



“THE FORMATION OF REGIONS” SIMULATION

Introduction and Instructions

As part of its Peacebuilding Practice, the Public International Law & Policy Group (PILPG) drafts and runs negotiation simulations for current conflict areas around the globe in order to train parties in negotiating techniques and to assist in the development of innovative diplomatic solutions to armed conflicts. The negotiation simulations are run both for the policy making community in Washington, D.C. and in some instances in-country as part of a training program for the parties to a given conflict.

The purpose of the simulations is to surface critical issues in each conflict, test new approaches to conflict management, and devise innovative diplomatic solutions. Following each simulation, PILPG typically drafts and distributes a Lessons Learned Report, which highlights key lessons that may be applicable during the upcoming negotiations.

The simulation exercises follow the methodology used by the U.S. Department of State’s National Foreign Affairs Training Center to train American diplomats prior to negotiations.

The “The Formation of Regions” simulation is an opportunity for the experts assembled for PILPG’s Roundtable Series on the “Next Steps for Implementing the Iraq Constitution” to apply their knowledge of Iraq to a number of practical challenges. Each participant is assigned to a party or alliance. Participants are encouraged to utilize their experience and unique insights on events in Iraq to represent their particular interest groups. Though the leaders of Iraq face a variety of issues and challenges in structuring their state, this simulation will focus on the negotiations that will likely take place as the Council of Representatives carries out its mandate to establish, within six months from the date of its first session, the executive procedures for the formation of new regions. (Article 118). In preparing for the simulation, the respective teams should consider that such negotiations may produce calls for Constitutional amendments (based on the exceptional amendment procedures of Article 142) as well as particular legislative procedures. These particular negotiations are likely to address matters relating to the division of

powers between federal, regional, governorate and other local authorities; the management and equitable distribution of national wealth (including oil resources); and the role of the public commission on the rights of regions and governorates that are not organized into regions, as well as the public commission related to the auditing and appropriating of federal revenues (Arts. 105 and 106 respectively).

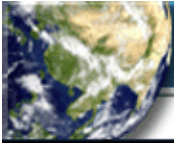
Other related questions that might arise during these negotiations and therefore require consideration by participating delegates include, but are not limited to:

- Who will vote in the referenda on the formation of regions (the general population, just those living in governorates to be incorporated into a region, etc.)?
- Will the federal government have input in the formation of regions (i.e. will it certify referendum results, or make determinations as to the governorate(s)' capacity to carry out the powers commensurate with the status of a region)?
- What role will be outlined for the Federal Supreme Court in the formation of regions (i.e. will it certify referendum results or issue determinations about the capacity of one or more governorates to carry out the commensurate powers of a region)?
- Will there be a limit on how many governorates can form one region?
- Will interested governorate(s) need to demonstrate their ability to carry out regional powers, functions, and duties?
- Will regions be formed based on existing governorate/provincial borders, or those that may arise due to a new census or redistricting?
- Will the formation of regions be based purely on the positive results of a referendum, or also on geographical/territorial considerations, ethnic or sectarian considerations, or a determination as to the capacity of the proposing governorate(s) to carry out the commensurate functions of a region?
- Will regions, once formed, assume all powers affirmed for regions in the Constitution, or will there be a gradual assumption of powers?
- What will be the powers of governorates organized as part of a region versus those that are not organized as part of a region (compare Article 115 to Articles 122 and 123)?
- How will the power of the regions and governorates relate to the local administrative rights of the various nationalities as provided for in Article 126?

- What tax powers will the respective governments possess?
- Would a Shiite or Sunni region have the same level of autonomy as Kurdistan, and hence exercise the same powers as the Kurdistan region?
- How will national revenues be distributed and how is this distribution affected by the formation of new regions?
- Who will manage oil revenues – particularly in non-“current fields,” and how will this management be affected by the formation of new regions?
- What will be the structure, membership and powers of the two public commissions identified in Articles 105 and 106?

The negotiations on the Formation of the Regions will be accomplished through informal discussions between and among interested parties and alliances, the carrying out of issue-specific small group meetings, and participation of delegates in plenary sessions. Participants will be randomly assigned to an interest group. The parties to this negotiation are the United Iraqi Alliance (Shiite), Iraqi Accordance Front (Sunni), Kurdistan Coalition List, Iraqi Turkmen Front, and the Iraqi National List (Secular). The United States and United Nations will both serve as observers and facilitators.

