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IRAQ: NEGOTIATING AN EQUITABLE ALLOCATION OF OIL RESOURCES

Briefing Packet for the Iraqi Kurd Delegation

Negotiation Simulation

Prepared by

Yoonie Kim & Jared McKee

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Introduction

As the new Iraqi Interim Government begins exercising its sovereignty, the question of oil resource ownership and allocation of revenue to be derived from oil poses a potentially divisive question for Iraq. Few issues will have a more significant impact on the future of Iraq as the issue of oil.[1] For decades, the Iraq Petroleum Company, a consortium of international oil companies that included ExxonMobil, British Petroleum, Shell and TotalFinaElf controlled Iraq's oil industry until 1972, when the oil industry became nationalized. Thus, any reversion to foreign control, or the appearance of foreign control under the U.S.-led military intervention, will likely be a major issue of contention and popular opposition in Iraq.

Currently, the Iraqi oil industry is under the control of the Ministry of Oil, which oversees North Oil and South Oil, the two major state companies, as well as other agencies in charge of exploration, extraction, pipelines and other oil-related activities.[2] An initial, substantial debate is underway currently over the control of oil production, concessions, royalties and revenues generated by its sale.

The distribution of oil in Iraq presents several issues concerning the development of the Iraqi oil industry. The two primary issues are 1) the ownership of and right to extract Iraq's oil resources and 2) the formula for allocation of the revenues collected from the sale of oil. Other secondary issues—ownership and operation of the downstream oil sector (oil extraction and refining infrastructure), involvement of foreign companies, and mechanisms to ensure accountability and transparency—are to a large extent likely to be shaped by the resolution of the issue of ownership.

The Transitional Administrative Law (TAL) preliminarily addresses the two primary issues. The TAL vests ownership of Iraq's natural resources in "the people of all regions and governorates of Iraq," and grants the Transitional Government the authority to "distribute the revenue resulting from their sale through the national budget in an equitable manner."[3] Questions of oil ownership and allocation of revenue are almost certain to become contentious issues in future negotiations over the Iraqi oil sector.

The purpose of this negotiation simulation is to raise key issues and potential solutions, which are likely to arise during negotiations over Iraq's oil, to the points of impasse. It is important to note that the objective of the simulation is not to reach consensus on the precise structure and operation of the oil industry. Rather, this negotiation simulation is designed to stimulate debate, surface points of impasse and identify potential solutions. The negotiation simulation has been developed using the methodology employed by the U.S. Department of

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1 Prior to the 2003 war, oil comprised roughly 95percent of Iraq's foreign exchange earnings. *See* CIA Fact Book *available at* http://www.cia.gov/cia/publications/factbook/geos/iz.html.

2 In March 2003, Halliburton Corporation, a U.S.-based engineering company, was awarded a contract by the U.S. Army Corps of Engineers to handle emergency repairs to the Iraqi oil industry. In addition, Halliburton's subsidiary, Kellogg Brown and Root, was awarded a contract over Iraq's downstream oil sector.

3 IRAQ CONST. (Transitional Administrative Law, 2004) art. 25(E).

State's National Foreign Affairs Training Institute which runs similar negotiations to train U.S. diplomats prior to negotiations.

This simulation exercise is not intended to be a comprehensive review of all the issues involved, nor is it intended to endorse one view over the other. The participants in the simulation naturally will have varying levels of substantive or area expertise, as well as professional commitment to the issue. Participants are therefore encouraged to draw upon their individual experiences as they deem appropriate. The background information and delegation instructions are provided to serve as a guideline and not necessarily to be adhered to rigidly.

To provide the necessary information to conduct this simulation, this briefing packet presents a brief background on the nature and allocation of Iraq's oil resources, identifies the main parties to the debate and their principal interests, and provides negotiating instructions for your delegation. The participants have been divided into four delegations: Shi'a, Sunni, Kurd, and Turkomen. Additionally, one delegation has been designated to serve as a facilitator: the United States Embassy. The simulation will proceed along a structured agenda, which is provided in the annex.

The negotiation simulation has been prepared on behalf of the Public International Law & Policy Group in cooperation with American University, and is made possible by a grant from the Plowshares Fund (http://www.plowshares.org). The Public International Law & Policy Group (PILPG) is a 501(c)(3) non-profit organization, which operates as a global *pro bono* law firm providing free legal assistance to developing states and states in transition involved in conflicts. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution. To date, PILPG has advised over a dozen countries on the legal aspects of peace negotiations and constitution drafting, and over fifteen countries in Europe, Asia and Africa concerning the protection of human rights, self-determination, and the prosecution of war crimes.

Background

Despite years of war and disruption, the future of the Iraqi oil industry has potential. Indeed, Iraq is currently estimated to hold 115 billion barrels of proven oil reserves, which is more than any other country except Canada and Saudi Arabia.[4] Of these oil reserves, 75 billion barrels have yet to be developed. This figure, however, does not include numerous undiscovered oil fields, especially in the Western part of the country, which could boost Iraq's oil reserves by as much as 45 to 100 billion barrels more.[5]

The bulk of known oil reserves are clustered in northern and southern Iraq. The northern oil reserves are mainly in the Kirkuk oil field, near the northern city of Kirkuk. This field has an estimated 8.7 billion barrels of remaining reserves. Other northern oil fields include the Bai Hassan, Jambus, Khabbaz, Ajil and Ain Zalah-Butmah-Safaia oil fields. The southern oil fields are headquartered in the Rumalia oil field, which is located near the southern city of Basra. The Rumalia field is itself divided into a northern and southern field, with the southern field alone containing 663 wells and three separate streams of oil. Other significant southern oil fields include Az Zubayr, Nahr 'Umar, both near Basra, and Majnun, near the Iranian border. Finally, another major Iraqi oil field located in central Iraq is the East Baghdad field. This field, located east of Baghdad as the name suggests, is estimated to contain 11 billion barrels of oil.[6]

The location of oil fields in many ways mirrors the location of Iraq's three main ethnic/religious groups. The southern portion of Iraq is heavily population by the Shi'a Arabs, who comprise approximately 60–65 percent of the national Iraqi population. The Shi'a Arabs are heavily concentrated from the Persian Gulf and the Kuwaiti border up north to the Central Iraqi cities of Karbala and Najaf, along the Euphrates River.[7] Thus, demographically, the Shi'a dominate the areas surrounding the Rumalia oil fields.

