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What Oil Policy for Iraq? By Tariq Shafiq *

It is in the national interest that the Ministry of Oil, especially in the absence of due democratic processes in making policy, consult with an Iraqi think-tank, made up of competent Iraqi oil technocrats, in an atmosphere of constructive debate.

Rules and procedures for incorporating advice and consultation from the think-tank ought to be worked out and selection should be based solely on merit and absence of conflict of interest. It is important in such an exercise, I explained, that constructive dialogue is encouraged and opinions expressed without discrimination or incrimination. Furthermore, oil policy and plans must ensure optimum benefits to the nation, the rightful proprietor of this depleting asset. They should be prepared with the utmost care and diligence over a sufficient period of time in order to allow for constructive debate. Hydrocarbon resources are an inalienable property of the state- In other words, petroleum is a non-renewable depleting asset, meriting conservation, maximum fiscal reward, as well as among other things, participation of the national oil company and inclusion of 'national content' which should be built into every contract.

Such 'national content' should promote and build participation of national private oil companies, services and manufacturing industries; transfer of knowledge, management and technology; and local research and technical institutions. Those elements of national content have already been applied in major national oil industries such as that of Norway, Iran and Russia to the extent of 51%.

For those reasons and in order to compensate for petroleum depletion as a source of income, investment in other economic endeavours should be made. Once achieved, there is room for lesser dependence on a state-run upstream oil monopoly. But we need to ensure that oil and gas conservation practices are implemented with due regard to health, safety and environment protection throughout the exploration, exploitation and related operations. Furthermore, gas development should be given a prominent role in meeting domestic energy needs, in the least.

Partnership between national oil companies and the IOC's is the best way of rebuilding Iraq's oil industry and raising production to a level commensurate with its huge resource base, catching up with the latest state-of-the-art technology and management, acquiring the necessary investment capital, and speeding up the realization of benefits through efficiency and healthy co-operation. However, IOC's



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and foreign contractors require stability and security, law and order, assurance for the safety of their personnel and capital investment, and a fair return on their investment, among other legitimate requirements.

Oil and gas laws and regulations should derive their legitimacy from the constitution, hopefully after its amendment to permit a national unified policy to be applied by the federal Government in consultation with the regions and governorates. However, I was of the view that in the interim period, there was consensus of opinion that rehabilitation of production systems and short-term production and development operations by the Ministry of Oil and its contractors, are allowed to proceed. I listed the different contract models that could be applied such as buy-backs, other forms of service contracts or production sharing agreements, preserving the State's ownership of the petroleum resource in the ground. Each may be more suitable than others under certain conditions but production sharing appears to have wider and more favourable acceptance by the IOC's and host countries. The most important criteria, however, in all contract models are: the fiscal returns to both parties, the share of each party, the extent of national content and degree of other economic and fringe benefits to the nation, the degree of control the Government has to exercise and maintain administration and supervision without infringing on the company's rights to carry out its operation effectively and efficiently. From the outset, I said that tendering should be the only process for selecting companies interested in working on exploration and development (E&D) and related projects, and I set out the rules for this process. Tenders should be comprehensive and announced to a well-defined time schedule. This should involve general information and meetings with interested parties. Interested bidders should submit pre-qualifications, as only pre-qualified parties should be invited to bid. They should be given equal opportunity to access a comprehensive database. Bids should be evaluated and short-listed bidders be given a fair chance for discussions, leading to the selection of a winner. The procedure, evaluation, discussions and decision-making should be fair and transparent. Assigning a payable fee for bids and access to the database is advisable to eliminate less serious parties and improve the quality of the bids.

Agreements between the state organisation and the IOC's must be written and applied in good faith, and they need to be balanced and fair in order to reduce potential disputes and endure the test of time. They may permit reviews in the light of justified changes in circumstances governing taxation, royalties, profitability and market conditions, among others. No member of a consortium should have interests incompatible with those of the other members or with the host country's vital oil industry objectives, which could curtail its investment and hamper the consortium's E&D obligations.



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The size of Iraq's proven oil reserves would allow production of up to 10 mbpd (million barrels per day), which may require almost two decades to achieve. Given Iraq's urgent need for production growth, production capacity should be based on existing, proven reserves. Risky exploration should be given a secondary priority. I argued that IOC's involvement might be desirable to carry our costly exploration but not necessary at the present time while oil reserves are ample. Economical production capacity growth is best achieved, in the medium term, from already developed and producing oil fields which have multiple producing formations other than the main pays, and through the use of enhanced oil industry management to optimize recovery from the main pays and to correct damage, wherever possible. Last but not least, oil policy; plans and organisations ought to be as dynamic as the technical and marketing sectors of the industry. They ought to be depoliticized and appointments should be solely on merit. Transparency and accountability must be prioritized.

The Case For Establishing The Iraqi National Oil Company (INOC)

The first INOC was set up by Law No.11 of 1964, "establishing a national oil industry that would serve as the basis for future oil exploitation activities in the areas where the rights of exploitation had been restored to the State by Law No. 80 of 1961", and "laying down the ground work necessary for the growth and development of the industry so as to create an advanced oil economy not limited in scope to exploration of crude oil but extending to effective engagement in the various phases of the oil industry".

That law stipulated that "its capital shall be purely governmental, in keeping with the principle of sovereignty over mineral resources of the state that are natural monopolies", in view of the importance of the oil reserve, the right of exploitation over which is expected to be granted to the National Oil Company. This, however, "shall not preclude the company, acting within statutory framework, from making use of other capital, domestic or foreign, through loans or through partnership of various forms of business cooperation with concerns or organizations concerned with oil development, should this be warranted by the magnitude of capital needed, marketing exigencies or the technological requirement of construction". Further, since it is necessary that the company enjoy financial and administrative independence for it to be able to efficiently perform its diverse and steadily growing tasks, the law stressed the company's independence. However, the oil industry had been nationalized and all the country's exploration and developments had come under the jurisdiction of INOC. These objectives and stipulations remain as valid today as they were then albeit not without some modification in line with the country's market-oriented policy.



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Accordingly, in the documents I sent to al-Shahristani, I suggested the following principles for a future INOC charter:

1. INOC should be a fully state-owned, independent company (administratively and financially), entrusted with the task of managing and developing Iraq's upstream and downstream petroleum industry in all its phases, inside and outside the country, excluding the manufacturing and petrochemical industries.
2. INOC should perform its duties and obligations in accordance with the state's petroleum policy. Proper interpretation of government policy should remain the prerogative of the Minister of Oil. However, the Higher Petroleum Council of Ministers should resolve potential differences.
3. The present operating oil and refining companies should be detached from the Ministry of Oil and attached to INOC.
4. INOC should have an independent Board of Directors made up of members from among the Heads of the operating companies: North and South oil companies, Refining directorates and others from among the Iraqi petroleum technocrats or exceptional and successful managerial level individuals. The Chairman and Managing Director should have ministerial status.
5. The Government should allocate INOC a capital budget and be allowed to borrow from the domestic or foreign markets. The first budget should be commensurate with one year's operation plus capital investment required for its first year of operation (as is normally the case). It may then be taxed in such a way as to leave it a return commensurate with commonly acceptable management fee or be allowed a fixed fee on each barrel produced during a transition period (say five years). Thereafter, it should be taxed on the same basis as the IOC's operating in the country.
6. The Company, for the purpose of achieving its objectives, should have the right to establish companies inside and outside the country, singly or jointly with other parties or participate in existing companies.
7. The Company should be granted exemptions from all taxes and duties in respect of the performance of its functions, customarily granted to IOC's in host countries.
8. Petroleum resources should remain the inalienable property of the state.

The Dilemma Of The Constitution And Call To Reconsider

The Constitutional Articles governing Iraq's oil and gas assets are:



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- Article 111: “Oil and gas are the property of the nation (people) of all the Regions and Governorates”.
 - Article 112:
 - “The Federal Government will administer (manage) the production of oil and gas fields in cooperation (consultation) with the governments of the producing Regions or Governorates, “provided that the revenues will be distributed in a manner compatible with the demographical distribution across the country.”
 - “The Federal Government and Governments of oil producing Regions and Governorates, in cooperation (in consultation or together), will draw up the necessary strategic policies to develop oil and gas assets (wealth) to achieve the greatest benefit to the Iraqi people, based on the most modern market technology and encouraging investments.”
 - Article 110: defines the exclusive powers of the Federal Government. Hence the choice of words in the translation is affected accordingly, as in the possible use of ‘consultation’ rather than ‘co-operation’ or ‘jointly’.
 - Article 115: “All that is not written in the exclusive powers of the Federal Government falls under the authority of the Regions and all that is not written in the exclusive powers of the Federal Authority is in the authority of the of the Regions and Governorates. In case of disputes on matters that fall under powers common (shared) between the Federal Government and the Governments of the Regions and Governorates, priority will be given to the latter.”

However, there are a number of technical facts to consider when dealing with the above articles of the constitution. One of those facts is that there are, in Iraq, some 530 structural anomalies. Some 115 have been drilled to-date. Of these, 80 fields have today proven oil reserves of some 115 billion barrels (Bb). The 415 unexplored structural anomalies are estimated to have in excess of 215 Bb. Present production is 2 mbpd of which the export is 1.5 mbpd. Historical production high was 3.5 mbpd in 1979 and production prior to the March 2003 war was 2.8 mbpd.

Another fact is that the finding and development cost per barrel of oil is estimated (year 2005) at \$1.0, equivalent to around \$5,000 per 1 bpd production rate (365 barrels per year) and operating production cost is \$1.0-1.5pb. Furthermore, present proven reserves can technically support a production rate of 10 mbpd, which can be maintained for over 8 years before it starts to decline. Building Iraq’s current production rate to a peak of 10 mbpd and maintaining the plateau for 8 years would result in an annual depletion rate of 4% initially, rising to 5.3% when it would be



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allowed to decline in order to maintain the sound depletion rate of 4%-5%. Theoretically, if it is allowed to decline, the oil production rate would have reached 6.4 mbpd by the end of the 25th year of production when the country's reserves would have declined to around 40 Bb from the present 115 Bb at the start of the build-up of production capacity, still a few times of the North Sea or Caspian reserves.

From a technical point of view, the 10 mbpd plateau could be raised to 12 mbpd with the addition of new reserves to make up for depletion of 4%-5%. However, it would take Iraq over a decade or even two to reach a production rate of 10 mbpd.

Petrolog And Associates (P&A) Plan

An energy expert and friend reminded me that production capability of 10 and 12 mbpd never had the support of the MoO or international oil technocrats on technical grounds, until its adoption by international bidders in 2009. Surprisingly the IOC's had an estimated reserve base of some 82 Bb to build a plateau in excess of 12 mbpd. 82 Bb requires too high a depletion rate to ensure optimum oil recovery.

On exploration planning I have often stressed that, contrary to the generally held belief that exploration activities are required at all times to replenish produced reserves, Iraq's case is unfortunately unique. Iraq's production rate has never been commensurate with its proven reserves over the past decades, throughout the IPC concessionary era or the nationalised era that followed. The IPC parents had obligations elsewhere in the Middle East and so they limited production in each country to a low, 1% annual depletion rate. They considered other countries a safer investment than Iraq. Iraq's oil production has not truly reflected the size of its reserves because of the IPC policy, later followed by INOC, as well as the damage caused by the two Gulf wars.

Iraq today has, on a global basis, the highest proven reserves or total oil resource reserves to production ratio (a measure of life expectancy) of 157 years and 452 years respectively (when adding potential reserves to the proven reserves). At a production rate of 5 mbp, it would still maintain 62 years and 180 years of life expectancy, respectively. Iraq could have held off awarding long-term exploration PSA contracts until the return of stability and the easing of pressure on the Government by the big powers. In the meantime, the industry could concentrate its capital investment and limited human resources on production capacity growth to bring in the necessary revenue.

Major producers outside the Middle East keep their reserves to production ratio at a fraction of Iraq's: the UK at 6, Norway at 8, Denmark at 9, USA at 11 and Russia at 21 years, according to statistics at the beginning of 2005. Russia's production rate was



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9.4 mbpd with oil reserves of 72 Bb, corresponding to an annual depletion rate of 5%. However, this does not mean that no exploration activities should be carried out to enhance understanding of the geological nature of the reserves and improve oil and gas prospects. Such exploration activity would be part of comprehensive and unified planning for exploitation and development of the whole country. But it would be limited to a scale far smaller than the un-coordinated competing numerous exploration ventures by IOC's in the various regions and governorates. In fact, Kurdistan had already started and a few other Governorates are at the beginning of the road, following suit.

Planning Oilfield Development

Planning oil field developments for production capacity growth is normally carried out on the basis of a composite master plan, examining the capacities of the discovered and producing fields (including each and every producing formation within each field) from technical and economic feasibility points of view. At the same time, it takes into consideration Iraq's economic development plans and needs. The choice of the plan for execution must ensure:

- Optimal use of proven reserves, housed in varying locations throughout the Governorates and Regions.
- Optimal oilfield development costs, plus costs of any additional or replaced major pipeline carriers and export terminal capacities.
- Catering for future potential reserves as and when necessary.
- Securing investment capital and the managerial capability of the national effort (be it the ministry and/or INOC) and deciding on the role and number of the complementary IOC's.

Such comprehensive and integrated planning cannot be realised in the absence of a centralised, coordinated and unified oil policy mechanism and the whole country's database. It is best accomplished by the central authority, Ministry of Oil and/or a High Energy Commission working jointly with the MoO and in consultation with a think-tank and qualified non-governmental organisations (NGOs) from the various Regions and Governorates, chosen on merit.

The Case For Central Oil Policy

There are several points to consider when planning management of oil field E&D in light of the present constitutional articles. Without a central unified policy, there will be disharmony and competition between INOC (operating on production and



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marketing its export oil to provide the state's income) and the Regions and Governorates (operating on exploration for unneeded additional reserves) with disharmony and envy between the haves and have not. This would lead to an unhealthy oil industry, causing instability and contributing to the fragmentation of the country. Furthermore, instability would discourage the serious, major IOC's with knowledge, capital and markets, from engaging in Iraq's oil industry development. Iraq would then find itself accepting the speculators and minor independents with more promises than they can deliver. Add to that, the lack of experienced oil personnel of managerial quality at the regional level and the absence of unified model contractual terms, and agreements are likely to lead to inferior oil and gas agreements with the knowledgeable IOC's which is, in itself, a failure, as it does not satisfy the constitutional requirement of "ensuring highest benefits to the nation". Worse yet is the likelihood that accountability and transparency might prove difficult to ensure from embryonic regional governments and governorates lacking institutions and traditions. Furthermore, contracts enacted under such conditions of unfair terms due to gross disparity between the parties would be considered null and void under the Unidroit (International Institute for the Unification of Private Law) principles of international commercial contracts.