Each group will be given at least two periods in which they can meet solely with their members (see schedule attached at the end of this packet). Additionally, delegates will be provided time to dialogue with potential allies, as well as “opponents,” in small issue-specific group meetings. In an effort to replicate true negotiation practice, participants will also be encouraged to seek out more informal discussions with other delegates throughout the day (in the hallways, over coffee, etc.). At the end of the negotiations, all delegates will participate in a plenary session. The ultimate goal of the negotiations is to faithfully represent the parties involved in Iraqi politics and develop effective strategies for those parties to implement. Based on the results of the simulation, PILPG will issue a report on the lessons learned from the negotiation that will highlight, as appropriate, successful strategies and approaches to the formation of regions.



PILPG Iraq Simulation January 31, 2006

The Formation of Regions: Background

One of the first tasks for the newly constituted Iraq Council of Representatives is to define the relationship between the national government and the regions and governorates. During the negotiations on the draft constitution in summer 2005, the major interest groups of Iraq vigorously debated the structure of the state. The Kurds sought to consolidate their autonomy in the North, while many Shiites negotiated to protect the development of a Shiite region in the South. The Sunnis however tried to limit the formation of regions to maintain national cohesion and prevent economic isolation. The Constitution resulting from these negotiations broadly sketches a federal Iraqi state but leaves many issues to be resolved. The procedure by which regions will be created remains to be clarified. Perhaps three of the biggest issues to be settled are how competencies will be shared between the federal, regional, governorate and other local governments; how national wealth (including oil revenues) will be managed and equitably distributed; and what role will be played by the public commission on the rights of regions and governorates that are not organized into regions, as well as the public commission related to the auditing and appropriating of federal revenues. Each party and interest group in Iraq has specific positions on these matters. These positions will likely permeate the pending round of negotiations on the procedures and mechanisms for forming a region.

Mechanism for Establishing Regions

The formation of regions was one of the contentious issues during the negotiations of the permanent Iraq Constitution. The Kurds wished to retain the autonomy in the North that they gained over the past 15 years. Many Shiites wanted the option of an autonomous region in the South, while Sunnis desired to protect national cohesion and their fair share of the natural resource wealth by limiting the number of regions and/or the governorates that can form a region,

guarding against the broad regional powers, and ensuring the strength of the central government.

The approved Iraqi Constitution approbates Kurdistan as a region, and allows the creation of new regions. One or more governorates may propose a referendum on a region by a request of either one-third of the council members of each governorate intending to form a region or one-tenth of the voters in each governorate intending to form a region. Article 118 of the Constitution requires the Council of Representatives, by a simple majority, to pass a law within the first six months of its session that details the procedures to create regions.

One of the goals of this simulation is to outline the major issues for the law on the formation of regions, and reach agreement among the parties if possible. Among these important issues are the requirements for voting in the referenda provided for in Article 119 of the Constitution and the role of the Council of Representatives and the Federal Supreme Court in the conduct of these elections and in general the various procedures for the formation of regions.

The Constitution allows voters and council members from governorates to request a referendum on the formation of a new region. The Constitution does not state whether participation in the referendum is limited to citizens of the affected governorates, or is open to the entire nation. National participation would likely strengthen the cohesion of the nation and central government, but may foster resentment in areas seeking certain autonomy.

The Constitution does not require it, but the Council of Representatives might grant the federal government oversight on the referenda. Possible activities include execution of the referenda by the Independent Electoral Commission of Iraq and certification of the region by the Council of Representatives. Such national involvement in the governorates and regions may generate opposition in some of these areas but could provide consistency in the referenda.

The Federal Supreme Court might also have a role in referenda and the formation of regions. The Federal Supreme Court might be called upon to rule on the results of a referendum on a region in a manner similar to the Court's jurisdiction over Council of Representative membership disputes. Additionally, if the formation of a region requires a demonstration of capacity by the regions, the Council of Representatives or the Federal Supreme Court may be involved in the determination of this capacity. The Federal Supreme Court will likely also have a continuing role in the adjudication of competencies between the federal

government, regions, governorates not organized in regions, and other local authorities.