In central and western Iraq the Sunni Arabs constitute the majority. The Sunnis are especially populous in the "Sunni Triangle" region which encompasses the area between Baghdad, Mosul and Ar Rutbah.[8] Although the Sunnis only constitute between 15-20 percent of the Iraqi population, they have traditionally dominated the Iraqi political and military structures. In terms of oil resources, the Iraqi East Baghdad oil field is the only major oil field located in a Sunni-dominated region even though the Sunnis do not constitute an actual majority in the multi-cultural city of Baghdad itself.

The mountainous northern region of Iraq is dominated by Iraq's most resistant minority, the Kurds. The Kurds, who account for approximately 20 percent of the Iraqi population, are especially prominent in the oil-rich Kirkuk area, which the Kurds consider to be the heart of their

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4 *See* United States Department of Energy Brief (March 2004) *available at* http://www.eia.doe.gov/emeu/cabs/iraq.html.

5 *See id.* Estimates are based on the more conservative analysis of the U.S. Geological Survey and the more liberal analysis of the Baker Institute, Center for Global Energy Studies and Federation of American Scientists.

6 *Id.*

7 *See* Helen Chapin Metz, Iraq: A Country Study 82 (Helen Chapin Metz ed., Federal Research Division Library of Congress 1989).

8 *Id.* at 95-96

traditional homeland.[9] Under the regime of Saddam Hussein, however, thousands of Kurds were expelled form the Kirkuk area to be replaced by more loyal Arabic populations. Similarly, the Turkomen constitute a large part of the Kirkuk population and they claim to be the majority. As a result, the current situation in the Kirkuk region is tense and has led some Iraqis to fear that a civil war may break out for control over the northern oil fields.

The Parties

For the purpose of this exercise, the parties to the constitutional negotiation are the Iraqi Shi'as, Iraqi Sunnis, Iraqi Kurds and Iraqi Turkomen. The United States Embassy will serve as the facilitator to the negotiation. A brief synopsis for each of the relevant parties follows, noting their most prominent objectives regarding Iraqi oil policy.

Shi'as

The Iraqi Shi'a population is heavily concentrated in southern Iraq although Baghdad also has a substantial Shi'a population. While ethnically related to the Sunni Arab population in central Iraq, the Shi'a Arabs differ from the Sunni Arabs in their interpretation of Islam. This difference has led to a great deal of tension between the Shi'as and Sunnis in Iraq and throughout the Muslim world. Although the Shi'a constitute an actual majority of the Iraqi population—by some estimates as high as 65 percent—they have historically exercised limited political power and played a subordinate role to the Sunni Arab population of central Iraq. Accordingly, the Shi'a view the formation of a new government as an opportunity for them to gain more political and economic power, especially over the ownership and distribution of oil resources in the country.

Generally, the Shi'a seek a unified Iraq and have a vested interest in preserving the country's territorial integrity. The Shi'a also feel that a unified Iraq could allow the Shi'a to become a strong regional voice in the Middle East. Thus, any break-up of Iraq could prevent the Shi'a from accomplishing this goal.

Given their aspirations for the new Iraqi government, and their desire to create a strong regional Shi'a power, a large portion of Iraq's Shi'a population will likely endorse a centralized oil-policy that will enable the new national government to exercise substantial control over Iraq's oil resources, especially those who live in Najaf, Karbala and Baghdad. These Shi'a will likely reason that any ownership and distribution of oil revenue along strictly regional lines may severely restrict the new Iraqi government and impair the desire of the Shi'a political leadership to create a strong, unified Iraq. Also, a regional-oriented oil plan, while allocating the rich oil resources of southern Iraq to the Shi'a, may deprive them of any share of oil revenues from the East Baghdad or Kirkuk oil fields.

The Shi'a who live near the Rumalia oil fields in Basra and other southern Iraqi cities, however, will likely seek a regional-based oil policy which allows them to retain at least some

9 *See* David Wright, *Kirkuk Reclaimed: Kurds Take Back Their City, Culture and Stake in the Iraqi Oil Industry*, Kuerkuk Kurdistane *available at* http://www.kerkk-kurdistan.com/kerkukek.asp?ser=4&cep=9&nnimre=1954.

control over the oil in their region. Thus, it is likely that the Shi'a delegation may be split according to their desire to create a strong national government and the desire of the Shi'a in the south to benefit from local oilfields. The nationalistic Shi'a will seek to maintain a centralized oil policy that allows the new central government to control both the ownership of oil and distribution of oil revenues in Iraq while the southern Shi'a will advocate a regional-based oil policy.

Sunnis

While the Iraqi Sunni population accounts for only about 20 percent of the total Iraqi population, they have traditionally exerted disproportionate control over the Iraqi political, military and economic structure. Indeed, Saddam Hussein was a Sunni himself, and many of the leading Ba'ath party members hailed from the "Sunni Triangle" region of central Iraq. The Sunni Arabs are ethnically related to the Shi'a of the south but differ in their religious interpretation of Islam. This has created much conflict between Sunni-dominated central Iraq and the Shi'a-dominated south.

Even though not all Sunni Arabs were Ba'ath party members, the Sunnis are likely to fear retribution from other ethnic and religious groups and will skeptically greet all efforts to minimize their exercise of political power. The Sunnis are also likely to fear losing control over Iraqi oil fields or Iraqi oil policy, which Sunnis have historically dominated.

This issue is especially significant for Sunnis when considering the geographic location of the Sunni population. Heavily concentrated in central and western Iraq, where oil resources are minimal, the Sunni may lose control over the majority of Iraqi oil resources if any type of regional-based ownership oil policy is adopted. Similarly, if the government adopts a regional-based formula to distribute oil revenues, the Sunni may receive very little of the revenue since the majority of Iraqi oil reserves are located in the northern and southern portions of the country. Such a policy may be too difficult for many Sunnis to accept, especially considering the political power that they already risk losing in the formation of a democratic Iraq.