That's why, I argued, the highest benefit from produced oil could only come from a national oil operation where direct investment of \$1 per developed barrel brings in a return of over \$55 in today's market which is unlikely to fall below \$35-40 at least up to the end of the decade. It is illogical to leave such a highly profitable business solely to the IOC's.

The interpretation of the following passage in the constitution, "latest technology of the market principles and investment promotion", taken out of its context of "ensuring the *greatest* benefit to the nation", would mean that Iraq's future oil riches would be handed over to the IOC's as sole operators, effectively denationalising Iraq's oil and gas assets. This would take Iraq back to the concessionary era with all its drawbacks, including serious infringement of Iraq's sovereignty and near total financial dependence on IOC's.

While IOC's can achieve many positive mutual benefits including, among others, fast track and sound development, unchecked production of competing IOC's leads to excessive production, causing price deterioration and market instability. This is neither in Iraq's interest as a major producer, nor in compliance with Iraq's obligation towards OPEC. As a long-term consequence of the application of Articles 112 and 115, the oil- and gas-rich Regions and Governorates could claim exclusive future control over nearly two thirds of Iraq's oil. And, as the oil reserves from the producing fields decline and new reserves are added from the Regions and the



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Governorates, the latter would have increasingly greater economic power than the federal Government.

A Balanced Oil Policy Needed

As long as Iraq's economy remains dependent on oil income, it is absolutely necessary to establish a national state-owned oil industry with the administrative and financial independence to play a pivotal role in the development of the country's oil industry. It would ensure orderly E&D operations, decisions based on technical and commercial merit and optimum flow of income to the treasury.

The need for large investment capital for future oil and gas development does not require substituting national operations with IOC's. Building production capacity of one barrel per day (365 barrels per year) would cost around \$5,000. The oil industry elsewhere was built by the IOC's through loans to the extent of 80%-90% of the required investment capital. A borrowed capital of \$5,000 to build production at a rate of a barrel of oil per day could be repaid in less than 100 days of production at today's market price. A bridging loan could be fairly easily obtained under such circumstances and the case would not be far different at a price of \$35-\$40 per barrel. Thus, while capital investment for fast-track oil development coming from IOC's has merit, it should not be exaggerated.

Partnership between an NOC and IOC's is the best balance and is preferable to the disadvantages of sole operations by IOC's, regardless of contractual form. Partnership with the NOC is also the preferred route of the major oil companies. It provides transfer of technology and management, eases capital investment requirement and ensures orderly development and marketing of oil exports.

Today, Iraq's oil industry limitations inhibiting fast-track oil field capacity development (obviously, apart from security concerns, instability and absence of a government in full control of the country), are due to insufficiently experienced oil management personnel and the lack of the latest state-of-the-art technology. An active INOC working jointly with IOC's on oilfield development provides a solution to technology and management limitations, and a balanced approach between total state oil monopoly and a free market controlled by IOC's. Growing dependence on IOC's, in a diminishing or absent role for INOC, deprives the state of economic independence and puts it at serious risk particularly if/when the IOC's' obligations toward their shareholders override Iraq's national interest.

Upstream oil exploration and development is capital intensive. It would be wasteful to use it as a means of creating employment in the Regions and governorates. Oil and gas are the assets of all the people. Below ground assets should remain in the hands of the state for generating capital to the nation as a whole. However, technical



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and commercial sectors such as drilling, seismic/gravity/magnetic surveying, well-bore examination by various tools and testing operations could be privatised to create investment opportunities and employment. Likewise, many phases of downstream operations could be privatised such as distribution and even refining. However, proper planning along a reasonable time scale and preservation of labour rights should be upheld. Additionally, “local content” (obligations on IOC’s to allocate some of the industry’s functions to nationals to lessen total dependence and provide wealth and employment for the locals) ought to be adopted and enforced as an obligatory contractual policy. “Local content” accounts for 51% in Iran and the Soviet Union, and 70% in Norway. It has worked to the mutual benefit of IOC’s and host countries. It has been accepted elsewhere and there is no reason not to adopt it in Iraq. However, like everything new, it should be developed gradually in accordance with rules and regulations to avoid abuse.

Sectarian and ethnic divisions in governance and the politicisation of oil policy and management are bound to obstruct the development of an efficient, transparent and accountable Iraqi oil industry. A corrected course of action and the appointment of well-qualified oil technocrats are badly needed to rectify much of the wrongs of present trends. The heads of the political parties in power, creating a fog of differing interpretations, has corrupted the constitutional articles governing oil and gas assets. A corrective course of action, modifying present constitutional articles governing management and strategic policy making is badly needed in order to establish conditions for an efficient, growing, transparent and accountable oil industry that does justice to Iraq’s present, huge, proven and potential reserves. In turn, this would create conditions conducive to true realisation of the objectives of Article 108 that, “oil and gas are the property of the nation (people) of all the Regions and Governorates.

Corrective Measures

The application of Article 112 would lead to seriously damaging consequences and cannot achieve the equitable distribution of wealth and benefits among the entire nation as demanded by Article 110. It would not ensure the highest benefit to the nation unless corrective measures are taken. I suggested a number of such measures.

To start with, separating a) the management of the oil industry from b) revenue distribution, by breaking the linkage between the two provided in Article 112. A) management of the oil industry ought to be re-examined and worded in such a way as to create and optimise an Iraqi oil industry that would bring in the greatest return commensurate with its natural richness, putting it on par with the world leader, Saudi Arabia. Treatment of b) revenue distribution, ought to be based on equity, fairness



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and the needs of each of the Governorates and Regions in the context of the economic and social development of the country and the nation. Article 110 resolves this issue by making it common property, which is consistent with Islamic Sharia Law. Corrective measures ought to be considered to avoid these inevitable and seriously damaging consequences. The wording should also be carefully chosen to clear up the confusion of the currently imprecise text.

I suggested the application of a unified oil plan and policy free from unwarranted, contradictory plans between the federal Government and the Governments of the Regions and Governorates. I also suggested the adoption of a hydrocarbon law that sets out the foundations of a national oil company as the principal operator in the country under sound health and safety rules and technical/commercial codes of practice to explore and develop oil and gas in all the Regions and Governorates, with transparency, accountability and efficiency. INOC would work independently and jointly with IOC's, when needed, on internationally accepted and balanced contractual modes with "local content" ensuring the greatest benefit to the nation, encouraging private enterprise and allowing an assured reward to IOC's, governed by clear rules and regulations, within a secure and stable socio-political environment.

A radical solution to truly satisfy the objective of Article 110 and set Iraq's oil and gas industry on a correct path, therefore, requires the inclusion in Article 109 of "exploration operation" to develop Iraq's huge oil and gas resource potential, in addition to the management of production operations. A translation of Article 110 should then read, "The Federal Government shall manage the oil and gas production of the discovered and producing fields as well as the exploration and production operations necessary to unfold the potential oil and gas resource." This implies eliminating Article 112, which allocates future exploration to the Governments of the Regions and Governorates, giving them the right to overrule the Federal Government in case of differences or disputes. It is neither correct nor practical for any part to rule the whole nation. Consultation and/or representation in policy making and management should provide the logical solution.

Making the INOC a parent company with operating oil companies in the regions¹ whose directors could become members of the board of INOC, provides an effective role for the Regions and Governorates in the whole country's oil and gas operations, alongside the Federal Government.

In order to have efficient development of the oil industry "ensuring highest benefit to the nation" it is necessary that the constitution make reference to hydrocarbon legislation endorsing, among others, the allocation of the upstream and downstream



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operations and related commercial aspects, to a national oil company while the Ministry of Oil and a Higher Energy Commission focus on strategic plans, policy and overall regulatory supervision.

Oil policy should be made by the Ministry of Oil in consultation with the Regions and Governorates through a consultative body from among relevant NGO's and oil technocrats with representation from the Regions and Governorates. The policy should then be reviewed for approval by the cabinet, which after all represents the will of the elected members of Parliament from all the regions. Negotiated oil and gas agreements with IOC's, oil and gas related strategic projects with other countries and between the Regions and Governorates should have the approval of Parliament to ensure that their terms and conditions satisfy the hydrocarbon law, the constitutional criteria of Article 108, and is acceptable to the representatives of all Regions, Governorates and the nation as a whole.

If the constitutional terms are left unchanged, the Regions and Governorates' likely action would be to go down the route of indiscriminate PSA's and second-rate oil companies, resulting in damaging consequences mentioned. This would also be regarded by critics as inviting privatisation of the nation's very livelihood through the back door, a policy known to be absolutely unacceptable by the nation.

Iraq's First Hydrocarbon Law: The Drafting Process Tasked By Al-Shahristani

In late May 2006, I received a telephone call from al-Shahristani tasking me with the drafting of a petroleum law. I must admit, at the time the call bewildered me even more than the first call on 2nd May, as it brought difficult memories rushing back. At the same time, accepting the task would provide me with the honour of serving my country in laying down the foundations for developing the great oil and gas assets and beating out US lobbying efforts at the Ministry of Oil (on behalf of US BearingPoint business consultants) to draft the Iraqi petroleum law free of charge:

"It is a great honour to be entrusted with a contribution to write the Hydrocarbon Law for one's own country and nation."

I wrote to al-Shahristani in response to his invitation:

"Indeed, I value the confidence you have placed in me."

First, I would need to carry out the exercise in the same way as other consultancy projects from my base in Amman/London in a convenient working environment. This



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would not only suit my professional commitment to my clients but also keep me close to my home and wife who could not otherwise be left alone while not in the best of health. Secondly, the exercise would take up to three months and a team of three to four Iraqi oil technocrats, in addition to a legal advisor at a later stage, to ensure legal drafting and clarity. I wrote:

“We will draft and dispatch to you an outline of our approach and the guiding principles together with the CVs of the contributors once you make a decision in principle in favour of this approach”.

We would then have an initiation meeting to discuss matters in greater details. Towards the end, we could have a final presentation meeting.

I was sure to note from the outset, that neither I nor the other potential contributors would charge any consultancy fees but that on account of the fact that the places of residence of the contributors stretch between Europe and the Middle East, it would be helpful if he could allocate a budget to meet our travel expenses. Ultimately, we ended up financing our travels on our own.

I chose Thamir Ghadhban and Farouk al-Kasim as associate contributors. When I received al-Shahristani’s request, Thamir had been on one of his frequent short visits to Amman where his family lived. We had just worked on a consultancy research project as associates while he was in retirement from his last ministerial job. I got to know him further when we participated together in a score of conferences, expressing compatible oil and gas plans and policies, and had developed an excellent professional relationship which I thought could be extended into drafting a petroleum law together. He was overwhelmed when I approached him with the news of al-Shahristani’s request and my acceptance in principle. He gladly welcomed the offer to join in and similarly charged no fees as a means of repaying what he owed to country and nation.

Farouk had been a close and old friend from the early 1960’s. Then, he was the petroleum engineering department’s geologist at the BPC in Basra when I was head of the department though we had not seen each other for years. He left for Norway while I had been in London for 35 years. Farouk and I renewed contact following the change of regime in 2003 and then started meeting frequently in Amman, where I started spending part of the year attending oil conferences on Iraq oil plans and policy. He had been very supportive when I presented my views at a London School of Economics conference on the very subject of the future plans and policies for Iraq’s oil and gas exploration and production. I saw in him a mature professional oil and gas expert and an impressive character.



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Farouk would be the ideal choice, so I believed, to join Thamir and I on the drafting of a petroleum law. I often called Farouk, the ‘architect of Norway’s oil industry’, long before the media discovered him and called him just that.² It took a telephone call to Farouk, the day after Thamir and I agreed, to get his acceptance which he gave with joy and excitement.

The Trio At Work

The “Trio” was formed and ready with combined experience of more than 120 years in national and international oil affairs. We agreed to loyally carry out the task with strong nationalist sentiment. Within a few days of al-Shahristani’s telephone call, I wrote to inform him that we were ready to begin the work of drafting the law:

“I am sorry it took me so long to write. The start is inevitably slow due to previous commitments and necessary consultation with the other contributors. But I finally managed to coordinate a plan between myself and the other contributors.”

I started by acknowledging his suggestion to add another contributor to my team at a future date:

“I must say that I am delighted with your approach to add Dr. Abdulla Ashti, the Oil Minister of Kurdistan Region and an oil technocrat member of your (oil) ministry, to our team. We will arrange to invite both of them, at convenient stages, starting with the Initiation Meeting and as and when we, Petrolog and Associates’ contributors, have sufficient research to present them with material for review and discussion.”

I then went on to introduce the names and background of my associate contributors, our planned start and a caution on rendering our task a public matter to save us from falling under pressure of the media and the influences of politicians:

“Mr Thamir Ghadhban, who is no doubt known to you, a renowned oil technocrat and ex- Minister of Oil. With residence in Baghdad, he would conveniently perform the task of coordinating with your ministry and Kurdistan as often as necessary.”



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Mr Farouk al-Kasim is another Iraqi, from Basra. He has a wealth of experience as a geologist in Iraq during the 1950's and 1960's. He left Iraq in the early 1970's to Norway at the birth of their oil industry where he made a profound technical and managerial contribution, including development of their oil institutions and oil and gas laws and regulations. He is now an oil consultant."

I informed al-Shahristani that the three of us planned to meet on 16th June and could plan a formal initiation meeting towards the last week of June. By that point, we would have made sufficient progress at least with respect to a written agenda, including headlines of the principles that would govern the Hydrocarbon Law. I followed with a plea:

"May I suggest not announcing this decision to draft Hydrocarbon Law, to the media, politicians or political parties. I feel strongly about keeping this exercise out of the media and politics by not making an announcement of the exercise or the appointees. I am sure you will use your political wisdom to save us from uncalled for, immature media exposure and debate."

It must be said at this juncture that neither an oil technocrat from the MoO nor Ashti Howrami had joined us. Later, when I met Ashti in Dubai in 2007, on the sidelines of an Iraq-focused conference, he told me that he received no invitation to join our drafting committee. After a long and frank discussion over dinner that day, he admitted: "Had we worked as planned in the drafting committee, much of the conflict that had arisen might not have taken place." To this day I do not know the reason for al-Shahristani's apparent change of mind. Of course, it might be naïve to interpret Ashti's statement in any context other than it was made; in good faith. Nevertheless, I may still venture to say that the political, con-federal aspirations of the Kurdistan Regional Government (KRG), perhaps would not have escalated to the extent they did in the environment of political and self-centred ethnic haggling, seemingly dominating the Energy Ministerial Committee due to review our draft law.

