the lack of experts and technocrats who would negotiate correctly and follow things up in the proper manner, because on each of the issues there was a different interpretation of the concept and each city read the law differently.

Furthermore, in the absence of a correct framework for access to information, the details of the disputes, the crisis, and the settlement remain unclear to the public on both sides of the checkpoint to the south of Erbil who are growing less interested in the disputes and their developments as long as it does not affect their livelihoods.

The tale of these two cities may be grim with bleak prospects, but in reality and up until very recently, the turbulence seems to stay amongst the politicians and not the people.

The number of people visiting Kurdistan from the south remained unaffected by the politics: the factor that decides the number is the religious occasions of the south that the visitors don't want to be part of. The step that truly affected relations between the people was Maliki's decision to use the salaries of the civil servants in Kurdistan as a weapon in his dispute with the KRG.

**Comparing Iraqi Kurdistan with the Moroccan Initiative for the Sahara Region**

The Moroccan Proposal reveals some interesting aspects that would help avoiding the conflicts that occurred in the case of Kurdistan described above. In comparison, the case of Morocco and its Saharan provinces is quite different with regard to how the country foresees the relationship between the central government and the autonomous region.

In the case of Iraqi Kurdistan, it is an almost a hands-off approach. Despite the Constitution that gives the region a large degree of autonomy, the previous 13 years that preceded the new Iraq were years of complete separation between Baghdad and Erbil. This forced the Kurds to create their own governance model. In effect, when the Constitution was written, the Kurds returned to Iraq. But the difference in understanding or interpreting federalism and the current government's demand for greater control has created a lot of tension between Erbil and Baghdad.

In the Sahara case, the state seems to be consciously willing to provide autonomy to the Sahara region, aiming at finding a political solution to a longstanding dispute, as stipulated in Article 4 of the Moroccan proposal: “*This initiative is part of the endeavours made to build a modern, democratic society, based on the rule of law, collective and individual freedoms, and economic and social development. As such, it brings hope for a better future for the region’s populations, puts an end to separation and exile, and promotes reconciliation*.”

The wording of the article seems to have stemmed from a conviction and a will to settle this issue. While in Iraq, it was clear that the Kurdish issue was dealt with as a historical problem and the keyword for any government was control. As a result, it was always an issue as to who decided what. The Prime Minister of Kurdistan said in a recent oil and gas conference in Erbil, “When we were negotiating during the writing the Constitution, we had Anfal and Halabja in mind,” a reference to the genocide, the mass graves and use of chemical weapons.

As for **sharing the powers** between the central government and the autonomous region, the Moroccan initiative underlines clearly in Articles 12, 13 & 14 the respective powers that each side will have in the future, thus avoiding conflicts and misunderstanding such as the ones in the Iraqi Kurdistan case.

Moreover, the Moroccan proposal is comprehensive since it also defines in its Article 17 the procedure to be followed for “powers which are not specifically entrusted to a given party” and which shall be “exercised by common agreement, on the basis of the principle of subsidiarity”.

Similar to the Moroccan initiative, the Iraqi constitution outlined this clearly by dividing responsibilities and roles between the region and the central government. It also gives regional laws priority over the central ones. But the key difference is that there are important legislations that need to be passed in order to clarify the confusion of the federal powers mainly. The country is yet to agree these laws, the hydro-carbon and the revenue-sharing laws.

The other element in the Iraqi Kurdish model for power sharing is that the Kurds are not confined to the region: they are participating in the central government too. But the country has not yet made the transition to a federal system and hence getting the officials in Baghdad to understand the importance of federalising is a rather difficult task to say the least. This is mainly because Baghdad is still behaving in a central manner and believes it should have control over everything.

As things stand the Iraqi state is a hybrid of a federal region and central government not federal. A common Kurdish complaint about their officials is that they are federal when they work in Erbil and the become central when they go to Baghdad.

Morocco could look at Iraqi Kurdistan's power sharing model and possibly consider bringing people from the Sahara region political groups to the central government. This will be seen as a demonstration of the will to have a true partnership.

The Moroccan proposal gives particular attention to the **development** of the Sahara region and specifies the sectors in which the Region would exercise powers and the financial resources required for the development. In Iraqi Kurdistan, development is the mainly an internal issue for the Region: apart from some of the federal issues like hydro-carbon and water resources, the central government does not interfere in the Region but everything in all the other governorates has to go back to Baghdad.

The Moroccan model may be quite different from the Iraqi Kurdistan region but it provides a good example for other autonomous regions in the world and for governments who are thinking of giving autonomy to certain parts of their countries.

Such initiatives are importance for building trust between autonomous regions and central governments. Human rights, in particular the economic, social, cultural and environmental rights, lie at the heart of this model, which gives it real credibility.

In Iraq, a new state is being built and we are making it up as we go along because every turn of events is teaching us something new. This doesn't have to be like that in Morocco, where a new state is emerging but it can be done in a more calculated way.

1. Media consultant and commentator on Iraq, CEO of [mediawan.me](http://mediawan.me), a media, creative and communications firm, and former media advisor for Iraqi President Jalal Talabani. [↑](#footnote-ref-1)
2. The Governing Council was a 25-person body established by the Coalition Provisional Authority (CPA) in July 2003 until June 2004. It was tasked with advising the CPA on legislation and orders. [↑](#footnote-ref-2)
3. Article 112 of the Iraqi Constitution. [↑](#footnote-ref-3)
4. Kurdistan Regional Government, “International Law Expert Confirms KRG’s Authority to Manage Oil & Gas Resources, 5 Feb. 2008 (<http://www.krg.org/articles/detail.asp?anr=22631&lngnr=12>). [↑](#footnote-ref-4)