It is important to note that while the Sunnis have traditionally exerted a nationalistic approach, the Sunnis are by no means monolithic. Many Sunni Arabs, especially from outside Baghdad, give high priority to the devolution of powers and guarantees based on tribal or regional affiliation in the executive, parliamentary, ministerial and judicial systems. It is possible that such elements of the Sunni population may seek a more regional-oriented oil policy, but this will likely only be true to the extent that they own or control oil resources.

On the whole, it is likely that the Sunni Arabs will seek to minimize their loss of control over oil resources in the new Iraqi government by endorsing a centralized oil policy. At the minimum, they will likely seek an oil policy that grants the new government national ownership of oil and the power to collect and distribute oil revenue. They will likely resist any regionally-oriented oil policy since this could potentially eliminate any benefits that the Sunni Arabs could receive from the oil-rich Kirkuk and Rumalia oil fields.

Kurds

The Kurds comprise approximately 20 percent of the Iraqi population. They are heavily concentrated in the mountainous regions of northern Iraq where they constitute the majority. While most Kurds adhere to Sunni Islam, they differ from both the Sunni and Shi'a Arabs in ethnicity, constituting the largest non-Arab minority in Iraq. The Kurds also speak a different language than the Iraqi Arabs. Kurdish is an Indo-European language and does not originate from the Semitic or Turkic language groups.[10] Historically, these differences caused almost constant tension between the Kurds and the Arab-dominated central Iraqi government.

Prior to and during Saddam's regime, the Kurds were a persecuted minority in Iraq. Saddam Hussein even resorted to chemical warfare to quell Kurdish separatists.[11] Due to their limited representation in the Iraqi government, the Kurds, like the Shi'a, exerted limited control over either the ownership or distribution of revenue from the northern based Kirkuk oil fields, despite the fact that Kurds traditionally constituted a majority of the population in the oil-rich Kirkuk area. One of the goals of Saddam's regime was to alter the demographics of the region by resettling thousands of regime-friendly Arabs in Kirkuk. As a result, many Kurds were forced from their homes as the Arab populations moved in.[12]

One of the primary objectives of the Kurds is to maintain control over Kirkuk and other oil fields located in northern Iraq and allocate the revenue from these oil fields for the benefit of the Kurdish population. Contingent with this goal, the Kurds will likely seek a regional-based oil policy. A regional-based oil policy will allow the Kurds the type of autonomy they seek from what will likely be another Arab-dominated central government in Baghdad. While the Kurds remain open to negotiation regarding ownership and allocation of oil resources in Iraq, their ultimate objective is to maintain control over the oil-rich region of Kirkuk and to distribute oil resources for the benefit of the local Kurdish population. Accordingly, the Kurds will likely resist any centralized government oil plan which infringes on their autonomy and will instead seek a regional-oriented oil policy, which allows the Kurds the greatest control over northern Iraqi oil.

Turkomen

The Turkomen are the third largest ethnic group in Iraq and by some estimates account for as much as 2% of the Iraqi population.[20] They reside mostly in northeastern Iraq, in the border region between the Kurds and Arabs.[20] The Turkomen were brought to Iraq by the Ottoman Empire to help prevent tribal raids.[20] They claim that they are the majority population

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10 *See* Metz, *supra*, at 84.
11 *See Anfal Ethnic Cleansing Campaign Against Kurds*, 1988, BBC, July 1, 2004 *available at* http://news.bbc.co.uk/2/hi/middle_east/3320293.stm.
12 *See* Wright, *supra*, *available at* http://www.krg.org/docs/articles/nytimes-kirkuk-ethnics-struggle-sep03.asp.
[0]20 *See* Metz, *supra*, at 85. *See also Turkomen Quit Kirkuk City Council, supra, available at* http://home.cogeco.ca/~kurdistan2/28-3-04-Turkomen-quit-city-council.html (stating that some Turkomen dispute this figure, claiming to constitute as much as 13% of the Iraqi population, or 3 million people).
[0]21 *See* Metz, *supra*, at 85.
[0]22 *Id.*

of Kirkuk.[20] Although the Turkomen are very populous in this area, a new census is needed to determine whether the Turkomen or the Kurds constitute the majority population in this oil-rich city of about 700,000. The last census of Kirkuk was conducted in 1997 by the Ba'thist regime. However, this census is highly unreliable since the Ba'thist regime greatly manipulated census figures.[24] Similarly, since the end of the second gulf war, thousands of Kurds and Turkomen have moved back to Kirkuk while thousands of Arabs have moved away from Kirkuk. One analyst estimates that as many as 50,000 Arab families have been displaced from the Kirkuk governate while as many as 30,000-40,000 Kurds have returned to Kirkuk since the end of the war.[20]

The Turkomen not only claim to be the majority population of Kirkuk, they also claim to have founded the city.[20] Many Turkomen are greatly alarmed by the sharp rise in the Kurdish population, and worry that the Kurds are attempting to incorporate Kirkuk into the autonomous Kurdish region.[20] Since the Turkomen consider themselves the founders and ancestral inhabitants of Kirkuk, they believe that any attempt to incorporate Kirkuk into an autonomous Kurdish region or to grant control of the city to Kurds would be a gross injustice. Similarly, the Turkomen believe that they should both own and control the oil resources of the region.

It is likely that the Turkomen will advocate a regional or even localized (e.g. metropolitan Kirkuk) oil policy which grants ownership and control of the Kirkuk oilfields to the local Turkomen population of Kirkuk if they can establish that they are the majority population of Kirkuk. Such a policy would allow the Turkomen the greatest control over the oil resources of the region. If the Turkomen cannot demonstrate that they constitute the majority population in Kirkuk, and cannot gain control of the regional or municipal government, it is likely that they will seek a national-oriented or shared oil policy. Since the Turkomen greatly distrust the Kurds, they would likely have more confidence in an equitable oil policy originating in an Arab dominated government in Baghdad then a Kurdish-dominated regional government centered in Kirkuk.