The conspiracy theory that subsequently emerged, regretfully, led a few to conclude that our effort drafting the petroleum law was dictated by the Americans, by virtue of the fact that the Arabic text was clearly a translation from the original draft in English. English has been the language of the oil industry throughout the Middle East and North Africa, including Libya. Qaddafi had succeeded in 'Arabising' all government and educational documents except oil and gas contracts.

Al-Shahristani's reply to my email arrived promptly the next day welcoming our commitment:



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“I look forward to your ideas and recommendations.”

Soon thereafter, having failed to reach al-Shahristani by phone, I wrote to him with our planned schedule of work and to ask if the Ministry of Oil (MoO) had an official interpretation of the constitutional articles governing the management of the nation’s oil and gas assets:

“I have arranged a tentative agreement with Farouk al-Kasim and Thamir Ghadhban to meet in London from 8th to 10th June. This will be our first internal initiation meeting during which we plan to write the over-riding principles governing the issues of the Hydrocarbon Law. I would, therefore, need your blessing and formal instruction to go ahead in order to confirm the arrangement and hold our first formal meeting.”

I also attached a published news item about the award of a contract to a small oil company by the KRG:

“Incidentally, I have just read today further news of Kurdistan oil exploration, EPSA. I find it difficult to see why it shouldn’t be that though the present constitution grants the rights for the Region to explore for oil (within the country’s overall plan and policy and the terms of the constitutional principles and the federal petroleum laws), the fact remains that the return, government share of the profit, which is determined in the EPSA, belongs to the whole nation. You rightly declared that it should be handed over to the Central Federal Government and as such it should only be decided by the Central Federal Government, no?”

Principle Policy Outline

Al-Shahristani had given us a generalised policy principle statement on 1st July in answer to my reminder on the 25th June asking him to provide us with the MoO’s interpretation of constitutional articles governing oil and gas management. However, he made a public policy statement where he said: “There is [a] need to pass an oil and gas law to guarantee the right conditions for international companies to help develop the Iraqi oil sector.”³

Clearly IOC input would be sought but the principal issue, which had been left undefined, was whether this would be for technical support by way of a service



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contract of short duration or as investors where they would share in the decision-making and/or for a long-term contract.

During our planned initiation meeting on the 8th to 10th June 2006, Farouk, Thamir and I set out the bullet points that would make up the structure of our approach, subject to ascertaining our understanding of the relevant constitutional articles and related policy issues:

1. The draft petroleum law requires close examination and support of a legal interpretation of the constitutional Articles 111 and 112, seen in the light of Article 2, 49, 109 and 110 of the Constitution, which broadly define the authorities and responsibilities of the Federal and Provincial (the Region and Governorates) authorities within the petroleum sector. However, we await the MoO's constitutional interpretation.
2. Application of the constitutional Articles 111 and 112, implies a requirement for uniformity of plan and policy drawn by the Centre (by the federal ministry of oil) in cooperation with the provincial Regions and Governorates, using state of the art technology, marketing and management to ensure optimum return to the nation, the whole nation, the owner of the oil and gas asset.
3. Encouragement of the Centre's dialogue, cooperation and involvement with the Region and Governorates.
4. Re-organisation of the MoO on the basis of retaining the supervisory and regulatory roles and tasking the NOC with the technical and commercial roles.
5. Re-establishment and tasking of INOC with the responsibility of managing production from currently producing fields and earmarking it with the development of proven and discovered, undeveloped or semi-developed fields, with or without IOC's on a technical support or service contract basis.
6. Encourage INOC to compete singly or jointly with IOC's on future E&D.
7. Ensure, check and balance control, transparency and anti-corruption practices; paramount issues.
8. Setting out terms and conditions to prequalify companies for competitive bidding on procurement and award of contracts to ascertain the national interest and optimise the return to the nation through model contract/contracts.
9. Creation of a truly independent think-tank to advise managerial decision-making bodies instead of a Supreme Council, decided against after thorough discussions, and an Independent Central Unit for negotiating and managing competitive bidding processes.
10. Ascertaining consultation and/or sharing of plans, policy and management with the provincial authorities while retaining alienation, exclusively, in SOMO.



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During this first meeting, Thamir mentioned that Farouk had already prepared a draft petroleum law in 2004 which Thamir, as Minister of Oil at the time, had received free of charge and circulated within MoO for comments. After some adjustments, the draft was not submitted to the Council of Ministers. Farouk explained that the draft was developed with legal assistance from Professor Peter Cameron of the University of Dundee and some comments from Fadhel Othman, who resided in Istanbul. The three of us then agreed that we would take advantage of Farouk's 2004 draft as a starting point for drafting the new law. We'd make what changes and additions we deemed necessary especially as regards the plan, policy and decision-making process. All this would be done with the necessary checks and balances and transparency in accommodating the concept of federalism, introduced by the Constitution of 2005, ensuring corruption control, uniformity of practice and unity of country and nation.

It was sheer coincidence to have had a friend, Yahia Said, named Director of a new organization (moneywatch.com) whose objective included anti-corruption practices and balanced company-government oil industry relationships. Yahia sent me a copy of a study for publication on their website, by Joseph Bell on Iraq Oil Policy and the constitutional issues regarding federal and regional authority.⁴ On 25th June 2006, I wrote to al-Shahristani attaching a copy of the study by Joseph Bell:

"I wish to refer to my email of 18th June and attach a legal interpretation provided to me, confidentially and should continue to be treated as such. As you will see, it is interesting and rather more generous in favour of the Federal powers than Ashti's interpretation. It leaves no doubt on the issue of the oil and gas assets being undivided share of the nation, the whole nation. And, it gives the intended correct definition of the extracted oil and present oil fields. Thamir Ghadhban will soon be in Baghdad and, in turn, will contact you. Meanwhile, I will appreciate your guidance with respect to the policy of the MoO on the interpretation of the relevant articles of the constitution regarding oil and gas to provide the right basis for our on-going work on the draft Petroleum Law."

US Shared Policy Vision

Al-Shahristani acknowledged receipt of the attached study of Joseph Bell on 1st July 2006 saying:

⁴ Joseph C. Bell, Hogan & Hartson LLP & Professor Cheryl Saunders, *Iraqi Oil Policy -- Constitutional Issues Regarding Federal and Regional Authority*, University of Melbourne Australia: See Attachments, Appendix 3



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“I apologize for the delayed response, but I had to clarify some issues here about the constitutional articles concerning the oil law. The MoO interpretation of these articles is that the national oil policy will be discussed and coordinated with authorities in the Regions and Governorates and implemented throughout Iraq by the MoO using best market practices for both producing and potential fields. This means all the exploration, development, production, transport, loading at ports and contracts for sale of crude oil will be the responsibility of MoO. I will not accept any other interpretation of the constitutional articles. This vision is shared with us by US and UK governments and major IOC’s. I will not accept any other interpretation of the constitutional articles.”

Next, he gave lip service to the KRG’s announcement and Ashti’s declarations to the contrary, which I conveyed to him, as if to confirm his absolute belief in the positive US reaction:

“The media announcement of some regional officials in Kurdish region including Ashti, is for local consumption and we have been talking to key ministers here and they do not seem to differ with our interpretations.”

His dismissive attitude towards Ashti Howrami’s policy statement and his confidence in the apparent US “vision” to the contrary has proved a total misjudgement. Ashti has proved himself the stronger politician, albeit an aggressive and undiplomatic one, and his ethnic con-federal oil policy has achieved success. No doubt, the region had its feet solidly on the ground while the central Government was too feeble to stand. I can understand the justification for sharing a “vision” with the US and UK authorities (being in the policy-steering seat as the occupiers) and IOC’s (future business partners), but not while neglecting to share that “vision” with the major national players at home. This was, it seemed, in-line with al-Shahristani’s general management style, despite my repeated reminders to the contrary, advising adoption of transparency and dialogue with the national players.

He ended his letter with a clear policy instruction:

“The draft oil law you are working on should be based on this understanding.”

This policy instruction was compatible with our understanding of the relevant articles of the Constitution and the study by Joseph Bell.



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First Draft Of 27th July 2006

We sent our first draft of the Petroleum Law to al-Shahristani on 27th July 2006⁵:

“We are glad to inform you that we have completed the first draft of the Petroleum Law. We have endeavoured to reflect an oil policy in conformity with the Constitution whereby management of the oil and gas shall be made in consultation with the Regions and the Governorates while keeping an effective Federal role for the Federal Government. To our minds, we have ensured that the oil and gas industry plays a unified role for the entire nation. You will notice we have not addressed the issue of the distribution of revenue. Our objective is to ensure an efficient, transparent and optimum utilization and management of the national assets: oil and gas. You will notice that we have made reference, as appropriate, to transparency and accountability. However, we are considering devoting separate article to these issues, which we shall forward to you in due course.

Thamir Ghadhban has kindly offered to bring to you a hard copy and elucidate the pros and cons of the concepts we have chosen in order to improve the probability that this Law will be accepted by the various political groups in the country while remaining an up-to-date legislation that shall pave the way for the effective management of the Iraqi oil industry.”

I stressed:

“Our choice of the English language, though by true Iraqi individuals, was intended to expedite the preparation of the draft. We would be glad to prepare a final version in Arabic after receiving your comments. It has been rather unfortunate that there has been no opportunity for the participation of nominees from the Ministry and Kurdistan region. We hope this may be shouldered by the Ministry while we shall stand ready, as and when needed.”

Confirming Shared Vision with USA

Al-Shahristani replied promptly addressing the three of us with courtesy and appreciation:

“Thank you for your patriotic efforts in drafting the oil law, which I will discuss



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with our colleagues at the MoO.”

He added that he had the support and encouragement of the US and major IOC's with respect to the specific policy principles of the draft petroleum law:

“I have just returned from a visit to the UK and US with the PM in Washington, I had a good meeting with Sec. of Energy Bodman and senior officers from all major IOC's. I presented them with our vision and plans for the oil and gas sector and explained that the oil law will be based on the following constitutional principles:

- *Oil and gas resources are the property of all the Iraqi people in all the Regions and Governorates and no Region or Governorate can claim title to or control over these resources in their areas.*
- *National oil policy will be agreed upon between the federal and regional authorities where it will be agreed which fields will be developed at various stages and what kind of contract best serves Iraq's national interest for each field.*
- *The Energy Council, EC (Deputy PM for economy, ministers of oil, electricity, finance, planning, trade, justice, natural resources in Kurdish Region and adviser to PM on energy) will discuss and decide energy policies and major agreements will be presented to the full cabinet for approval.*
- *Revenues from crude oil and gas sales will be deposited in a national account and will be dispersed through the budget, annually approved by the Council of Representatives.”*

These views, he concluded, are fully supported by IOCs and the Energy Department.

Truly An Independent Trio

I have always maintained, and still do, that our draft law was not dictated or influenced by any third party, be it foreign governments or individuals as was claimed by a number of individuals. This is not to say that, as researchers, we did not get advice from outside sources. Advice we sought, in fact, in two cases. One was the search for an authoritative legal interpretation of the constitution⁶ plus legal drafting of transparency and related issues through Yahia Said. The second was the advice on



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tendering principles and procedures and related transparency and accountability issues. The World Bank has rendered public the minutes of a videoconference we had on 14th June 2006, summarised as follows:

“Background

Tariq Shafiq began by explaining that the Minister of Oil has approached his firm to prepare a draft hydrocarbons law. Thamir Ghadhban, and Farouk al-Kasim and possibly others will support him. The (informally communicated) timetable is for preparation of a draft within three months and passage six months from now.

The Ministry of Oil is considering separating commercial activities from the Ministry. The Ministry will become a policymaker and regulator. A parent national oil company—Iraq National Oil Company (INOC)—will be established, with regional and other companies reporting to it. One organisational structure envisaged is that each company will have a board of directors and the chair of each board will be on the board of directors of the parent company.

The law will cover, inter alia, how INOC should be regulated. The law will not deal with distribution of oil revenue. All oil revenues will flow to the central Government first on the basis of Article 108 of the Constitution.

Completion Of The Petroleum Law

As if to prove our methodical achievements, we followed the first draft with two further texts. One on 8th August 2006, which we called *The Final Draft of the Law* with a commentary to explain and support the changes we introduced to the draft law articles. The second was on 21st August 2006, which was the final draft with its Arabic translation. I wrote to al-Shahristani:

“When three old timers work on an assignment such as this important one, there may never be an end to improvements through repeated revisions. So, do not be surprised if we may come back with another “final” text. However, we strongly recommend that the Arabic text, being a translation and checked repeatedly by the three of us, should also be reviewed by an Iraqi lawyer to give its final legal context.”

I received an acknowledgment from al-Shahristani and courteous words of thanks to each one of us in an email dated, 24th August, with a request for Farouk and I to assist him and Thamir in the course of discussions of the draft among ministers



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representing the political spectrum, mainly with the KRG, after getting the endorsement of senior MoO staff. He wrote:

“The Arabic draft was presented by Thamir Ghadhban to a committee of senior MoO staff and was endorsed. It will be discussed later today at a Ministerial Committee for Energy meeting. Thamir and I will be in touch with you to let you know of developments.”

What al-Shahristani meant by *“letting us know of developments”* was that we should continue our voluntary, advisory, supporting role. A role that we conducted, I dare say, with unmatched devotion.

KRG’s Petroleum Law And The Trio

In early August 2006, the KRG published its own proposed petroleum law. It was a big disappointment to Farouk and I. We thought it might be possible, albeit with great effort, to reconcile the two texts from a technical point of view. But the greater difficulty was in meeting their political aspirations which were clearly in the direction of independence. It signalled a call for unconformity and disunity and laid the first foundation stone for independence. The KRG’s stand in the Energy Committee was sovereign-like, exercising veto power. Their representatives’ opening negotiating position was to condemn the role and competence of the federal MoO and to propose their petroleum law as the basis for discussions; a de-facto example of the Region overriding the federal Government. In fact, as the year rolled on, the KRG’s attitude became aggressive, typified by their Minister Ashti Howrami, when he accused the drafters of the petroleum law of being “Ba’athists” and “chauvinists”. Later he would say at a meeting in Dubai in 2007:

“We tore the MoO Petroleum Law apart and threw it in the bin.”

I wrote to Thamir and Farouk exploring Baghdad’s reaction and seeking the trio’s consensus to the KRG draft law:

“At first glance, the law basically reflects an interpretation of the constitution closer to an independent state than part of a federation at its infancy. You know, from their interpretation of Article 111 (the oil and gas assets are not undivided interest), they are saying that the oil under their feet is theirs. Everything that follows will divide country and nation. I have refrained from making public



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comments about it so far, but I'm wondering about the official reaction to this Kurdistan move."