Distribution of Powers and Resources

Perhaps one of the most important issues in the formation of regions is the division of competencies between the federal government, the regions, governorates (organized and not organized into regions), and local authorities. As a federal state, the national and regional governments share lawmaking authority. The Constitution enumerates certain powers as the sole or shared domain of the federal government. The Constitution identifies the exclusive authorities of the federal government in Article 110:

- First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing and ratifying debt policies and formulating foreign sovereign economic and trade policy;
- Second: Formulating and executing national security policy, including establishing and managing armed forces to secure the protection, and to guarantee the security of Iraq's borders and to defend Iraq;
- Third: Formulating fiscal and customs policy, issuing currency, regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy, and establishing and administering a central bank;
- Fourth: Regulating standards, weights and measures;
- Fifth: Regulating issues of citizenship, naturalization, residency and the right to apply for political asylum;
- Sixth: Regulating the policies of broadcast frequencies and mail;
- Seventh: To draw up the general and investment budget bill;
- Eighth: Plan policies relating to water sources from outside Iraq, and guarantee the rate of water flow to Iraq and its fair distribution inside Iraq in accordance with international laws and conventions;
- Ninth: General population statistics and census.

These listed powers are classic areas of federal power. Some, however, have described these powers as too limited. Notably, there is no *express* power of taxation affirmed for the central government or the regions or governorates.

Additionally, the Constitution charges the federal government with managing oil and gas production from “current” fields in cooperation with the producing region or governorate governments. The revenue must then be distributed in a demographically fair and equitable manner as specifically provided for in Article 112 and as read consistently with Article 121(3) (providing that all regions and governorates will receive national revenue distributions sufficient to discharge their respective responsibilities and duties).

The Constitution lists in Article 114 the competencies shared by the federal government and regional authorities:

- First: To manage customs in coordination with the governments of the regions and governorates that are not organized in a region, and this shall be regulated by a law;
- Second: To regulate the main sources of electric energy and its distribution;
- Third: To formulate environmental policy to ensure the protection of the environment from pollution and to preserve its cleanness in cooperation with the regions and governorates that are not organized in a region;
- Fourth: To formulate the development and general planning policies;
- Fifth: To formulate public health policy in cooperation with the regions and governorates that are not organized in a region;
- Sixth: To formulate the public educational and instructional policy in consultation with the regions and governorates that are not organized in a region;
- Seventh: To formulate and regulate the internal water resources policy in a way that guarantees their just distribution, and this shall be regulated by law.

Though the above listed powers are concurrently assigned to the federal and regional authorities, in Article 115 the Constitution provides that all powers not stipulated as exclusive authorities of the federal government shall be powers of the regions *and* the governorates that are not organized in a region. Moreover, Article 121(2) recognizes the executive, legislative and judicial authority of the regions in all areas not within the exclusive power of the federal government and provides that where a federal and regional law are in conflict, the region may “amend the application” of the former. It is likely that in the context of the negotiations surrounding the formation of new regions, these articles and the powers they

confer will need to be clarified and also reconciled with the powers of the “governorates that are not incorporated in a region” as provided for in Articles 122 and 123 (which appear less comprehensive than those described in 115) as well as those powers affirmed for national minorities in Article 125.

Additionally, the Constitution does not expressly assign control over new oil and gas fields to the federal or regional government. Given the provisions described above, this has prompted some to infer regional control over all new production and exploration. Disputes have already occurred over the interpretation of this clause. In early December 2005, the Kurdish regional government announced that drilling had commenced in the Tawke well in the governorate of Dohuk under a production sharing agreement signed with a Norwegian company in 2004.¹ The drilling prompted Sunni criticism that it is not in the interest of all Iraqis. Hence, clarification of the division of authority over oil resources between the federal, regional, and governorate governments must still be decided and will likely become a critical issue in the debates over the formation of new regions

It also remains to be seen how the federal and regional governments will assert control in additional areas – everything from taxation to the protection and enforcement of human rights and fundamental freedoms. For instance, the powers to enact general taxes are not explicitly granted to any government by the Constitution, yet are important to the functioning of the federal state.

The federal government’s ability to raise revenue under its enumerated powers could also be interpreted as limited. Though the government may collect revenue through its authority over customs and existing oil fields, it lacks explicit authority for general taxes. It is unclear if such authority would arise under another general power such as the federal government’s authority to formulate fiscal policy, regulate commercial policy, (Art. 110(3)) or draw up a national budget (Art. 110(7)). Depending on the profitability of existing oil fields, general taxes may be necessary to support the armed forces and enable the central government to carry out its essential functions and services.

There has also been considerable debate as to the concurrent and exclusive powers of the various governments to enact laws, procedures and enforcement measures necessary to respect and protect the rights of women, minorities and all Iraqis. Questions have arisen as to the level of diversity that the Constitution permits with respect to the laws enacted from one region or governorate to another.

¹ Steve Negus, “Alarm as Iraqi Kurds Drill for Oil,” Financial Times UK, Dec. 2, 2005.

Questions have further arisen as to the federal government's authority to ensure certain consistency of law and application throughout the state with respect to human rights and fundamental freedoms.