United States Embassy (Facilitator)

In all likelihood the facilitator to the oil industry negotiations will be the United States Embassy. More than any other coalition power assisting in the rebuilding of Iraq, the United States has the most at stake in the successful transition of Iraq to a stable, prosperous democracy. Indeed, the United States has more troops in Iraq than any other foreign power. The primary American goal in Iraq is to create a stable, peaceful democracy, which is not a threat to its neighbors and in which all Iraqis can peacefully co-exist. One of the main objectives of the U.S. Embassy is the creation of an oil policy that allows for equalized ownership and distribution of oil revenue throughout Iraq for the benefit of all Iraqis. The U.S. Embassy can also assist the

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[0]23 *See* Nicolas Blanford, *Ethnic Divide Deepens in New Iraq*, Christian Science Monitor, March 8, 2004 *available at* http://www.csmonitor.com/2004/0308/p01s04-woiq.html.
[0]25 Based on figures reported by Amatzia Baram.
[0]26 *See Kirkuk is the Nexus of an Ethnic and Political Struggle,* Global IDP, February 2004, *available at* http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/93A93B90D7BD75CCC1256E3D0056668E.
[0]27 *See Turkomen Quit Kirkuk City Council*, *supra*, *available at* http://home.cogeco.ca/~kurdistan2/28-3-04-Turkomen-quit-city-council.html.

negotiations by providing technical assistance and serving as a liaison between the various Iraqi groups. The United States may also suggest methods for ownership or distribution of oil in Iraq.

Identification of Issues for the Equitable Distribution of Oil

For the purposes of this simulation, the following issues will be considered in negotiating a new oil policy for Iraq:

- Ownership of oil resources: national, regional or shared ownership
- Formulas for distribution of oil revenue
- Utility of creating specialized oil funds

Ownership of Oil Resources

Generally, oil-producing countries utilize three methods of oil ownership: national ownership, regional ownership and shared ownership. Additionally, localized ownership of resources, while not common, is a form of ownership which may be applicable to Iraq.

National Ownership. The vast majority of oil-producing countries maintain national ownership of their oil resources. This form of ownership establishes a country's oil resources as a national commodity and eliminates any regional ownership. Generally, national ownership is constitutionally protected, as in the cases of Russia, Norway, Venezuela, Indonesia and the majority of Middle Eastern and African (MEA) oil-producing countries. Of the fourteen MEA[13] oil-producing countries, thirteen exert complete state ownership.[14] Additionally, in the MEA states, only the constitutions of Egypt, Libya and Qatar do not contain provisions designating national ownership of oil. Even in these three countries oil resources are owned by the sovereign.

Oil-producing countries that employ national ownership over their oil resources are characterized commonly by highly centralized governments. Most of the Gulf States are monarchies; other Middle Eastern oil-producing countries are highly centralized (e.g., Egypt, Iran). A significant number of the non-Gulf States are represented by a republican form of government, yet often these governments are weak democracies (e.g., Indonesia, Russia, Venezuela), non-democratic (e.g., Chad), de facto military dictatorships (e.g., Libya), or marked by civil unrest (e.g., Angola).

Although a system of national ownership seems likely to reduce the potential for regional, sectarian or ethnic conflict over oil resources, this may not necessarily be true. Sovereign ownership may potentially create friction between central and regional/provincial governments over revenue, geographic boundaries and/or regional wealth disparities.

Regional Ownership. Very few oil-producing countries vest ownership of oil resources in regional or provincial governments. Regional ownership of oil resources is usually found in federal states and seems to be most compatible with decentralized governments. The most cited examples of regional ownership are the U.S./Alaska and United Arab Emirates approaches.

13 For the purposes of this memorandum, the MEA oil-producing countries include: Algeria, Angola, Chad, Egypt, Iran, Kuwait, Libya, Nigeria, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates and Yemen.
14 The United Arab Emirates is the only MEA country that does not provide for national ownership of its oil resources.

The U.S./Alaska approach, though providing for regional ownership of oil resources, claims some unique features. In the United States, federal government ownership of oil resources is not constitutionally enshrined. Rather, each state maintains ownership over oil resources within its territorial boundaries. Specifically, the State of Alaska owns the oil resources within its land unless provided otherwise.

In the U.S./Alaska approach, the right to drill for oil belongs to the owners of the land being drilled and they may lease that right. While Alaska asserts ownership to oil within its territory, a unique provision in the Alaskan Constitution grants ownership to any individual or entity that extracts the oil out of the ground.[15] This concept is known in American jurisprudence as the "right to capture."[16] Thus, in the U.S./Alaska approach, oil resources may be owned by the government of Alaska, the U.S. federal government, and private individuals and corporations. Attendant to ownership of oil resources is the requirement to pay fees, rents, royalties or other requirements as may be prescribed by Alaskan law.

The United Arab Emirates (UAE) is a federation of seven emirates, with political power concentrated in Abu Dhabi, which controls the vast majority of the UAE's economic and resource wealth.[17] Under the UAE's constitution, each emirate owns its oil resources and controls oil production and development. Thus, each emirate maintains a high degree of regional autonomy from the central government.

Several advantages exist to implementing regional ownership of oil resources. First, it is well-suited to a federal state structure since it fulfills the goal of enabling regional entities to maintain a high level of autonomy from the central government. Second, regional ownership may spur private development if regional entities decide to adopt an oil policy that allows private entities to obtain ownership rights in a particular region. One disadvantage to regional ownership is that it tends to generate conflict between oil-rich and non-oil producing regions of a country.

Shared Ownership. A few states use a system of shared national and regional ownership of oil resources. The prime example of shared ownership is the Canadian approach.

In Canada, the federal and provincial governments both exercise constitutional powers in energy development, transportation, marking, and use regarding oil and natural resources. Each province owns and administers oil within its borders, whereas the federal government owns and administers oil resources on Canada's frontier lands (north and offshore).[18] More specifically, the provinces retain responsibility over oil exploration and production within provincial boundaries.

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15 ALASKA CONST. art. 8, § 11 (stating that "discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State").
16 The right to capture, which accompanies land ownership, permits an owner of land to bring fugitive resources such as oil and gas to the surface, where they can be sold as personal property, regardless of whether the oil or gas was actually underneath the property where the drilling takes place.
17 Abu Dhabi is by far the biggest oil producer in the UAE, controlling more than 85% of the UAE's total output capacity and over 90% of its crude oil reserves. Dubai is the next largest, with 4% of the UAE's crude oil reserves.
18 Some provincial governments dispute this, and in the offshore area of Nova Scotia and Newfoundland, the question of ownership has been set aside and the oil and gas industry is jointly managed. In both these areas, an independent offshore petroleum board regulates oil and gas exploration, development and production for both federal and provincial governments; mirror legislation and regulation are enacted both federally and provincially.