Thamir answered promptly:

"Did you expect otherwise? As I said before, I expect a fierce battle ahead. We have to get our Arabic text first. I have not read their version in detail. I believe a specialised firm has written it for them. From a quick glance they seem to have included several articles that we might consider or think of (content aside)."

He made two points clear:

- 1. From a tactical perspective, I advise that we do not come out in the open regarding the KRG version and keep your contributions to the appropriate moment when it is most needed.*
- 2. Let us take it seriously and look at it objectively so that we can deal with the subject efficiently.*

His reaction was not unexpected. Going by his long governmental experience, he often said to us during the drafting of the law *"expect a shake up from Baghdad politics"*. His reply drew on this past experience and applied it to the present official negotiation task with the KRG.

Farouk's reaction was one of astonishment, much in line with mine. His words carried a conciliatory tone with a philosophical pitch:

"The great Norwegian author and poet Henrik Ibsen has a verse in which he says: 'When the point of departure is singularly wrong, the outcome is bound to be singularly strange'. I get the feeling when I read the text, that Kurdistan has mentally separated itself from the rest of Iraq. The dealings with the Federal Government as described in the draft law, resemble those between adversaries rather than between brothers within the same nation. The most controversial and thorny issue however is that they have a fundamentally irreconcilable interpretation of the relevant paragraphs of the Constitution. This is exactly as we have feared all along.

Yes, there are elements in this draft we could consider. I have noted some of these: restrictions on the rights of public officers, prospecting authorisation, principles of relinquishment, authorisation for non-petroleum prospecting in area covered by an authorisation, information available to public, penalty provisions



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etc. I do not think that reconciling the two texts from the technical point of view will be a great problem. The difficulty lies in the political aspirations which to me, are clearly in the direction of independence.”

Al-Shahristani’s Overconfidence

I wrote a letter to al-Shahristani attaching a paper I wrote for a forthcoming conference in Amman analysing the KRG’s proposed Petroleum Law. You will notice, I wrote, amongst other major premises, about the huge gap between the written terms and conditions in the KRG draft law and their actual PSA signed agreements (an economic evaluation of which is covered in the paper, “Windfall return on IOC’s investments”).

The creation of the Commission of Oil and Gas in our draft law (it was amended to a federal Oil and Gas Council, though consultative in nature), would act as a barrier against the passage of inferior agreements in the course of their review and advice. It is important, in the first place, that negotiation of agreements should never be left to the regions. An independent or semi-independent body from the MoO with technocrats from INOC, injected with representation from the region concerned, may prove to be the right answer to safeguard against inferior agreements.⁷

In a letter dated 31st August, he expressed confidence that the draft law would be approved by the Energy Committee in response to my pessimism about the outcome. My fear was that the committee chaired by Barham Saleh, a leading Kurd, and including Ashti Hawrami, would result in a negative outcome. His words seemed as if intended to assuage my fear about the route the draft law would take under this Energy Committee. There, the KRG would seemingly prove to be the more powerful within a Committee where “muhasasa” (exchange of benefit for self-interest) forms the basis of settling a haggling game. Moreover, the KRG would exercise their lobbying skills within and without, targeting the USA, the media and their own skilled legal and political advisors. I had wondered if al-Shahristani would ever resort to the rescue plan he had in mind to go to Parliament, as he had told me in a private conversation:

“I would go to the parliament where the KRG and their supporters would not exceed 20%. We can count on the remaining 80%.”

He sounded so sure of himself then. I wondered whether the policy of “muhasasa”, or the sectarian apportioning of positions in government that has been a feature of



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post-2003 Iraqi politics, did not underlie al-Shahristani's assurance of such a majority in parliament. He wrote to me:

"Please do not worry about the future of the Iraqi oil resources; it will be used to unify Iraq and raise the standard of living of its people. The oil law will be based on the draft you and our colleagues have prepared and Thamir will give you the details of the negotiations."

His response projected his confidence in his policy which events proved unfounded. Oil under the ethno-sectarian "muhasasa" system became a wedge that separated Iraqis rather than uniting them under a federal constitution.

I shared his email with Farouk. Invariably Farouk and I shared all information and consulted each other at all times. I had also kept al-Shahristani informed and always gave him my frank opinion. Our combined role had been positive, uninfluenced by the prevailing political culture and at a fair distance from the immediate stresses of Iraqi politics. Thamir however, was not spared the pressures from within the committee, the Iraqi political spectrum and foreign pressure.

The Route Proved Tortuous

I wrote to al-Shahristani on 17th November 2006, to give him the opinions of Farouk and I regarding the amendments made by the Energy Committee on a vital issue of the authority for final initiation of negotiated contracts:

"I write you today in the midst of the present intensified turbulence at home, wishing you continued determination in the pursuit of what is right and just for the country and nation through this most difficult exercise to charter the right path for Iraq's oil industry.

Thamir, in the course of his review of the last petroleum draft, which accommodated the creation of the Federal Petroleum Commission, has raised a drafting requirement to settle the question regarding the authority that should 'sign' the oil and gas contracts negotiated by the entity belonging to the Federal Petroleum Commission. Articles 5 and 6 have therefore been reviewed and the necessary modifications made. It is obvious that Article 6.1 was a residue of earlier editions and required some updating.

Article 6.1, in the corrected version, states that the "E&P [exploration and production] contract is entered into by the Council of Ministers and the Contractor." This means that the final contract has to be agreed to by the Council of Ministers. The question of who actually 'signs' is thus left open for the Council



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of Ministers to decide on as they see practically fit. In many countries it is the Ministry that is automatically empowered.

The question may arise as to whether the Provincial Ministry can do the signing on instruction by the Council of Ministers? We personally do not like this and will find it strange as a compromise. It is necessary to retain some overall Federal supervision in order to avoid divergent practices that dilute the Federal Regulations. A homogeneous and consistently firm and just approach to regulatory functions is essential.

Attached is this revised Petroleum draft dated 14th November which brings these two Articles up to date.”

As time passed, Farouk and I started to feel uncomfortable with the concessions made to the KRG to the point where some emotions flashed to the surface between Thamir on one side and Farouk and I, on the other.

The policy position of the KRG was and remained that: not only to negotiate their oil and gas contracts but also to sign them as final, ignoring the checks and balances process we had built into the text to ensure transparency and uniformity and minimize corruption practices.

On 18th January 2007, media reports quoted a MoO spokesman as saying that the Government’s oil committee had agreed on the final draft of an oil law which had been approved unanimously by all members of the committee; that draft, drawn up by senior national and regional leaders, calls for a federal committee headed by the Prime Minister to oversee all future contracts. It further reported that the draft would be presented to the cabinet the following week and that it had to be referred to the Shura (Consultative) Council.⁸

The Shura Council, however, in its role to check the legal aspects of all draft laws, advised that:

1. The powers of signing oil and gas contracts with IOC’s should be confined to the Federal Government because regions and governorates haven’t enough experience to do so.
2. The duration of a contract mentioned by the draft law (in the range of 20-30 years) is too long. It should be shortened.
3. The draft oil and gas law shouldn’t be enacted at this time when the Iraqi parliament is debating new amendments to the country’s constitution particularly the clause concerning Iraq’s energy resources.



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4. The rate of government royalty set by the draft law, which is 12.5% regardless of the quantity, quality and type of the produced hydrocarbon, is less than the normal rate set by the Organization of the Petroleum Exporting Countries which is 16%.

The Shura Council's recommendations added another major criticism of the law. This was in addition the criticism put forward by Farouk's and I, plus that of the oil unions in the South, political blocs including the Sunni Accordance Front, the Iraqi Front for National Dialogue, Shi'ite parties al-Fadhila and the Sadrist movement, and a group of 61 Iraqi former oil official technocrats residing in Amman in a meeting they held on 17th February 2007. All opposed the current draft law. However, the KRG's official position was that their own oil and gas law could not be subjected to the authority of the Shura Council or the national parliament.

Despite the country's wide opposition to the passage of this approved petroleum law, the cabinet was determined to legalise it, had it not been for the reversal of the KRG's position. The US and UK's blessing to pass the law did not seem to have been shaken as long as Iraq's oil resource, recognised to be on par with Saudi Arabia's, is on offer to provide IOC's and the global consumers extended security of supply.

Passage of the law in its modified corrupted present version would provide badly needed legal cover to the Federal Government's future award of contracts to IOC's to develop the bulk of Iraq' oil reserves and the immediate offer of wholesale 65 exploration prospects. Meanwhile the KRG continues to grant further PSA agreements for exploration of the north-eastern Zagros belt and the development of the many discovered but undeveloped fields that lie in Iraqi Kurdistan and in the 'disputed' areas.

One-Sided Public Relations Campaign

When I suggested to al-Shahristani that the MoO should respond to a damaging campaign in the foreign media⁹, he asked that I respond instead. It took al-Shahristani a few years, under my repeated encouragement, before he held a meeting with Iraqi oil technocrats in Amman. However, he refused to meet with the Oil Union leadership, who asked me to facilitate a 'reconciliation' meeting with him. He also did not respond to Russian Lukeoil's request for a meeting because he believed, without proof, that the Russian company had obtained its West Qurna II oil contract by corrupt means.

It was not a surprise that he left it to me to reply to the article published by a



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British paper. He wrote to me:

“It will be good if you can find time to respond to the article. It is pure fabrication and you have drafted the law and there is nothing in it about 60% shares to IOC’s or preferences to US and UK. Who are the writers and do you know who is behind it?”

I knew it was largely fabrication but the allegation could not have been made had it not been for the lack of transparency on the part of al-Shahristani, in an era when it is so closely associated with democracy and an awakened population. Along with transparency, public relations became a necessary tool to ensure accurate understanding and awareness, though one that could unfortunately be used to deceive. Among the allegations made by the newspaper article was that companies would receive 75% of profits until their costs had been recouped and another claiming a split of 60%-70% cost oil limits and 20%-80% profit oil splits. What I’m sure of is that our draft petroleum law required the IOC’s be paid a fair or reasonable rate of return on their investment and that did not change in the modified subsequent drafts. A fair return is normally 10%-15% but not above 20%. Of course, windfall profit was their main tool to attract oil companies to invest in Kurdistan under their politically risky legal cover.

One of the allegations made was that the legislation was drafted with the assistance of BearingPoint, an American consultancy firm, which was reportedly hired by the US Government. Mohammed Ali Zainy, an Iraqi oil technocrat, once went further in his allegation as he wrote that BearingPoint had supervised the draft writing. This was never the case. I do not know if the MoO had any assistance from BearingPoint before or after we drafted the law. However, I corrected Zainy at the time and assumed his incorrect allegation might be due to a memory slip. On a previous occasion, I had told a few friends (he may have been one of them) that I had met a consultant from BearingPoint who, in the course of a conversation over dinner at an oil conference held in a hotel in the Dead Sea area in Jordan, told me that he had been in Baghdad lobbying the MoO for some time to write them their petroleum law.

Farouk had not though Thamir might have met a BearingPoint consultant and I have not seen or heard from him since. However, what I later discovered was that I did beat him to it by welcoming al-Shahristani’s call to draft the petroleum law. It was through sheer coincidence in both cases; the case of meeting a BearingPoint consultant at a time when there was no question of a national being entrusted with writing the petroleum law and/or meeting al-Shahristani in a London conference and developing a rapport leading to that task.



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Another example of unfair criticism was an allegation meant to damage the federal Government's position (either by ignorance or intended political manipulation) by claiming the adoption of a PSA model contract and that the law would permit Western companies to pocket up to three-quarters of profits in the early years. Our first draft recommended common Service Contract practices be used when contracting services are needed for all the producing (undeveloped and developed) fields, which were assigned previously to INOC. Another form of Service Contract model was loosely named PSA. In fact, it was a modified PSA derived from the Iranian buy-back model by the MoO, limiting the return on investment to less than 18%. However, it was dropped later on to avoid the kind of misinterpretation its nomenclature suggests.

I personally had promoted the Service Contract model in many of my speeches in conferences to get state of the art technology and management from IOC's. Moreover, I argued against other forms that sought foreign capital investment, because the necessary investment per barrel of a discovered field in Iraq makes a very small fraction of the market price of a barrel. Iraq's investment costs per discovered barrel is historically a fraction of a cent due to the high discovery success (7+ out of 10 drilled wells) which may have risen at the present time to a fraction of a dollar. The investment cost per barrel today is as low as \$1.5-\$2 and the annual operating cost of the same order which amounts to a small fraction of its selling price of around \$100. Had a PSA model been adopted, the cost element (the limit allowed for paying back the company's cost) should still have been as low as 10%-20% (not the 50% of the KRG's PSAs and/or the present Iraqi Service Contracts) and the profit split to the investing company, a much lower percentage, invariably around 1%-2% in the case of large fields which may rise to 5% for smaller fields in rugged areas. Indeed, this is a most unfair term judged by practice elsewhere or compared by the old concessions which then practiced amortization of intangibles over 20 years and tangible assets over 10 to 20 years.

I responded to this campaign explaining how myth has replaced truth in the case of Iraq's draft petroleum law and correcting the allegations made in certain articles, in a speech I gave on 19th January 2007, at the US Institute of Peace, where I highlighted the true picture.

Lobbying US

I have repeatedly advised transparency and pre-consultation with qualified Iraqi oil technocrats, oil unions, and concerned NGO's, among others. Al-Shahristani paid little attention, if any, to such vital management principles, especially when managing the very most valuable assets of the nation. Transparency and consultation would



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have enhanced awareness. Its absence produced unfair and often unjustified criticism from many foreign and national persons.

The KRG, on the other hand, managed to successfully cover up the lack of transparency, credibility and legality of their PSAs with the generous use of public relations and consultancies. It gained them the support of many international oil commentators and froze, if not reversed, the US and UK anticipated support for what al-Shahristani called his “vision”.