Both of these issues will likely manifest in the ongoing dispute over the powers of the central government and the regional and governorate governments. One of the goals of this simulation might be to reach agreements on needed clarifications and appropriate divisions of powers between the federal government, regions, governorates and other local authorities.

When it comes to the distribution of powers among authorities, the positions of the major parties in Iraq have not substantially changed since the summer of 2005. The Kurds seek strong regional power and limited central authority. Several influential Shiite leaders wish to create a large Shiite region with significant autonomy over everyday affairs and control over oil resources. The Sunnis continue to fear the division of Iraq into regions. They desire a strong central government and assurances that the formation of regions will not result in their deprivation of revenue from natural resource exploitation. One possibility that has been put forth is asymmetrical federalism. In such an arrangement, Kurdistan would maintain its autonomy, but new regions would have fewer powers. The arrangement would be appealing to Kurds, and possibly Sunnis, but may be opposed by a number of Shiites. Other proposals have included, but are not limited to: placing a limitation on the number of governorates that can form a region; affirming that one single governorate (i.e. a single Sunni governorate) can assume all the powers affirmed for regions in the Constitution; or clarifying a process whereby governorates or newly formed regions would assume powers over time, rather than automatically -- perhaps by a demonstration of their capacity to carry out the commensurate duties and responsibilities of a region.

Public Commissions

The Iraq Constitution creates a number of independent commissions to work alongside government on specific issues. Relevant to negotiations on the regions and governorates are the Public Commission on Regions and Governorates not Organized in Regions and the Public Commission to Audit and Appropriate Federal Revenue.

The Iraq Constitution provides in Article 105 for a public commission to represent the interests of the regions and governorates that are not organized in a region. The commission will be composed of representatives of the federal

government, regions and governorates that are not organized in a region. The mission of the Commission is to guarantee the rights of the regions and governorate that are not organized in a region in fair participation in managing the various state federal institutions, missions, fellowships, delegations, and regional and international conferences. This directive is broad and leaves room for clarification in an enabling law.

The Constitution does not make clear the powers of the Public Commission on Regions and Governorates not Organized in Regions. The task of “guarantee[ing] the rights of regions and governorates not organized in a region” might entail a veto on government actions that are not in the interests of the regions and governorates. Alternatively, the Commission might only be advisory and provide input on the interests of the regions and governorates. Additionally, the mission of representing the regions and governorates at the national level could be complemented by a program of support to governments at the regional and governorate level.

The Constitution requires that members in the Commission include representatives of the federal government, regions and governorates not organized in a region. Responsibility for election or appointment of these representatives remains to be decided. Possibilities include ex officio membership for executive officials in each region or governorate, appointment power to the highest officials or assemblies in the regions, and popular involvement through elections. The Public Commission on Regions and Governorates not Organized in Regions is listed in the section of the Constitution on independent commissions, so inclusion of members who do not hold public office may be what was intended or at a minimum, most desirable.

The structure of the Public Commission on Regions and Governorates not Organized in Regions must also be decided. Similar commissions or associations in other nations use a two-tiered system that includes a secretariat to carry out general activity, and a general assembly that is charged with decision-making and establishing the overall policy and direction of the body. A secretariat would give the Commission more resources and ability to advise the regions and governorates if that is part of the role of the Commission.

The same decisions to be made regarding the Public Commission on Regions and Governorates not Organized in Regions must be made regarding the Public Commission to Audit and Appropriate Federal Revenues. This commission represents the interests of the regions and all governorates in the distribution of

federal revenue. Article 103 lists membership as “experts from the federal government, the regions, the governorates and its representatives.” The Commission is given responsibility to:

- First: Verify the fair distribution of grants, aid and international loans pursuant to the entitlement of the regions and governorates that are not organized in a region.
- Second: Verify the ideal use and division of the federal financial resources.
- Third: Guarantee transparency and justice in appropriating funds to the governments of the regions and governorates that are not organized in a region in accordance with the established percentages.

The structure of this body, the method of selection and terms of members, and the powers to carry out the duties enumerated in the Constitution are not defined. The Commission may be a powerful advocate for the regions and governorates as they seek their share of federal revenue from oil and other resources. It is important to the regions and governorates that the nature of the Commission and its powers are structured to represent their interests.

For the reasons stated above, the composition and mandate of the Public Commission on Regions and Governorates not Organized in Regions, as well as the Public Commission to Audit and Appropriate Federal Revenues, may become the subject of debate in the negotiations related to the formation of regions.