The federal powers in petroleum are primarily associated with inter-provincial and international oil transportation and marketing.

Russia exercises national ownership over its oil and mineral resources, however, the central government in Moscow has worked out special arrangements with certain resource-rich republics, e.g., Bashkorstan and Tatarstan. Article 72 of the 1993 Russian Constitution allows the execution of bilateral treaties between the central government and subnational entities on power-sharing.[19] For example, in 1994, the republic of Tatarstan brokered a treaty with the central government in Moscow, where Tatarstan gave up claim to sovereignty and accepted Russia's taxing authority in exchange for Russia accepting Tatarstan's ownership and control over oil and other natural resources, as well as Tatarstan's right to sign economic agreements with other sovereign nations.

The advantage to shared ownership is that it allows regional entities to maintain direct control over substantial portions of their own oil wealth while allowing the central government to regulate the interchange and exchange of oil both interregionally and internationally. As a result, regional oil administrators are directly accountable to the citizens of their respective regions as opposed to the central government.

A shared ownership approach may provide a compromise between those who seek a regional system of ownership and those who seek a national system of ownership. The primary disadvantage is that it is often difficult to decide how to divide ownership of oil resources between the national government and regional entities to the satisfaction of all parties involved. Shared ownership thus tends to work best in countries, such as Canada, where oil is not the primary source of national income.

Localized Ownership. Localized ownership of oil resources vests ownership of oil resources in highly localized governmental entities, such as a municipality. This system of ownership is favored by municipalities or other minute regions which are located near large oil reserves. In Iraq, this system of ownership will most likely be favored by the inhabitants of Kirkuk, in northern Iraq, and the inhabitants of southern Iraqi cities which are located near the Rumalia oil fields.

The advantage of this system of ownership is that it enables local entities to hold regional oil resources in trust for the benefit of the local population. This system also satisfies Iraqis who believe that oil should be used to benefit those who live closest to it.

The disadvantage of this ownership system is that it is highly divisive. Not only would granting ownership of oil resources to local entities such as municipalities alienate those Iraqi's living in non-oil rich regions of the country, but also it would alienate Iraqis living in non-oil rich areas of a particular region. In northern Iraq, for example, granting ownership of the Kirkuk oil fields to the municipality of Kirkuk would not only alienate the Sunnis of central Iraq, but also the Kurds and Turkomen who do not live in Kirkuk.

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19 The Russian Federation is comprised of eighty-nine subnational jurisdictions (republics, territories, regions, federal cities, the autonomous region and autonomous areas), including twenty-one ethnic enclaves with the status of republics, ten autonomous regions, six territories and forty-nine provinces.

Formulas for Allocation of Oil Revenue

The next question facing any oil-producing country is how to use its oil wealth. One of the most pressing issues in post-conflict Iraq is the allocation of the country's oil revenues.

The TAL addresses this issue by granting the Transitional Government the authority to distribute oil revenue through the national budget, proportional to the distribution of population throughout the country. The TAL does not entertain an allocation system based solely on regional concerns. However, the TAL does state that oil revenue allocation will be made "with due regard for areas that were unjustly deprived of these revenues" by Saddam's regime or whether the region requires revenue for development.

Oil-producing countries have implemented numerous formulas for allocation of oil revenue. Some apply the same formula to share oil revenue as used for other budgetary distributions, while others favor the derivation principle, whereby each subnational government's share is related to the oil revenue originating in its territory. Still others follow different criteria such as population, needs or tax capacity.[20] The approaches used by these countries do not readily fall into discrete categories, nor is there a systematized method of addressing the issue of revenue allocation. The following section surveys several approaches to oil revenue allocation employed by various oil-producing countries.

Saudi Arabia. In Saudi Arabia, as well as the other oil-producing Gulf monarchies, the ruling family directly controls the allocation of oil revenue. For example, the Saudi government provides free health services and subsidized housing, which is financed through its oil revenue. Oil revenues have enabled the government to provide its citizens with infrastructural and social services. However, a vast majority of the expenditures have been concentrated in a few metropolitan cities, predisposing these areas to more rapid economic growth.

The Saudi Arabia approach vests discretion in the central government over how oil revenue is to be allocated. No clear set formula for allocation of oil revenue can be distilled in Saudi Arabia. This approach to allocation provides no guarantees for equitable distribution, and appears to be problematic in countries lacking sufficient transparency and accountability standards.

Chad. In 1998, the World Bank began the Petroleum Development and Pipeline Project to develop and export Chad's oil resources in an attempt to improve its development prospects and to generate additional revenue to finance poverty alleviation expenditures. As a prerequisite for the project, Chad adopted the Petroleum Revenues Management Law (PRML) in 1999, outlining the government's planned allocation of the oil revenues. Under the PRML, the government is obligated to utilize 80% of the oil revenues on its "priority sectors" (education, health, social services, environment and infrastructure development), however, there are no fixed allocations for the various sectors.

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20 Ehtisham Ahmad and Eric Mottu, *Oil Revenue Assignments: Country Experiences and Issues*, 203 INT'L MONETARY FUND WORKING PAPER (2002).

The remaining 20 percent is portioned accordingly: 5 percent is reserved for the oil-producing region of Doba, 10 percent is allocated to an escrow account for future generations, and 5 percent is left to the government's discretion.

United Arab Emirates. The approach the United Arab Emirates utilizes allows each emirate to collect its oil revenue and maintain control over its allocation. Nonetheless, each emirate is required to devote a certain percentage of its oil revenue to the UAE central government. The UAE is the only country that fully decentralizes allocation of oil revenue and has an upward revenue-sharing arrangement. Regional allocation of oil revenue with a contribution to the central government seems to work well for the UAE, without noticeable tensions among the seven emirates.

Sudan. Under the peace agreement between the Sudanese Government and the Sudanese People's Liberation Movement/Army (SPLM/A), revenue is allocated to three separate entities. According to the agreement, oil revenue will first be channeled into a national Oil Stabilization Account. After this payment is made into the Oil Stabilization Account, at least 2% of the oil revenue will be allocated to the oil producing region, in proportion to the output produced in that region. Finally, the remaining oil revenue will be divided equally between the Government of Southern Sudan (GOSS) and the national government in northern Sudan. Thus, a sizeable portion of the oil revenue is allocated to regional entities.