Fearing further concessions to the KRG and in order to support al-Shahristani’s stand, I had an American Iraqi friend, Dr. Faleh al-Jibury, who was well informed on the likely stand of the US State Department, lobby the US authorities and inform al-Shahristani accordingly. Faleh and I wrote a joint letter dated 5th of January, 2007, (which I must say I wrote on my own without consulting Farouk or al-Shahristani) under his name, in support of the federal Government in its dispute with the KRG’s far reaching demand to decision making authority contrary to the very constitutional principle spelled out in Article 111. We emphasized the US commitment to a unified Iraq and the need for a new, genuine route to reconciliation, dissolution of mafias, abandonment of ethno-sectarian policies, separation of religion from politics and the activation of the constitutional review. The letter concluded by saying:

“It is essential for the future of Iraq and the US, to follow a straight and hard-nosed strategy that could be supported by the Iraqis, the US and regional governments. A new direction for Iraq’s policy should be based on the policy of reconciliation and embedding the US and Iraqi forces together to disband and disarm sectarian forces, to control security and to build an Iraq for all its people, that can govern, sustain and defend itself.”¹⁰

On 16th January 2007, Faleh took the initiative to advise al-Shahristani accordingly:

“It has come to my attention from various sources that although Mr. Ashti Hawarami originally indicated that there will be an agreement about the Iraqi Energy Committee to sanction contracts signed by the Regions, it appears that their leader, Mr. Masoud Barazani does not wish for the federal Government to approve...just to rubberstamp what the Region decides. This would be a clear violation of the sovereignty of the country which in legal opinions, cannot be compromised. While he believes it’s a fight of pressure and wills, you and I believe

¹⁰ See Attachments, Footnote Attachment 4: US President Iraq Policy 5th January 2007



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it's a matter of constitutional right that no one should have the right to destroy. Please be aware that some of the lawyers in the US Embassy are considered to be biased against the Region. Many government people in Washington support the view that I presented. We have the faith in you."

The letter was addressed to the President but might have been readdressed to the secretary of the states. Three days later on 19th January, al-Shahristani's answer came to Faleh and I:

"The Energy Committee has agreed on a draft, that includes that decisions on oil and gas contracts are to be made by the Federal Council for Oil and Gas. All the contracts that were signed by the previous regime or by the Region will have to meet the conditions of this law, in particular that the contract provides the maximum benefit for Iraq.

Tariq Shafiq, who has worked on the draft, is in Washington now giving a talk on the draft law and taking part in a Congressional hearing. Please coordinate with him so that you both lobby support for the draft in Washington."

Draft Approved With Optimism

The day before the delivery of my speech at the US Institute of Peace, al-Shahristani called to inform me and confirmed by email a few days later, that the petroleum draft was unanimously agreed upon by members of the Energy Committee and had been taken by Barham Saleh to the head of the KRG, Mr. Massoud Barzani for approval. Little did he know that our success at the Energy Committee and with the central Government had been given a short life expectancy by the KRG authority.

My disappointment could not have been greater, on examining their version. As ever, I expressed my views frankly and without hesitation. I emailed al-Shahristani on 20th January:

"My heavy schedule of meetings and the talk at the USIP on 19th January has not left me time to further examine the latest draft from you,"

I wrote before referring to the other panellist who seemed to have known of Mr. Barzani's rejection before I did:

"The other panellist who is a legal advisor to the KRG, by the name of Dr. Jonathan Morrow, surprised me and the entire audience of some 60-70 people, including personalities from the State Department, VIP's and leading Journalists.



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He said that as far as he knows, up to the previous day, he could say only that the KRG had not yet dropped their reservations on their right to negotiate and finalise their contract (without further consent of central Government) nor have they accepted to revise the present PSA agreements. Furthermore, they would not consider giving their final consent to the draft until such pending legislations as those for INOC, Oil Revenue Distribution and the re-organisation of the MoO, are completed (though these draft legislations were ready, as far as I was aware). This confused the audience as it contradicted my announcement of the email you sent me.

After the conference, I contacted the Administrator for the Senate Foreign Relations Committee. He read me the latest correspondence they had from the KRG, dated 17th December 2006. It more or less confirmed what Morrow had said. However, Morrow seems to be basically saying that there has been no progress since 17th December! Furthermore, he denied what Ashti Howrami told us at the CGES retreat on 8th December 2006 in London, that the KRG has dropped their legal interpretation of Articles 111, 112 and 115 for the sake of unity and agreement with the interpretation of Federal Government, now that all have agreed on equitable sharing of the oil revenue. This has indeed been disturbing and damaging to the optimism I tried to convey to the audience. I seek your urgent advice on this important matter.”

As for the approved draft law, I wrote:

“I shall soon devote time to a careful reading of the finalised draft and communicate my opinion. In the meantime, I wish to say that while I am happy that the settlement and the compromises made appear, to a large degree, to be balanced, I remain un-convinced of the wisdom of:

- *Not retaining authority for negotiating contracts in central Government*
- *Diluting the role of the professional think-tank.*
- *Requiring unanimity for the appointment of members of the think- tank (veto right).*
- *Returning to ethnic and sectarian divisions with respect to ethno-sectarian representation in the Oil and Gas Federal Council.*
- *Such large numbers of members in the Federal Council might (15-20?) create an atmosphere more appropriate for a debating society than a Board or Commission of Directors tasked with decision-making.*
- *The overall weakening of checks and balances.*
- *There seem to be many changes and additions in this final draft over the old*



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one. As such, I must soon revise the summary of the old draft in order to have a practical and meaningful summary. I will send you a copy as soon as I have prepared one.”

I also informed al-Shahristani of the change of plans regarding my scheduled testimony to the Senate’s Foreign Relations Committee:

“Last evening, I was informed that the Senate’s Foreign Relations Committee had to defer their meeting on Iraqi Oil as a result of more urgent matters (it seems that Sec. Rice had failed her mission to the Gulf countries and their Foreign Ministers in connection with Iraq? It was so reported in today’s news). Under the circumstances, the administrator asked if I may present him with my written testimony, summary of the petroleum draft, and shall be called back in due course to present my spoken testimony. The problem is that there is only 24 hours in any one day.”

So, I had to leave my written speech in Washington but missed the opportunity for questions and answers. Farouk was equally disappointed. He wrote back to me on 21st January:

“I too have mixed feelings about the compromise. It is good that they have agreed at all. On the other hand, I do not agree with the compromises they made. My immediate reactions after skimming through Article 5 are similar to yours:

- 1. The Council approves model contracts and the selection of the appropriate contract for the area in question (item 4). However, the Council only ‘looks into’ contracts that have been negotiated by the provinces or the Ministry (item 3). This language is deliberately vague. It will certainly be challenged in case of disagreement between the provinces and the Federal Authorities.*
- 2. We are moving away from central negotiations. This will open the door for “divide and rule” tactics, no matter how you dress it up, by establishing a Petroleum Council. This will lead to competition between the various provinces that could eliminate the chances for central planning and uniform practices.*
- 3. The idea of the ‘think-tank’ is now obliterated by: reducing them to a one-year contract and requiring that their appointment takes place by the Council’s unanimous decision. This is a kind of joke and will, in practice, mean that no self-respecting specialist would want to join. So much the better, though, for certain parties.*



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4. *The composition of the Council seems to be designed to provide rubberstamping rather than proactive steering to ensure overall benefit to the nation as a whole. The fact remains that only the Council can ensure the overall benefit. As it is now, the whole Council has a sense of politics without having any checks and balances.*
5. *I am generally pleased with the functions of the Ministry. In particular, I am pleased with leaving the function of supervision clearly with the Ministry (item 7). However, the strengthening of the provinces, the creation of a super rubberstamp at the Council level and the elimination of the Advisory Committee all tend to clip the wings of the Ministry.”*

Farouk and I shared the opinion that the compromise meant that further processing of the law and its implementation would be fully open to manipulation by prevailing political forces. Any checks and balances left are more likely to act as a façade. It is difficult for us to accept authorship of the law as it stands, precisely because we fear manipulation. In an ideal world the model could perhaps have worked although we doubt that too.

The items that were removed from the text are fundamental in the context of professionalism and transparency. In reality, the provinces would influence the model contracts, the instructions on how to negotiate, the federal petroleum policy, the blocks/fields that would be selected for negotiations at any round and finally the assessment of the final contract to be agreed by the provinces. In other words, the Council would provide legitimacy to the product rather than scrutinise the outcome and ensure its conformity with the principles which we so carefully put in the draft. The principles are still there you may say but the mechanisms for enforcing them in Iraq’s prevailing conditions, have been skilfully removed or circumvented, making the outcome purely cosmetic.

One might say that some degree of real influence could still be exerted by the Ministry, but we doubt that. The best scenario we could think of was that the right to negotiate was confined to the northern provinces (KRG Region). Alas, we did not anticipate that the southern provinces would readily agree that the Ministry would administer and negotiate all contracts on behalf of the rest of the country. In any case the door is now wide open for anybody wishing to follow the example of our northern brothers. In our humble judgment, these weaknesses are gravely serious, particularly considering the complexity of Iraq’s present reality.

We both pointed out that the draft we produced was itself a compromise between the views of the three of us. A major concern had been that the draft we produce should have sufficient checks and balances. We strived to offer as many as possible so



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that our draft would be acceptable. Thamir kept reminding us that there would be a further process where the draft would be diluted in favour of the provinces but has now gone so far that the checks and balances wholly insufficient for coping with Iraq's internal politics.

Short-Lived Success

On 20th January 2007, the same day I informed al-Shahristani of the encounter I had at the US Institute of Peace, he wrote back informing me of the unofficial news of the KRG's rejection of the latest draft:

“The draft that I sent you is the final document that was discussed and agreed upon at the Energy Committee. Barham Saleh has taken it to the North for a final review and will return Sunday. Although, we have not heard an official response, it seems that the KRG have retracted from their position and want to re-discuss some points. Other members of the Energy Committee will find this unacceptable and I will let you know if there is any development in their position tomorrow.”

This explains Ashti's explanation in his early December 2006 speech, at a CGES Retreat (apparently unaware of the KRG's rejection or change of mind) and al-Shahristani's expressed optimism in the earlier correspondence that all was well. Clearly it was a case of a draft law successfully agreed to but short lived, as it seemed that it did not go far enough to satisfy the ambitions of Mr. Barzani for an official recognition of the KRG confederation. I can only assume that Barzani did so in anticipation that the KRG could win further concessions, counting on the weakness of the Federal Government. And, in fact they did win those concessions by voting with their feet as a con-federal state.

Al-Shahristani designated the agreed draft as “final”. Apparently it was, at least in so far as members of the Ministerial Committee chaired by a senior Kurd, Mr. Barham Saleh, and strangely enough the Federal Government were concerned, just not by Barzani! It seems that Mr. Masaud Barzani decided to disagree, applying Bremer's advice spelled out in his book, “sit firm and have it your way”. So he did and the politicians are back for further concessions.

I still had to deal with the issue of the translation of the draft, even though I was still unclear on the fate of the draft finalised by the Energy Committee. I wrote to al-Shahristani:

“A couple of days ago, Thamir informed me of a new solution to the unresolved points which he has mediated for the negotiating committee to decide



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on. However, Farouk's views and mine remain unchanged; not in favour of the old or new solution. Seldom do the 'trio' disagree quite like this. However, Thamir, being the mediator, often has 'to hold the stick from the middle.'

I can guess your honest feeling on these frustrating issues under the present political climate. However, I can only assure you of the overwhelming support of the vast majority of the Iraqi oilmen for the MoO position. A bulk of those oil men intend to meet in Amman in a workshop on 17th February to take a stand on the matter."

Finally, on 9th February, al-Shahristani informed me of the KRG's official and final rejection of the Energy Committee's finalised draft law and revealed the absence of real support from many political parties:

"The draft has not been agreed upon and the KRG position undermines the fundamental objectives of the law. The Energy Committee will be now chaired by the PM in an effort to resolve the impasse."

He went on to say:

"Thank you for your support and appreciation of what I stand for. I am only doing my duty to the Iraqi people and future generations albeit unfortunately, without sufficient understanding or firm support from the political actors who are overwhelmed by the security situation and not paying attention to what a few individuals with self-interest are trying to do. A campaign to raise awareness among the people and letters to the PM and the Cabinet by prominent Iraqi oil experts is due. Please do not share this letter with others."

In fact, I acted accordingly to get support for him with the Prime Minister and Parliament, with or without his request for it, as a matter of principle on an issue that concerns the national interest. Now however, I owe it to the nation, to be heard on historical facts.

Al-Shahristani's last letter revealed his precarious position given the lack of support from political factions in the Government and a central Government too weak to stop the KRG's unending demands for authority to manage oil independently. His admission to the lack of genuine support of his Prime Minister was too alarming to be ignored. The support of Farouk, Thamir and I, as well as a large number of oil technocrats, for al-Shahristani's stand, is rooted in sharing oil policy principles which had to continue unabated.



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Al-Shahristani's declaration that the KRG PSA's were illegal, remained unchanged and escalated matters. He warned foreign oil companies that in signing contracts with the Kurdish authorities without central Government approval, they risked retaliation when seeking stakes in the bigger oil prospects in the southern part of the country. The central Government made it clear that it would rely on Saddam Hussein's oil laws to offer service contracts if the new petroleum legislation was delayed.

Media reports on 18th February, suggested a draft of the long-awaited law had been submitted to the Iraqi cabinet and that it contained a compromise that would satisfy everyone, breaking the deadlock. At the time the media assumed and asserted, that once approved by the cabinet and the political parties' representatives sitting on the council of ministers, Parliament would automatically give its stamp of approval.¹¹ However, time has proved that what the Cabinet approves can, and often does, meet a rocky path if not rejection by the parliament. I, on the other hand, felt the need for an urgent public stand to defend the principles of our draft petroleum law. I published a paper in The Middle East Economic Survey (MEES) on 19th February, with my public criticism in defence of our draft and condemning its amendment.

In summary, I wrote that the latest third draft of Iraq's Hydrocarbon Law included material changes from the original document that weaken the original checks and balances designed to ensure accountability and transparency, and consequently fails to meet the basic objectives of the law, that is, to optimize the exploitation of oil and gas in Iraq and maximize returns and unite the country. The negotiations between oil ministry officials and representatives of the KRG, I argued, have made little progress in part because the KRG effectively rejects the articles of the Iraqi constitution which give the federal Government responsibility for the management of oil and gas resources. Such a position leaves the door open for other Regions and Governorates to follow suit, setting a damaging precedent, possibly leading to a variety of contract terms and conditions and a potential lack of transparency and accountability, as well as bypassing the checks and balances built into the Oil Ministry's draft federal law.

I further warned that without a central unified policy there would be differences and competition between the national oil company, INOC (producing and marketing its export oil to provide the state's income) and the Regions and Governorates (prioritizing exploration for additional reserves that will not be required for many years to come), as well as friction and resentment between the haves and have-nots amongst the various Regions and Governorates. Such developments would foster instability, discouraging investment and contributing to fragmentation instead of promoting the uniformity of oil and gas practices and the unity of the nation. I wrote:



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“Instability will discourage serious IOC’s who have the knowledge, capital and markets Iraq requires. Iraq would then find itself resorting to speculators who promise more than they can deliver and minor companies, lacking the capability to develop the country’s giant oil fields. What Iraq needs from IOC’s at this stage, is an urgent rehabilitation of infrastructure, the expansion of capacity at partially developed fields, improved reservoir performance and the development of the many discovered but as yet un-delineated oil fields in partnerships with INOC rather than extensive exploration of unnecessary new oil. A stampede for exploration and development contracts at this particular juncture of Iraq’s political and economic development would be viewed as mortgaging the reserves of future generations. It would also fuel the view that the war was about oil.”