Distribution is overseen by the National Petroleum Commission (NPC) among other responsibilities. The NPC is comprised of the President of Sudan and the President of the GOSS as permanent co-chairs and eight permanent members, four each from the national government and the GOSS. A maximum of three representatives of an oil-producing region in which oil production is being considered are also admitted as non-permanent members.

Canada. The Canadian approach is complex: ownership and control over natural resources is provincial, and thus, each province collects and allocates its oil revenues in a manner it sees fit. The Canadian federal government, however, does possess the ability to levy taxes and regulate certain aspects of each province's oil industry through its other powers, i.e., control over foreign investment. While oil revenue is strongly concentrated in a few provinces, on aggregate, oil revenues account for less than 5% of the total revenue of subnational governments. The decentralization of oil revenue has contributed to disparities in fiscal capacity among the provinces, but the federal government has taken this into consideration by not providing any equalizing grants to the relatively rich, oil-producing provinces.

Creation of Specialized Oil Funds

Managing oil revenue well is much the same as managing any budget well, but, the following issues are more important for oil-producing countries: how much to save for future generations, how to achieve economic stability in the face of uncertain and widely vacillating oil prices and avoid "boom-bust" cycles, and how to ensure that spending is of high quality, whether in the form of large investment projects, public consumption, or subsidies.

A fairly new mechanism for oil revenue allocation and management has been to create oil funds. The creation of oil funds has become particularly attractive in the wake of past high and volatile oil prices and new discoveries. Some objectives of oil funds have been to combat commodity price volatility, currency appreciation or volatility, inflation, and political and economic dependency on oil revenues. Other objectives have included a desire to pay for social and economic development needs, provide financial resources for future generations, and provide an incentive for prudent financial management by putting revenue away for later use.

Canvassing oil-producing countries that have established an oil fund, the funds can be classified into two basic categories: 1) stabilization funds and 2) intergenerational funds. (*See* Table 2 for a list of countries with oil funds).

Stabilization Fund. A stabilization fund reserves a percentage of income for national financial reserves and national emergencies. Such funds may be used to stabilize a country's economy during particularly volatile periods. Stabilization funds have also been used to spur development in non-oil sectors of a country's economy.

The Government Petroleum Fund of Norway, established in 1990, acts as a financial buffer to smooth short-term variations in oil revenues and as a mechanism to cope with the long-term challenge of funding government expenditures when oil resources are exhausted. The primary income sources for the fund are from central government cash flows from petroleum activity and returns on invested capital. Money from the fund is solely intended for transfers to the Norwegian government's fiscal budget, upon approval from the Norwegian Parliament; the fund is managed by the Norwegian Central Bank according to Ministry of Finance guidelines.

Kazakhstan created a stabilization fund in August 2000, which aims to reduce the economy's susceptibility to unfavorable external factors. The National Fund of Kazakhstan acts to ensure stable social and economic development of the country. Proceeds from oil royalties and the sale of oil as well as other mineral assets capitalize the fund. Fund activity requires annual approval by Parliament, and the Management Council formed by the President, Prime Minister, and members of Parliament provides oversight. Furthermore, an annual independent audit is conducted on the fund.

Iran created the Foreign Exchange Reserve Account in 1999 to reduce budget reliance on oil revenues and to ensure the sustainability and preservation of national wealth. The Iranian stabilization fund aims to build up a reserve to balance future downturns in oil prices and to support Iran's industrial sector and non-oil exports. The Reserve Account is managed by the Central Bank of Iran.

Stabilization funds often accrue revenue not just from oil sales, but also from royalties, pipeline fees, rental fees, bonus payments and interest income. In the case of Kazakhstan, a transfer of 10% of baseline oil revenues finances the fund's savings portfolio, but the fund also receives large privatization receipts and bonus payments from other activity within the petroleum sector.

One disadvantage of stabilization funds is that the government may treat them as slush funds. For example, in Azerbaijan, the government recently used part of the governmental oil fund to finance commercial pipeline development, although the fund was set aside specifically to benefit the non-oil sectors.

Intergenerational Fund. An intergenerational fund saves a share of oil income for future generations. The purpose of such funds is to ensure that future generations reap benefits from prior oil production.

Alaska is the most often cited example of an oil-producing region that has established a successful intergenerational fund. The primary goal of the Alaska Permanent Fund is to conserve a portion of the state's oil revenue (as well as other mineral resources) to benefit all generations of Alaskans. A secondary goal of the fund is to serve as a savings account for other appropriations by the Alaskan state legislature. The fund accrues revenue from oil and mineral lease rentals, royalties, special legislative appropriations, and an annual transfer of fund income to protect the principle against inflation.

Revenue from the fund is only distributed for two purposes: 1) annual dividend payment and 2) "inflation proofing."[22] The principle of the fund remains to benefit future generations, while cash dividends on the principle are paid out annually to all Alaskan residents.[23] The Alaskan Permanent Fund is managed by the Alaska Permanent Fund Corporation and oversight is provided by a Board of Trustees, the Alaskan state legislature and the public.

Under World Bank guidelines, Chad has also established an intergenerational fund. The Revenue Management Plan reserves 10% of oil revenues in a trust fund for the benefit of future generations. The funds are held in an offshore escrow account, audited by the World Bank.

Kuwait has also established a successful intergenerational fund. The Kuwaiti Reserve Fund for Future Generations, established in 1976, receives an annual allocation equivalent to 10% of the government revenue. The Fund is managed by the state-run Kuwait Investment Authority.

The greatest challenge with any intergenerational fund is ensuring that the fund is preserved for future generations, particularly during a financial crisis or other significant emergency. Recently, for example, there has been pressure on the Alaskan legislature to open up its intergenerational fund to deal with the budgetary crisis gripping the state government.

As the use of oil funds is a relatively new mechanism for revenue allocation and management, some key issues to scrutinize are who manages, who audits, and who administers disbursements. Some fundamental factors in the success of oil funds are establishing clear goals

22 **Inflation proofing** is the annual transfer (by legislative appropriation) of a portion of Fund income to principal to protect the value of the principal from inflation. Over time, US $7.9 billion has come into the principal through inflation-proofing.

23 Approximately 50% of the fund income is used for the annual dividend payments, while the rest is saved. In 2003, the cash dividend paid out to each Alaskan resident was US $1108. From 1982 through 2003, the Fund has paid out $12.5 billion in Fund income as dividends to qualified Alaskans.

on the objectives of the funds, transparency of operations, and fund management rules that guarantee accountability.

NEGOTIATION INSTRUCTIONS
IRAQI KURD DELEGATION

(Only for Iraqi Kurd Delegation)

In a recent letter to President George Bush, Masoud Barzani, leader of the Kurdish Democratic Party and Jalal Talabani, leader of the Patriotic Union of Kurdistan wrote "[t]he people of Kurdistan will no longer accept second class citizenship in Iraq."[24] While your delegation is willing to compromise with the larger Arab populations of Iraq, your ultimate goal is to retain as much autonomy as possible for the Kurdish homeland. In fact, since the end of the first Gulf War, Kurds have exercised a near-independent level of autonomy and quasi-democratic state institutions thanks to the American established no-fly-zone over northern Iraq. Thus, your delegation will be unwilling to surrender any degree of autonomy. To maintain Kurdish autonomy, your delegation seeks an Iraqi government that is secular, pluralistic and federal.

Consistent with the goal of maintaining autonomy is the goal of exercising control over the northern Kirkuk oil-fields. Thus, your delegation favors a regional-oriented oil policy that allows the Kurds to maintain both ownership of the northern oil-fields and control over revenue distribution that come from these oil fields. Your delegation will resist any central-based oil policy as an infringement on Kurdish autonomy.

Ownership of Oil Resources

National Ownership. Your delegation opposes national ownership of oil resources, or a policy which grants ownership of all of Iraq's oil, including the northern oil fields, to the central government. Your delegation believes that such a policy unfairly infringes on the Kurd's right to control the natural resources in their own territory. Your delegation also believes that such a policy counters the Kurdish vision of a federal Iraq with several highly autonomous regions that exercise control over their own resources. Your delegation may also argue that placing ownership of all of Iraq's oil resources in national entities places too much power in the central government and may lead to corruption.

Regional Ownership. Accordingly, your delegation favors a regional ownership of oil policy which allows differing regions of Iraq to own their respective oil resources. This system would grant the Kurds the greatest degree of autonomy over the northern oil fields and allow them to formulate a policy of oil ownership that is best suited to Kurdistan. Your delegation also believes that such a system of ownership is perfectly suited to the Kurds vision of a federal Iraq and would help prevent corruption on the part of the national government by placing ownership of oil resources in the hands of various regions of the country. Finally, you may argue that it is only proper that those who inhabit the oil rich portions of the country should be able to control such oil-resources as opposed to distant bureaucrats in the far-off capital of Baghdad.

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24 *See* Masoud Barzani and Jalal Talabani, *Letter to President Bush*, June 1, 2004, *available at* http://www.krg.org/letter-from-barzani-talabani-to-bush-jun04.asp.

Shared Ownership: Your delegation opposes a system of shared ownership by which ownership of oil resources is split between the national government and regional entities, but prefers shared ownership to national ownership. Your delegation believes that Kurds should maintain ownership of all of the northern oil-fields and that a system of shared ownership would be an extremely contentious issue. In fact, your delegation believes that many Kurds may be angered to divide any of the northern oil-fields with the national government, which will likely be dominated by the Sunni and Shi'a Arabs, and may argue that such a system, while providing a compromise, may lead to continued ethnic strife in Iraq. Although your delegation opposes a system of shared ownership, it is willing to compromise with the national government by allowing the national government to maintain ownership over current Iraqi oilfields while granting Kurds ownership of any future oil fields.

Localized Ownership: The portion of your delegation from Kirkuk supports an ownership plan which vests ownership of oil resources in local governmental entities. This part of your delegation believes that granting localized control of the Kirkuk oil fields to a Kurd-dominated Kirkuk is the only way to ensure that local oil fields benefit local populations. However, the rest of your delegation opposes such a policy, believing that it would be extremely divisive and difficult to formulate. Localized ownership would not only alienate large portions of the Iraqi population, but also alienate large portions of the Kurdish population which do not live in Kirkuk. Such a policy would also frustrate plans to build Kurdistan into a strong regional entity.

Formulas for the Distribution of Oil Resources

Much like your stance on national ownership of oil resources, your delegation also opposes any centralized formula for the distribution of oil revenue, or distribution of all Iraqi oil revenue by the national government. Your delegation feels that Kirkuk is part of the traditional Kurdish homeland and that any resources there, including oil, should be used for the benefit of the Kurdish people. Your delegation rejects the idea that you should share your resources with the rest of Iraq simply because almost a hundred years previous the British decided to associate your region with southern and central portions of the Ottoman Empire to create Iraq in the first place. Similarly, your delegation believes that centralized distribution of oil revenue may lead to corruption on the part of the national government, as it has in the past.

Accordingly, your delegation believes that a decentralized formula for the distribution of oil revenue, which grants the Kurdish regional entity the power to distribute oil revenue generated from the northern oil fields, is preferable to centralized distribution. Such a system enables those who live in oil rich regions to benefit the most from their own resources. Allowing the Kurds to distribute the oil revenue generated from the northern oil fields would allow them to utilize the funds for the greatest benefit of the Kurdish people since the local Kurdish government, as opposed to the national government, is more likely to know of the specific needs of the Kurdish population. Your delegation also believes that decentralized distribution of oil funds could also prevent corruption on the part of the national government. Your delegation may point out that a decentralized formula still benefits the Iraqi government and the Iraqi people since a portion of the oil revenue generated in Kurdistan could still be sent to the central government, similar to the formula maintained by the United Arab Emirates.

Creation of Specialized Oil Funds

Regarding the creation of specialized oil funds, your delegation is not opposed to the creation of such funds as long as they are utilized for the benefit of all Iraqis. Your delegation realizes that Kurds may benefit from a specialized stabilization fund that could help protect the economy during times of economic crisis or turmoil. Similarly, intergenerational funds may be beneficial for future generations of Iraqis as long as they are practicable given Iraq's already numerous oil reserves. Your delegation may also support the creation of specialized oil funds to spur economic development or provide social benefits to the Iraqi people. However, your delegation will want to ensure that such funds receive proper government or even international oversight so that they are not misused to fund military projects or other non-designated projects, as has often occurred in the past.