I was still keen on minimizing the public relations damage that ensued and to get al-Shahristani as much support as possible given the lack of it within Iraq. I wrote to him on 23rd February, expressing my appreciation of his stand and urging him to meet with the Amman-based oil technocrats. I urged him to publish the agreed draft instead of leaving matters to speculation. I wrote:

“I personally appreciate your stand in spite of the political pressure made to bear on you. Whilst Farouk and I criticised the concessions made to the KRG, as expressed in my paper sent to you, we recognise the importance of the vital issues you managed to preserve. Furthermore, as I have said in a previous letter, it is best not to give-in to the KRG so long as their attitude has a, ‘the more you give in the more they demand!’ character. Clearly, it must not have been possible (as I assumed given their unreasonable demands) to take the draft, unchanged, to the parliament to endorse it so long as their objection would not amount to more than 20% of the total vote, which could not stop its passage. Could it be because of unreliable power politics and need for muhasasa?”

I find it important to explain that the 50 Iraqi oil technocrats who gathered in Amman had expressed intense frustration because: no one asked their opinion, the drafts were not published for discussions, decisions were taken in closed, dark rooms and they assumed a conspiracy. Moreover, so long as President George W. Bush wants to see an oil law, they feel it is better not to have one! I attempted to bring them back to sound reasoning and away from tension, by making constructive comments to improve the latest negotiated draft law. I spent three sessions over two days with them and finally they were swayed to present sound comment. I continued my message:



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“I wish to emphasize at this juncture, as I said before, the need to publish the draft (the original and its modifications) so the public, politicians and intellectuals are informed. As far as the Iraqi oil technocrats are concerned, it will be necessary to hold a meeting with them or their representatives. Formally invite a few of them over for dinner in Amman. Have a team from the Ministry there to explain, educate and inform, etc. Not publishing and informing the public of the KRG and associated political problems has brought about suspicion, negative and unfounded criticism.

It is important to make these Iraqi technocrats in ‘exile’ feel they are needed and that they remain important. They have built Iraq’s oil industry and their contribution remains necessary perhaps even more than in past years.

They intend to make an association [‘Rabita’ in Arabic] based in Amman. Meet them and discuss the possibility of MoO contributions, channels of co-operation and how they can contribute from where they are today, etc. The idea is not to just say, ‘welcome home any time’. Start the discussions on how they can contribute today, wherever they are, and jointly work out a plan to sway them back as and when circumstances permit but not without their determination to do so.

I am sure where there is will there is way. There is too much frustration among these technocrats. It is wrong not to apply remedies.”

In his stubbornness al-Shahristani had ignored both the prerogative of the oil technocrats in making oil policy and the strong oil union who rightly consider themselves privy to oil policy and as such, to have an important voice in the drafting of a petroleum law.

Hassan Juma Awad, President of the Iraqi Federation of Oil Unions, was quoted as saying:

“Since we are working to make progress in production, we need real participation in all the laws related to oil policy. We are the sons of this sector; we have the management and technical capability and we have the knowledge of all the oil fields. That is why we demand our participation at such a level”¹²

Awad also reiterated the view that I and the majority of Iraqi oil technocrats held:

“Foreign companies would be welcome to supply technical assistance but going



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much further is a red line the companies must not think to cross. We think that preserving the sovereignty of Iraq is controlling the oil wealth.”

About To Give Up

I wrote a letter to Thamir and Farouk on 22nd February, quoting my letter to al-Shahristani and expressing my feeling of disappointment with the amendments made by the Energy Committee, al-Shahristani’s inability to communicate and now the oil technocrats-colleagues in Amman. While the majority of oil technocrats shared our views on the principles that should make up the petroleum law, there were the few who pursued political agendas and made it difficult to come up with a professional message. Their spokesman, in the drafting committee, made it very difficult to arrive at a professional declaration that could make headway with the members of parliament it addressed.

“My fear is that despite my keen concern and the time and effort we, and those of like-minded concern exert, we do not seem to succeed in making ourselves heard by the decision makers, within and without. The dissatisfaction and bloodshed may very well continue if not intensify. People are getting ever more frustrated and going radical. The fifty or so Iraqi oil technocrats, who gathered in Amman, have shown intense frustration and expressed the most radical views. Indeed, I am on the verge of giving up.”

The next day, Thamir wrote back reflecting his own disappointment. It seemed to me that it was due to the lack of appreciation for his efforts to limit selfish or ethno-sectarian policy within the committee and without from their parties, regional and US or UK influences. He wrote:

“I do respect other people’s opinions, particularly those old colleagues from the oil industry. You know very well that the situation is awful, not only in terms of security but in terms of people’s mentality, holding on to never-ending conspiracy theories, that one cannot really bother too much with it all. You, Farouk and I know very well who wrote the Pet Law. We all believed in the need for reforming the oil industry and those who criticize now, know well that we started this process in 1994. We felt the need for the formation of National Oil Companies to manage the various sectors (upstream, mid and downstream) with authorised management and a strong Board of Directors. At that time, they recognized that we were lagging behind the international oil industry and that great needs existed for foreign investment, new technology and modern management skills. Oil data were



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scattered, geophysical tapes were in bad shape, reservoir management was poor ...etc. The need is much greater now and the very fact that 50 experienced oilmen have gathered in Amman tells part of the sad story of the present status of the Iraqi oil industry. The changes made in the first draft were not a result of American influence or otherwise but resulted from present day realities in Iraq, as you know. It was extremely difficult to arrive at what we did due to the insistence of the KRG. However, and in spite of the changes in the draft law and the departure from the first draft in many articles, the law still provides Federal control as follows:

- *All revenues are Federal.*
- *Oil export is to be managed by a Federal entity (SOMO).*
- *Pipeline network is for INOC.*
- *All producing oil fields to be managed by INOC with additional discovered fields to be decided and opportunity for exploration on a competitive basis.*
- *Oil and gas Federal policies, plans, model contracts, guidelines are under federal control.*
- *All initiated contracts shall not become valid if the Federal Petroleum Council objects and they have to be amended and presented again to the Council.*

I do not think it is in the interest of the Iraqi people to delay issuing the Law and thus delay major developments. The article that deals with licensing and model contracts, that we drafted together, is virtually unchanged. We included so many safeguards to ensure national interest. So why the fuss? I do not want to write more especially since you know it all and so does Farouk. All I can say is that we should stay on course and work as always for the benefit of our country.”

In his diplomatic wisdom, Farouk wrote back, speaking for both of us:

“I have read your two letters with great interest and feel that a word or two of encouragement, although perhaps unwarranted, may still be in order.

First of all, let us not minimise the value of our joint contribution to the future oil industry in Iraq. We may still fail to achieve our objectives but we have at least put the right issues on the agenda. Apart from the professionalism, which we so genuinely thrived for, there is a high degree of devotion and care for the common interest of the whole nation. If we did not believe that we could achieve that and simultaneously adhere to our professional standards, we would not have attempted the task in the first place. Despite the challenges ahead, there is still a reasonable



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chance that honest people will prevail in the end.

So why are we not celebrating? We all know the reason or rather, the reasons. The circumstances in Iraq are such that any effort, no matter how monumental, is overshadowed and drowned in the brutality and savagery of everyday reality. There is no common wisdom under such circumstances. Nor are there checks and balances or moral references. Opinions in today's Iraq are expressed by various shades of belligerence and motives are always subject to suspicion and attacked, no matter how noble or selfless. After almost four years of fabricated truths and camouflaged greed, the real truth can easily be downgraded into a conspiracy theory. Opinion is expressed in detonations and bloodshed. We have, in other words, lost an essential sense of proportion and purpose which, as you know, is essential for creating national consensus. God help us.

Having said all that, we must admit that it is normal for democratic people to argue seriously about matters that will affect them and their country for decades to come. In Norway for example, it is mandatory to send draft legislation to all stakeholders for comments before it is even submitted to the responsible ministry. In our case, the need for consultation was/is paramount for the enactment of the constitution and is no less urgent for the petroleum law. Even peaceful countries can have heated debates about such important legislation. Maybe Iraq's problem is not so much that we are having heated discussion but that we did not have sufficient discussion before the constitution was pushed to the vote. Maybe that's why we are seeing violent reactions to the law. Pray, let us have as much discussion on the law as possible. How else can it act as a cohesive element, cementing the nation? More than discussion, we need transparency, so that people can argue about real issues and not just slogans and phantom causes.

Seen in the light of Iraq's destiny, from its present traumatic situation onwards, what we need are laws. Above all, we need law and order. We need to learn how to trust each other, how to believe in the common good, how to make sacrifices for the sake of a nation and how to stand shoulder to shoulder when the nation is threatened. That there are people who care enough to express opinions about the petroleum law - some more and some less constructive - is a healthy sign when seen from the perspective of Iraq's destiny.

Among the three of us, let there be no doubt that we believe in each other and each other's devotion and integrity. You, Abu Khalid, have done a wonderful job in trying to reach a compromise with our brothers the Kurds. We salute you for your efforts to uphold the major points of the first draft. Any criticism of the changes to the draft is not so much a criticism of your role (think what could have been the result if others were given such a task) but of the political situation and the



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helplessness of the Federal authorities in making a stand on what matters. We know the limits of your situation. But I, for one, feel compelled to point out the dangers that may arise from the compromises and what they may do to erode the checks and balances that we so carefully included for the benefit of all parties including the Kurds, as God is our witness.

Finally, do I believe the law can still work? Only if it can unequivocally uphold the power of the Federal authorities over any provincial interests and only if the Federal Council becomes a decisive organ, performing its role professionally and transparently. Here I see no possible compromise that doesn't carry with it the danger of total and permanent fragmentation. This is why it's necessary to ensure the professional support of the Ministry and of the independent advisory board. We all agree that checks and balances are essential and all the more so in the case of Iraq, crying out for Federal discipline. I hope there is still room for amendments.

I hope that the above clarifies my position and I am assured of Abu Ihsan."

Satisfied with Farouk's letter, I did not write back to answer Thamir's letter for a further, important reason. I have never doubted his sincerity, knowledge and competence. I recall the wisdom of the pragmatic Iraqi proverb, "elli yakul a el-essy ghair el-el'ly eed-ha," (one who is whipped reacts to the pain, not the number of blows).

I recall a similar situation. During my Al-Aqiq consultancy partnership of 1968, the late General Aziz al-Uqaili (my close, respected and highly-principled friend, who was also the brother of my partner, Ghanim al-Uqaili) used to visit us with other friends from among the retired senior army officers in opposition to the Government of the time. They often talked openly about their determination to take over the Government in a coup d'état. Whenever they spoke of their plans, I would leave the room. God bless his soul, Aziz al-Uqaili would tease me saying: "are you afraid, Tariq?" My answer was, "Yes I am...I'm afraid of what my reaction would be if and when we're arrested and tortured. Would I confess the truth and get you in trouble? So, I prefer not to hear what is being said here so I can truly resist confessing to what I don't know, having not heard your conspiratorial chats!" Perhaps, similarly, I escaped putting myself in Thamir's position where I might not be able to stay faithful to my ideals and preferred to stick to my consultancy. General Uqaili paid with his life for his principles. He refused to change or bend even under the torture of his jailers, his poisoning and, ultimately, his slow and painful death.

Second Short-Lived Success

It was not until 2nd March when I learned the news from al-Shahristani that a



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final draft had been approved and sent to the Majlis Shura Al Dawla (Shura Council), with a strange remark added, “Of course it can be amended when conditions change”. In that same email he offered me a consultancy at the PM’s office or with the MoO. I declined the offer in my next letter of 17th March, as accepting his offer would have implied implementing an oil policy that I disagreed with and a return to working in a politicised environment perhaps much worse than that during the 1960’s. In al-Shahristani’s own words the letter said:

“Finally, and after lengthy debates, a draft of the Oil and Gas Law has been approved by the Council of Ministers. It has been sent to Majlis Shura Al-Dawla to fix the legal format before presenting it to the Parliament. This was the best that could be done in Iraq’s current political and security climate. Of course, it can be amended when conditions change. A copy of the draft with the appendices are attached [these were the texts which were later referred to as the April petroleum drafts] and I would be grateful if the changes to the English version could be made.”

It is dangerous to make concessions on principles and to think that at the same time they can be withdrawn when conditions change. He added a gesture of remuneration and/or recognition of merits by offering me a senior position in the next execution phase for which indeed I am grateful. He added:

“However, what I am writing about is much more serious. We should now work on strategy for bid rounds, Model Contracts for various fields, prequalification criteria and instructions to the negotiators to make sure the KRG is clearly guided by the Law. What are the possibilities that you may join us in Baghdad either as consultant at the PM’s office or to the MoO for this national task?”

My reply, I am afraid, might have disappointed him. However, soon enough, the KRG once again disappointed al-Shahristani and the Federal Government. I found myself having to continue my task, which had now clearly turned into an exercise of damage limitation. Though I felt it had been imposed on me and I accepted it in the national interest. I wrote al-Shahristani on 17th March, saying:

*“Now that the draft petroleum law is finding its route to the Parliament, I find it necessary to remain honest with you and myself. In my honest judgment:
This law has many positives, such as all revenues and exports are under*



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Federal control. INOC manages the pipeline network and has a reasonable share of, though not all, the discovered fields to operate. But there are quite a few negatives to consider:

The law has too many unnecessary and ambiguous terms and unnecessary parties and processes that will create more problems than it can solve.

The contracts' prerequisites, negotiation process and the decision making in general are too cumbersome to work. They are open to malpractice and short of the effective checks and balances or transparency.

The potential "immediate" implementation of the 65 exploration blocks is unnecessary, untimely, divisive and not in the national interest.

If it is not too late, it would be wise for the Parliament to consult representative teams from the 60 or so signatories to the declaration of the Amman, Iraqi oilmen, the intellectuals, unions and politicians."

On the offer of a future advisor's job with the MoO or the office of the Prime Minister, I said:

"I am sorry not to have had the chance of meeting you which would have at least given me the opportunity to discuss your proposition for me to prepare the model contracts. It was with enthusiasm I gave you, in principle, a positive response. However, now that I've had the chance to examine the final text, I wish to be excused from that position and the future government position you offered me, which I otherwise would have had the honour to shoulder. As you will notice from my above concluding remarks and my attached commentary, there are too many aspects in the draft law which I disagree with.

Attached you will find my specific comments on the draft petroleum law in its final negotiated version, together with a reference copy of the draft."

I offered to continue my work on a voluntary basis:

"I expect to be able to send you the English translated version of the draft petroleum law within a week.

May God be with you in your most difficult task and in succeeding, at least, to minimise what otherwise could have become a more damaging petroleum law."

At this time, reports started emerging in the press revealing the influence the British Government had exerted on the oil plan and policy, and its intervention to help UK and US energy giants in their attempt to secure lucrative contracts to exploit



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“Iraq’s ruined oil fields”.¹³

One article said the British Foreign Office had delivered a report by the International Tax and Investment Centre (ITIC) (a Washington-based think-tank backed by a host of multinationals, including oil companies such as Shell and BP), to Iraqi officials in Baghdad via the British Embassy. It said the “road map” of the Iraqi oil industry was delivered to the then Iraqi Minister of Finance, recommending the Iraqi Government sign long-term production-sharing agreements with foreign oil companies. It also mentioned that the Foreign Office had helped the ITIC secure an audience with senior officials from the Iraqi Oil Ministry so that it could present its report and it hosted a conference in Beirut in January 2005 to give a formal presentation to Iraqi ministers. The ITIC had written a study jointly with CGES, recommending the use of PSA as the right contract model for Iraq.

The Road To Dubai

I must say it would have been quite a festive day for the Government to celebrate had that agreement over the petroleum law lasted, but it did not.

Al-Shahristani replied on 18th March, agreeing with “most of my comments” on the Energy Committee petroleum agreed law but, understandably, when there was no longer a petroleum law to implement, made no reference to the job he offered me or my refusal. He invited Farouk and I, among a few others, to a forthcoming workshop in Dubai to discuss remedies, I assumed:

“Of course, most of the changes that were made to the draft were to reach consensus with KRG. This morning we discussed organising a workshop of Iraqi oil experts to discuss the draft with few MPs. You will soon be invited to participate on the panel and the suggested date is 7th April in Dubai. I hope to see you there.”

In the interim I received the tragic news that one of my younger brothers, Haj Sabah, had been killed in Iraq. My answer to al-Shahristani indicated my attendance was conditional on when we could locate the body, my family circumstances, and the timing of the ‘Majles Fatiha’ for my brother (congregation to receive condolences).

I asked whether al-Shahristani could use his security channels to search for my brother’s body, but I received no answer. It took over a week for family members to personally carry out the search in the many locations in and around al-Sadriya town where he was assassinated and in nearby Baghdad hospital mortuaries. It was sad to



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learn of the many corpses my family members had to examine to identify him. On of my sisters, who is a dentist by profession, received a call to identify him from a body of a male who appeared to fit his description, but his face was too disfigured with acid. She was able to identify that it was not our brother but a different man by inspecting his teeth. Security conditions then were such that the mafia of the so called ‘al-Mehdi Army’ had taken over and only people in armed cars could venture out to hospitals to collect deceased family members. The family had to call on a relative who had armed guards (being a member of the Government) in order to drive to the hospital and collect the body of our brother Haj Sabah. He was shot at close range after he was ordered to stop his car in Saydiya town, according to witnesses. Clearly, he was one of the many innocents who were being murdered in the prevailing wave of sectarian warfare.

Conditions in Iraq were chaotic particularly during that month of May. The country was listed fourth on the 2006 failed states index compiled by the American Foreign Policy magazine and the Fund for Peace think-tank. I might add that to date, the second half of 2013, as I write my book, Iraq has remained listed in the bottom ten countries of the index!

On 2nd April, I informed al-Shahristani of my schedule and confirmed my intention to attend the meeting:

“I am grateful for your concern. Haj Sabah appears to have been murdered on site. Three bullets to the chest and one to the neck were shot at close range while in the Saydiya district. There are witnesses, I am told, but clearly no one under the present circumstances dares to formalise a statement. May God save our country and nation united.

I arrived in Amman early this morning and shall receive people at a Majles Fatiha this evening. Enna li Ellah wa-enna Elayhi rajeoun. I will be staying in Amman till the end of the month. Duty to country and nation is paramount and cannot be relinquished. I am glad to learn that the meeting has been postponed. Time is the best healer. It is my intention to write a paper and attend the meeting, en sha’a Allah.”

Al-Shahristani was very sympathetic. He sent me another letter on 2nd April, informing me of the deferred date of the meeting:

“I know the shock that the family has endured because of the loss of Haj Sabah. But I wanted to let you know that the meeting of Dubai has been postponed till the 18th April. Would your circumstances permit you to attend? I fully



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understand if you cannot come to the meeting.”

Al-Shahristani appeared very concerned to ensure the presence of Farouk and I at the Dubai meeting and took it upon himself to invite us. His email of 15th April reflected his deep concern:

“I am sorry that the organisers of the workshop (Council of Representatives) have not been in touch with you about the final arrangements. Mehdi al-Hafidh was supposed to follow up but I guess the explosion at the Parliament has distracted them; I was on a visit to Japan and Korea with the PM and returned today.

The workshop will be held as scheduled on Wednesday 18th April at Bustan Rotana Hotel, Dubai and participants are expected to arrive on the 17th and leave on the 19th April. Both of you will be presenting your papers (15-20 min) in the second session with Mehdi al-Hafidh and Thamir al-Ghadhban. Fadhil al-Chalabi has not been feeling well and apologised that he cannot travel. I am waiting for Faleh al-Jibouri to confirm his participation.”

Farouk and I were given the impression of a highly pivotal meeting and had to prepare presentations for the occasion in anticipation of a serious debate, perhaps with a view to arriving at some kind of recommendation. We prepared two joint documents plus a detailed, line-by-line, critique of the latest draft law with comments and recommendations.¹⁴

The deputy chair of the Parliament, Khalid al-Attiya, took the podium surrounded by the distinguished Ministers of the central Government and the KRG Minister of Natural Resources, Hussain al-Shahristani and Ashti Howrami plus Ali Baban (the Minister of Planning and member of the Energy Committee), Mehdi al-Hafedh (the former Minister of Planning) and member of parliament, Thamir Ghadhban (Advisor, federal Government negotiator and member of the Energy committee). Farouk and I sat to the right of al-Shahristani. The Chair and Ministers each presented their points of view and hailed the importance of agreeing on a petroleum draft that would allow the efficient development of the Iraqi oil industry, achieving an income that would bring unity and prosperity to the whole nation.

To the surprise of all, Ashti Howrami went on the offensive saying, *“We tore up the petroleum draft and threw it in the rubbish basket. It was written by chauvinist Ba’athists!”* Al-Shahristani turned to me and whispered, *“Hit him, Tariq! Hit him*

¹⁴ See Attachments, Annex Attachment 4, *Addenda, July 2006 Hydrocarbon Law*



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hard!”

As a matter of fact, I did not take Ashti’s statement to heart, considering it immature behaviour. Neither did I take al-Shahristani’s whispered advice as sincere. I was glad the Chair publicly announced that Ashti’s remarks were improper and out of order. As to al-Shahristani’s whisper, I did wonder at the time and still do, if he expected me to react to his good or bad whims. In fact, contrary to his whim, I accepted a dinner invitation from a joint friend with Ashti which allowed us to exchange views in a professional manner.

Farouk presented our joint paper in power point format, summing up our views and proposals plus our detailed commentary on the latest draft, intending for parliamentary review.¹⁵ I presented a brief review of the global oil market, summed up the shortcomings of the latest draft and pointed to the intransigence of the KRG’s con-federal stand with attachments of the latest draft alongside our critique and suggested amendment.¹⁶

Dubai Meeting: A Façade

Most of the oil technocrats and I who participated in the Dubai meeting considered it a façade. The real objective appeared to solely promote the Government’s views which Farouk and I had found were no longer acceptable. I made this known to al-Shahristani in an email of 10th May 2007.

A new dispute prevented the draft law was supposed to being submitted to Parliament. The Kurds now said they wanted to discuss and agree on a package of all four laws that would include distribution of oil revenues, the oil industry law, an Iraqi national oil company law, and the oil and gas federal council's law, according to a statement by KRG spokesman, Khaled Saleh: “Without agreeing on these annexes, the draft law can’t be submitted to parliament.” That, in fact, was just what happened, “Is it not always the case that the more you give in the more they get and the more they demand?” I wrote to Thamir. The next day, Thamir wrote back an explanation of what truly governed that draft and the whole environment surrounding the outcome:

“The mood here is nowhere near concessionary. The letter/article signed by Ashti and published on their website really upset me. The language, attitude and drive to have a weak INOC, the total reliance on the IOC’s, his dictation to the Federal Government (what it should do and the threats should they fail to agree...etc. The whole thing is a reflection of the current balance of powers, weak Federal Government alongside the inherited constitutional weaknesses and the



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prevailing “Rule of Consensus” (Muhāsasa), which is a product of the first. There are further complications within the Federal Government that make it even weaker: the tense relations between the various non-Kurdish political groups forming the Government. Unfortunately, there are no readymade, satisfying solutions. They have to be made with all the conflicts of interests, historical problems and many other factors that come with it. What we think of as right and good for the whole nation is viewed as centralized dictatorship on one side and an American plot on the other. I wish that our July version had been adopted with minor changes but I knew from the very beginning it wouldn’t and I remember I said this to you and Farouk who mentioned it in one of his letters to us.

We started in the Energy Committee with a written version from the KRG that Oil and Gas in Kurdistan is the property of the people of Kurdistan, with Ashti (Howrami) saying that there is no need for a Ministry of Oil and Ministry of Finance in Iraq and the rest of their attitudes well documented in their draft law. Moving from the stands in August 2006 to the version of 15th February 2007 was largely governed by the prevailing factors mentioned earlier. Presently, I don’t know for certain what’s going to happen, let alone the timing.”

On 10th May 2007, I wrote to al-Shahristani expressing my disappointment with the Government’s incapacity to quell insecurity, al-Shahristani’s ineptness with dialogue and the invitation to a Dubai meeting where an agreement by “muhasasa” among politicians cannot be changed. I wrote:

“Events at home are disturbing in many ways. The attitude of people is no doubt influenced by the fear of worsening security and the inability of the Government to quell it before it takes state and nation to a point of no return.

The reaction of the opposition to the petroleum law takes the form best reflecting their backgrounds and positions in society. The Oil Union plans to strike and demonstrate in accordance with the Hayat report quoted below. There may exist genuine fear that demonstrations and labour strikes could get out of control unless wisdom from the Government and Unions prevail. As you are well aware, my attitude has always been that frank dialogue and communication should be maintained at all times and better before the event than later. Similarly, many of the oil technocrats were most unhappy for having not been consulted, hence the fiery reaction in the Amman meeting of 17th February.

Today, the Unions who have likewise expressed opposition all along but apparently have not had a dialogue or communication with the MoO. I, in turn, find the excuse given in Dubai to the effect that the Government Ministerial



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Committee had to debate and agree on a draft petroleum law in order to become policy before it could be revealed to others for their thoughts and opinions, is far from convincing, especially when such a product is presented as a fait-accompli post the Muhasasah.

The words of whoever-said-it still rings in my ear: “we have agreed (referring to the Muhasasah between the KRG and the Federal Government), it can no longer be changed!” Others among those who were invited to the Dubai debate and I wondered what the debate was held for then? And above all, why even debate it in Parliament if it can no longer be revised? Farouk and I have submitted our joint paper discussing the draft in detail, in the genuine hope it would be taken seriously; has it been? There is too much at a stake; we need reconciliation. We do not need confrontation”.

On 14th May 2007, MEES published a letter I sent to the editor, pointing out the intransigence of KRG and in support of my friend, Issam Chalabi who was quoted the previous week in the same publication as saying, “it’s back to square one” with Iraq’s oil law and the unlikelihood of meeting a 1st May deadline for approval:

“Back to square one”, indeed, applies to both the Kurdistan Regional Government (KRG) and the Ministry of Oil positions. In my paper, published as an Op Ed in MEES on the 30th April, I said: “Unconstitutionally, some 26 discovered oil and gas fields (referring to Annex 3 of the latest draft petroleum law) have not been allocated to INOC and have thus been passed on to the regions and provinces at a time when they lack the institutions and expertise to negotiate or take complex managerial and technological decisions. It is indeed questionable whether the regions and provinces can efficiently develop, let alone manage, Iraq’s potential reserves of some 215 Bb.” These observations were not made in a vacuum but were based on interpretation of the constitution which has dictated the Federal Government’s position and seemingly, the KRG has fallen into the same position though at the cost of some damaging concessions to the nation and optimal management of the resource. The legal interpretation I am referring to “equates the discovered fields to the producing fields.” I quote the relevant text below:

‘Limitations of Present Fields

The principal negotiators of Article 112 [First] appear to agree that that the management authority provided by the section does not apply to all gas and oil resources. Rather it extends to oil and gas “extracted from present fields.” The phrase needs to be broken up into its component parts. Nothing in the Constitution



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suggests that “field” should be given anything but its ordinary understanding in the petroleum industry and in Iraq. The Society of Petroleum Engineers defines ‘field’ as follows:

“Field: An area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same individual geological structural feature or stratigraphic condition. The field’s name refers to the surface area, although it may refer to both the surface and the underground productive formations.” In Iraq, various areas and structures have historically been identified as fields, e.g., the Rumaila field and the Kirkuk field.

But the controversy surrounds the qualifier “present”. Some, including certain Kurdish authorities, have construed “present” as meaning “presently producing” or “presently capable of being produced.” The difference is not trivial. In the absence of other limiting language, however, “present” should have its ordinary meaning of “existing.” There is still the issue of present when? Most people seem to believe that it meant existing at the time of the compromise or perhaps more precisely when the Constitution came into effect.

Regional Power to Nullify Decisions Pursuant to Article 112

The Constitution does give the Regions and the Governorates certain powers to modify or nullify federal legislation, but neither can be reasonably read to apply to Article 112. Article 115 provides: “All powers not stipulated in the exclusive powers of the federal Government belong to the authorities of the Regions and Governorates that are not organized in a region. With regard to other powers shared between the federal Government and the Regional Government, priority shall be given to the law of the Regions and Governorates not organized in a region in case of dispute.”

Since the powers in Article 112 do not appear in the list of exclusive powers of Article 110, the first sentence in Article 115 could be read to give the Regions and Governorates authority in the areas covered by Article 112.

This construction, however, would make Article 112 a nullity and thus cannot stand. The second sentence of Article 115 applies by its terms to the “shared” powers of the Regional Government and the federal Government.

The shared powers are specifically dealt with in Article 114 and this reference should be limited accordingly to the powers set out there.

Article 121 [Second] also gives the Regions certain powers: “In case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal Government, the Regional power shall have the right to amend the application of the national legislation within that



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region.”