ANNEX I AGENDA

9:00–9:20 AM	Coffee and doughnuts available for participants
9:20–9:30 AM	Introduction and review of simulation schedule and procedures (Room 503)
9:30–9:50 AM	Individual delegation meetings to review positions
9:50–10:10 AM	Round 1 – Shi'a Delegation and Sunni Delegation Kurd Delegation and Turkoman Delegation
10:10–10:30 AM	Round 2 – Shi'a Delegation and Turkoman Delegation Sunni Delegation and Kurd Delegation
10:30–11:00 AM	Coffee Break/Shuttle Diplomacy/Individual Delegation Meetings
11:00–11:20 PM	Round 3 – Shi'a Delegation and Kurd Delegation Sunni Delegation and Turkoman Delegation
11:20–12:00 PM	Plenary Session
12:00–12:30 PM	Review and Lessons Learned

ANNEX II   MAPS OF IRAQ

Source: http://www.cia.gov/cia/publications/factbook/geos/iz.html

For Additional Maps:

Political Map:
http://www.lib.utexas.edu/maps/middle_east_and_asia/iraq_pol99.pdf

Shaded Relief Map:
http://www.lib.utexas.edu/maps/middle_east_and_asia/iraq_rel99.pdf

Administrative Division Map:
http://www.lib.utexas.edu/maps/atlas_middle_east/iraq_divisions.jpg

Distribution of Ethnoreligious Groups and Major Tribes Map:
http://www.lib.utexas.edu/maps/middle_east_and_asia/iraq_ethno_2003.pdf

Population Density Map:
http://www.lib.utexas.edu/maps/middle_east_and_asia/iraq_pop_2003.pdf

Land Use Map:
http://www.lib.utexas.edu/maps/middle_east_and_asia/iraq_land_use_2003.pdf

Oil Infrastructure Map:
http://www.lib.utexas.edu/maps/middle_east_and_asia/iraq_oil_2003.pdf

Annex III Tables

Below are two tables: Table 1 lays out questions of ownership, operation and the degree of privatization of the oil sector in oil-producing countries; Table 2 lists the existing oil funds.

Table 1. Ownership and Management of Oil-Producing Countries

Region	Ownership	Operating Framework	Privatization
Western Europe			
Norway	national	mix	no privatization
United Kingdom	shared	concession	priv. substantially complete
Central/E. Europe			
Kazakhstan	national	joint venture/PSA	priv. underway
Russia	national/shared	mix	priv. underway
Turkmenistan	national	joint venture/PSA	no privatization
Africa/Middle East			
Algeria	national	mix	no privatization
Angola	national	mix	no privatization
Kuwait	national	mix	no privatization
Nigeria	national	mix	no privatization
Oman	national	mix	no privatization
Qatar	national	mix	no privatization
Saudi Arabia	national	mix	no privatization
UAE	regional	mix	no privatization
Yemen	national	PSA/concession	no privatization
Asia			
Australia	shared	mix	always private
China	national	PSA	no privatization
India	national	PSA	priv. underway
Indonesia	national	PSA	no privatization
South America			
Argentina	regional	concession	priv. substantially complete
Brazil	national	joint venture	no privatization
Columbia	national	joint venture	no privatization
Venezuela	national	joint venture/PSA	no privatization
North America			
Canada	shared	concession	priv. substantially complete
Mexico	national	service agreement	no privatization
United States	regional	concession	always private

Source: Adapted from *The Benefits and Deficiencies of Energy Sector Liberalisation*, World Energy Council, *at* http://www.worldenergy.org/wec-geis/publications/default/online.asp (1998).

Table 2. Oil Funds

Name	Country	Inception Date	Size
General Reserve Fund	Kuwait	1960	Approx. USD $65bn
General Stabilization Fund	Papua New Guinea	1974	N/A
Alaska Permanent Reserve Fund	United States	1976	Approx. USD $27.4bn
Alberta Heritage Savings Trust Fund	Canada	1976	Approx. CAD $12bn
State General Reserve Fund	Oman	1980	Approx. USD $2bn
Government Petroleum Fund	Norway	1990	Approx. NOK $625bn (USD $82bn)
Nunavut Trust	Government of Nunavut (Canada)	1990	Approx. CAD $475m
State Oil Fund	Azerbaijan	1999	Approx. USD $538m
Revenue Management Fund	Chad	1999	Not yet funded
Foreign Exchange Reserve Account	Iran	1999	Approx. USD $1.2bn
Investment Fund for Macroeconomic Stabilization	Venezuela	1999	Approx. USD $3.7bn
National Fund	Kazakhstan	2000	Approx. USD $1.2bn
Oil Stabilization Fund	Sudan	2004	Not yet funded

Source: Eric D.K. Melby, *A Global Overview of Oil Funds*, INTERGOVERNMENTAL AUTHORITY ON DEVELOPMENT SYMPOSIUM (2002) *at* http://www.csis.org/africa/0208_SudanMelby.pdf (last visited Apr. 12, 2004).

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The Public International Law & Policy Group (PILPG) is a 501(c)(3) organization, which operates as a global *pro bono* law firm providing free legal assistance to developing states and sub-state entities involved in conflicts. PILPG also provides policy formulation advice and training on matters related to conflict resolution.

PILPG has advised over a dozen countries on the legal aspects of peace negotiations and constitution drafting, and over fifteen countries in Europe, Asia and Africa concerning fundamental questions of public international law and foreign relations. PILPG has also advised four international criminal tribunals.

The four primary practice areas of PILPG are:

- **Peacebuilding**
- **International Justice**
- **Post-Conflict Political Development**
- **Public International Law**

As a *pro bono* law firm, PILPG relies almost exclusively on volunteer legal assistance from more than sixty legal advisors and former diplomats, as well as major international law firms. On average PILPG is able to provide over $1.5 million worth of *pro bono* services annually.

PILPG provides legal assistance to a large number of clients without a physical infrastructure or any full time paid staff, and is thereby able to commit over 95 percent of its resources directly to project activities. Frequently, PILPG sends members in-country to facilitate the provision of legal assistance, and its members often serve on the delegations of its clients during peace negotiations.

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