Nevertheless, this article does not apply to the activities of Article 112 as this is not an area where the Regional Government has authority to adopt legislation. This section only applies to those areas where the federal and Regional Governments have shared competency. These areas are set out in Article 114, and it is in these areas where there is conjoint legislative authority that the Regional Government pursuant to Article 121, has the limited authority to modify the federal legislation operative in its region. To hold otherwise would again make Article 112 a nullity, not only nullifying the federal authority but also the rights of the other producing Governorates and regions to participate in the policy formation provided for by Article 112.’”

Oil Technocrats Condemn KRG’s Wholesale Contracts

A meeting was held in Amman on 17th July, following another held on 7th July of a large number of Iraqi economists, oil technocrats and intellectuals. They referred to the previous meeting’s demands in their declaration. Both addressed their declarations to the Iraqi Parliamentarians. Among other demands, they emphasized the need for the Parliament to examine the four attachments, review all contracts terms and conditions for their grant of rights, mark all the discovered and producing fields to an INOC which ought to be founded, heed the advice of the Iraqi oil technocrats and Shura Council comments and preferably await the constitutional review and ensure meeting the common interest of the whole nation.

The KRG mounted a successful PR strategy as it continued to award contracts for oil and gas exploration and production of Iraqi undivided assets. They continued to grant PSA contracts which lacked transparency and gave windfall profits to the companies while the federal Government was too weak and divided to stand for the rights of the whole nation. I published a paper in defence of the MoO policy and its Minister, blamed for the slow progress of oil production development. I referred to the prevailing ethno-sectarian divisions, lack of cooperation from the other ministries to support and complement the MoO role as well as to the fact that Iraq was a failed state where the Government was incapable of managing the affairs of the nation.

While a letter of support was being prepared, I comforted al-Shahristani on 8th October with news of a support letter being prepared by the oil technocrats, also seeking his pre-approval. I wrote:

“Your national stance towards the KRG contracts is deeply appreciated both by me and also by the many oil professional colleagues who, I am sure, would individually or collectively do so. It is with pleasure that I confirm the support of



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my colleagues and I for your truly Iraqi national stance on the KRG's regrettable disregard for a united Iraq oil policy by assuming unconstitutional custodianship of Iraq's national oil and gas assets. Below is their letter of support:

"We, the undersigned, Iraqi oil professionals who have previously expressed concern and reservation with regard to the proposed draft oil law, would like to express our endorsement of your stance with regard to the contracts signed by the Kurdistan Regional Government and to consider them as illegal and that any foreign company who signs such deal, as well as their subcontractors, be subject to legal consequences including blacklisting and being denied further business in Iraq. We are sure that many other colleagues will echo our support but we thought of expediting this message in view of the campaign currently being staged by the KRG."¹⁷

In fairness, I wish to point out Issam Chalabi's objectivity with regards to his views on Iraqi oil and gas policy, evidenced by the fact that it was Issam's initiative to write this letter in support of al-Shahristani's policy position, despite the ideological distance between them.

Soon enough al-Shahristani made statements to the media vis-à-vis the KRG, in line with the letter of support he received from us. He announced that the federal Government in Baghdad was considering blacklisting foreign oil companies that sign contracts with northern Iraq's Kurdistan Regional Government. "There are many measures the federal Government is thinking of taking against these companies and one of them is to blacklist them and prevent them from working in Iraq in the future," al-Shahristani was quoted saying in one report. "The federal Government's position toward these new deals is that any contract signed without its approval isn't considered a contract," he said. "We warn these companies and hold them responsible for the consequences of signing such deals." He further said that oil and gas exports produced from fields as a result of contracts signed between the KRG and foreign oil companies and not approved by the central Government, would be considered illegal and categorized as 'smuggling'.

I followed with a letter on 21st October, having had no acknowledgement from al-Shahristani, urging him to reciprocate:

"I wish to have had an acknowledgement and/or a commentary on the letter of support sent to you for your national stance vis-a-vis the KRG's oil policy, copied below for convenience, which would have triggered dialogue and co-operation



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with the Iraqi oil professionals named therein, including publication in the media to further our cause.

He replied on the same day:

“The declaration of Iraqi oil professionals is expected from those who spent much of their lives developing Iraq’s oil potential. I, as a Minister of Oil, will persist in protecting Iraq’s national interest and making sure oil policies are formulated to strengthen national unity and the prosperity of our people.

It might be useful to send a copy to the Presidential Council, PM and the cabinet, and request that the Government of Iraq make its position public, supporting the MoO’s stated position of rejecting any oil contracts signed without the approval of the Federal Government.”

In fact, we sent the letter to al-Shahristani privately leaving him the prerogative of making it public. His answer, however, which revealed his fears about his uncertain position with the Prime Minister and the lack of real support from his own party’s political allies, did suggest that it be formalised by circulating to the senior Government authorities. We then published the letter and sent it to the requested authorities. The lack of support from his colleagues was confirmed in a telephone conversation I subsequently made to Dr. Ali Dabbagh, government spokesman, to encourage him to throw his weight behind al-Shahristani, in the national interest. Dabbagh was negative and unsympathetic.

However, al-Shahristani had been and remains indifferent, as ever to such meetings. His reply stopped short of an answer on the matter. Many of the signatories, including myself, eventually opposed al-Shahristani’s turnabout policy a year later, abandoning plans to re-establish INOC and granting ill-modelled service contract terms to IOC’s, especially when such awards included the super-giant oil fields that had been under national management for decades, among other ill-considered plans and policies.

To assure al-Shahristani of the oil technocrats’ support, I sent him an email on 27th November, attaching the Declaration Statement of the Iraqi oil technocrats dated 7th November 2007, in support of the MoO policy with my repeated recommendation to encourage dialogue and a vital role for the Iraqi oil technocrats with extensive experience on future oil policy and production development. I said:

“It gives me great pleasure to send you this attached declaration, is addressed to the House of Parliament and copied to you. It shows and expresses the depth of



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feeling among the bulk of Iraqi oil technocrats against the KRG's policy. We intend to make it public through the media. This move has been encouraged by the positive feedback from the one or two of our friends who wrote to you a prior letter of support for your stand on the issue which I thought should encourage a face-to-face meeting with the Iraqi oil technocrats perhaps followed by a video conference with a view to engaging in constructive dialogue with the oil technocrats abroad so that they may participate in a much needed, expanded development of Iraqi oil resources.

I feel strongly that there is and should be a constructive and necessary role for each and every capable Iraqi oil professional to play regardless of their views on the oil policy or their political perspectives."

At to this point I had not accused him of sectarianism although he might have had some affiliations. I saw in him a person who lacked the capacity for tolerance; very much like a few other friends I met from among the Islamic politicians in power. He also had a stubborn streak, which I came to realise later on.

Confidential Agreement

While researching relevant materials for this book, an informed friend brought a confidential agreement to my attention between the Federal Government and the KRG that had allowed the flood of contracts awarded by the KRG. A summary of its content is given herein. This leaked memorandum of agreement between the Federal Government and the KRG dated 26th February 2007, set out completion for no later than 15th March 2007. Unless there was agreement to extend the deadline, each party shall seek its own track, in the main, to permit the grant of exploration and production contracts:

1. To submit an agreed Petroleum Law draft, in accordance with constitutional principles, together with its four attachments and model agreements, by 15th March 2007. To simultaneously legalise the agreed draft for the distribution of the incoming oil funds.
2. To finalise INOC founding law which shall be compatible with the terms and conditions of the PL. The Kurdistan Petroleum Law shall be in conformity with the current terms and condition of the Federal PL
3. To suspend all oil operations and grant of rights in all the areas governed by article 140 of the Constitution except the on-going INOC [Federal] operations of the current oil producing fields.
4. The parties hereto shall refrain from the grant of new rights to current or new



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stakeholders until the passage of the current PL under finalization.

5. The Federal Government in coordination with the Region, shall carry out to completion all necessary documentations no later than the end of May 2007. Failure to finalisation by this date will require the heads of the Federal Government and the Region to meet within a month to decide on one of two options:
- i. The parties hereto shall be free to grant exploration and production rights in accordance with the Constitution,¹⁸ the current draft PL and the general principles of the model contracts.¹⁹
 - ii. To extend the above date of completion.²⁰

I am not surprised that the KRG entered into such commitment. However, for the Federal Government, this agreement amounts to relinquishing its responsibility to protect the interests of the nation by granting the Region a license to grant petroleum rights. In fact, it granted the Region rights it had no authority over. Oil and gas are the assets of the whole nation which can only be relinquished by the representatives of the whole nation; the Parliament.

At this time, I can only wonder if al-Shahristani had been a party to the above agreement. If he had been, I cannot find the right words to express my disappointment. And what a fool I and so many others must have been to have genuinely given him full backing to stop the unilateral con-federal KRG oil policy when he could have been party to it.

Al-Shahristani And I Part Ways

I have often said that oil and politics are intertwined and perhaps much more so in Iraq than elsewhere. However, my support for al-Shahristani was based on my belief that he, as a scientist with a political base, would limit, if not overcome, the potential damage caused by those Iraqi politicians and their political parties who have adopted ethno-sectarian and corrupt practices, the result of which has contributed to more divisive politics than healthy governance.

This belief in al-Shahristani continued following his address at a Chatham House conference held in February 2008, in a period when Iraq was still classified a failed state. He opened his speech by highlighting the fact that “oil had become a determining factor in the political struggles and economic development of the country. It is the main foreign exchange earner, a major employer, and an important



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contributor to major community developments.” He rightly blamed politicisation for the stalled the draft petroleum law, stating that: “The Iraqi Cabinet unanimously approved a draft Oil and Gas Law in February 2007. However, political differences among parliamentarian blocks and announcements by the Kurdish Regional Government of signing PSC’s with minor oil companies, delayed the legislation.” He then expressed a hope that, “2008 would see the resolution of political differences and the enactment of an Oil and Gas Law.” However, he also added a reservation and declared a plan that “failing a solution or meeting further delay”, the MoO would go it alone. The failure to resolve political differences was not in fact unexpected as long as negotiations continued on the basis of ‘muhasasa’, so that ultimately the stronger party won out. The KRG’s decision-makers, from their position of strength, found reasons to turn down settlements and demand more, and they were successful.

I have chosen to highlight the speech made by al-Shahristani on this occasion as it marked the period before the turning point in his publicised plans and policies and, perhaps more because it shows the politician in him rather than the scientist I had trusted for so long. What he said turned out to be, to my disappointment, either a deliberate deception designed to mislead the public or an unintended one motivated by self-preservation. Perhaps he planned to gain popularity and rise from the position his antagonists had pushed him into during Iraq’s post-2003 turbulent political era, dominated by the KRG and a partisan divided central Government.

From early 2006, al-Shahristani had kept me informed of the details of the negotiations of the petroleum draft law, with the exception, although there may have been others of course, of this important agreement between the central Government and the KRG. This made a farce of subsequent negotiations and debates on the petroleum law, including at public forums such as the Dubai conference of April 2007.

Similarly, how wrong I was, given this covert agreement, to criticise the KRG for hurriedly enacting PSAs at the same Chatham House Conference when I said, “Since then (15th February 2007 draft petroleum law) the KRG has gone further to enact additional PSAs, totalling 20 contracts, 12 of which were agreed in record time of a month or so, in violation of existing laws and regulations.”

This government/KRG agreement had effectively opened the floodgates for the KRG to sign more PSAs. Meanwhile, the central Government began to pursue a new plan using a long-term model service contract, instead of the 1-to-2-year technical support agreements and bidding rounds which took the nation’s oil and gas industry down a route hardly explored before.

I could not see how the Federal Government could agree to let the KRG continue with its unilateral policy of grating PSAs when all along its stated position was that it



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considered such contracts illegal! Neither the Federal Government nor the KRG can assume powers over a national asset on behalf of the Iraqi nation without the authority of the national Parliament; the only representative of the nation state and its people!

With this covert agreement in mind, I will now discuss al-Shahristani's public declarations at Chatham House and how they compare with what took place on the ground.

Al-Shahristani stated:

1. *"The draft Law separates policy setting and planning activities from technical-commercial implementation activities. The goal is to restructure the Ministry of Oil to focus on oil and gas field development strategies and policy formulation, and to re-establish INOC for E&P activities, plus several Petroleum Service Companies connected to the Ministry to cater for the technical and commercial activities, and implementation. This separation of roles, plus the establishment of new operating oil companies affiliated to INOC, will contribute to better and more efficient governance of the Industry."*

How very true this is! The above policy was one of the main principles underpinning the drafting of the Petroleum Law, fully adopted by the MoO. The re-establishment of INOC and the inclusion of a complementary policy principle, the Local Content, had become a feature of the oil industry in this era. Perhaps the omission of the Local Content from the Service Contracts is not as surprising as the omission of the role of INOC in MoO Service Contracts.

2. However, no restructuring of the MoO had taken place. Though INOC's founding Law was enacted, INOC remained practically inactive because its tasks had been tied to administrative bodies such as the Federal Oil and Gas Council, and its policy management decisions fell under the stalled petroleum law which had already been modified. Further, no separation of roles has taken place. The Operating Companies remain under the jurisdiction of the MoO. As a result, the Minister of Oil remains, in *"We hope that 2008 will see the resolution of political differences and the enactment of an Oil and Gas Law. However, even if there are further delays, the Ministry of Oil will proceed with the reorganization, reform and re-activation of the oil and gas sector following the procedures, requirements and modalities stipulated in the draft Oil and Gas Law. The Ministry will start development of the Iraqi oil and gas fields with the participation of IOC's, with the approval and full support of the Federal Government."*



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However, no resolution of the political differences or enactment of an Oil and Gas Law has taken place. On the contrary, differences have mounted with time and the dual tracks of oil and gas exploration and development appear fixed and set to continue unabated as long as the KRG continue to pursue independence or a de facto con-federal state.

“At present, Iraqi reserves are about 115 billion barrels of oil and 106 trillion SCF of gas. This resource base presently supports some 2.5 million bbl/d of production due to limitations of installation that have suffered three decades of destruction and neglect. This resource base could very well support production of about 6 million bbl/d of oil and commensurate associated gas may be up to 4 billion SCF/D, not to mention some important free gas fields. The Ministry has already started negotiating interim Technical Support Contracts (TSC) to prop up production from some giant brown fields targeting an incremental increase of production of some 500 thousand bbl/d by end of this year. These negotiations are based on earlier studies carried out by IOC’s over the last three years under Memoranda of Cooperation (MoCs).”

(*) Mr. Tariq Shafiq is a former high-ranking official in the Iraqi oil industry and Vice President of the Iraqi National Oil Company (INOC). See his autobiography. [Tariq-Shafik-TES-Bio-IEN-final-9-8-20.pdf](#) ([iraqieconomists.net](#))

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