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**The Iraqi election “bait and switch”:
Faulty poll will not bring peace or
US withdrawal**

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1. Introduction

President Bush was correct when he asserted on 2 December 2004 that it was “time for the Iraqi citizens to go to the polls.”¹ Indeed, it is long past time. Elections should have occurred a year or so after the fall of the Hussein regime. But the fact that they are overdue does not mean that an adequate foundation for meaningfully democratic elections has been laid. It has not. Unfortunately, the balloting due to take place on 30 January will not fulfill the promise of democracy nor satisfy the Iraqi passion for self-determination. For these reasons, it cannot bring peace. It is more likely to exacerbate civil strife.

Much attention has been focused on the problem of Sunni participation in the election, and rightly so. The election is supposed to figure centrally in the process of uniting the Iraqi nation and formulating its constitution. It is supposed to serve and embody a process of consensus building. But the abstention of any substantial part of the Sunni (or any other) Iraqi community – *for any reason* – undoes this central purpose and indicates that the necessary pre-conditions for the election have not been established. To proceed regardless of this fact is to revise the primary reason for conducting elections. And, indeed, the discourse on the election has shifted to place greater emphasis on its role as a weapon in the war of will and propaganda with Iraq’s insurgents. Thus, delay is called tantamount to defeat. This raises the question of what comes first in deciding the policy on elections: the requirements of democracy or those of counter-insurgency?

1.1. Bait and Switch

The problems with the Iraqi election process do not end with the Sunni community. Relevant to all of Iraq’s communities, the process as currently designed is little more than a “bait and switch” ploy.

The “bait” is the promise that by casting ballots Iraqis can reclaim their government and their sovereignty. With regard to governance, opinion polls have made clear what most Iraqis would like to see happen straight away. The polls leave no doubt that a majority (1) have lost confidence in the foreign-appointed Interim Government and (2) now want a quick end to the US military occupation and to the overbearing American influence that it undergirds. To put the matter bluntly: they want the United States out and do not trust the governing authorities it has put in place. Few sentiments unite Sunni and Shiite Arab majorities as well as these two. And these expressed sentiments can serve as a touchstone or litmus test for how well the elections fulfill their democratic promise. (See *Addendum 1: Iraqi attitudes on the coalition, occupation, force withdrawal, and appointed Iraqi governments.*)

Regardless of the balance of opinion among Iraqis – which is increasingly anti-occupation – the election will probably lead to a reassertion of something resembling the current status quo. This constitutes the “switch”: Most Iraqis will go to the polls expecting to achieve one thing while actually legitimizing a different outcome. The advantages conveyed to select candidates and parties by the US mission will prove to be a pivotal input in deciding Iraq’s future.

Certainly, the new national assembly will have a more Shiite complexion than the bodies that preceded it -- as is preferred by a majority of Iraqis. However, the government this assembly finally produces – that is, the Presidency Council, the Prime Minister, and the “power ministries” – will harken back to previous governing arrangements. The new executive bodies will prominently involve many of the same expatriate leaders and parties that the United States has advanced since it took control of Iraq. And, of course, the US occupation will not end. Indeed, no firm, near-term withdrawal date will be set. Most likely, the new government will link withdrawal loosely to the seating of a *permanent government* – a year or more in the future. But any “withdrawal schedule” that does not require that preparations for withdrawal get underway soon can only be regarded as tenuous or prospective.

One need not hypothesize a sudden and radical change of heart among the Iraqi electorate to foresee these outcomes. As explained below, they are determined by (1) structural features of the electoral process itself, (2) the circumstances in which the election is occurring, and (3) the broader balance of power in Iraq, which remains a country occupied by an actively partisan foreign power.

In short: both the structure and context of the political process will likely frustrate the will of the people. The election as currently designed is not merely "flawed." It is part of a counterfeit process that will impede the development of a truly sovereign and stable Iraq.

For the Sunni community, in particular, the democratic promise of elections has already been negated. For them, not even the bait is savory. As explained below, the elections offer the Sunnis a Hobson's choice -- ie. no choice at all: either participate and (thereby) legitimize a process that does not offer a solid guarantee of adequate representation in parliament or do not participate and risk an even less appealing outcome: decisive Shiite control of the Iraqi state.

1.2. Democracy and legitimation

The election will succeed in one important respect: it will confer greater legitimacy on the Bush administration's project in Iraq. This will allow a more vigorous prosecution of the counter-insurgency war.

The legitimizing effect of the electoral exercise will rest on a simple misperception: *Balloting is the most conspicuous element of the democratic process and can be easily mistaken for the whole of it.* The world and the media will be enthralled when millions of Iraqis go to the polls on 30 January 2005 to cast votes in the country's first multiparty legislative election since 1953. Some Iraqi voters will have to fight their way, literally, to the ballot box; and some will be killed in the process. This mass expression of democratic passion will be proffered and broadly accepted -- at least outside Iraq -- as a realization of democracy's promise. But to judge the true worth of the event requires us to pay attention to a subtler issue: Will the balloting and the government it produces fairly represent the balance of interests and opinion in Iraqi society?

Inside Iraq, optimism will initially greet the election's conclusion, but it will soon sour. Outside Iraq, the gains for the Bush administration policy may be more lasting. Many of the state and institutional opponents of the war and occupation -- France, Germany, and the United Nations -- may see an opportunity to "honorably" make peace with the American project. As the US congressional assault on UN General Secretary Kofi Annan illustrates, Washington has kept the price of opposition uncomfortably high.² The balloting may also fundamentally reshape the media's perception of events in Iraq.

In brief: the election will be a triumph of international legitimation, if not one of democratic practice.

In the sections that follow we examine:

- First, those general features of the electoral process that will shape and limit the outcome of the 30 January ballot, regardless of the intentions of the electorate.
- Second, those factors that will (1) steer the new National Assembly back toward the *status quo* as it moves to select Iraq’s future executive body and top ministers and that will (2) thereafter constrain and channel the decision-making of the new government.
- Finally, we will review those features of the electoral process specifically relevant to the Sunni community that have led portions of it to reject or abstain from it.

2. Tilting the field of play

2.1. The fog of democracy

For all Iraqi communities, the immediate outcome of the 30 January ballot will be significantly shaped by two factors:

- *Utter confusion will cloud the voters’ choices.*³ Many Iraqi voters will not know who or what they are voting for. This, due to the structure of the voting process, the composition of the choices put before voters, and the utter inadequacy of the party development, voter education, and electoral campaign processes. There is no good excuse for any of these shortfalls -- especially after 22 months of occupation. Why the Bush administration and Iraqi authorities would countenance such a chaotic enterprise can only be understood in light of the second factor shaping the ballot outcome:
- *The expatriate parties favored by the United States will enter the election contest with overwhelming advantages in resources and organization.* This will give them an incomparable capacity to elevate their candidate lists above the chaos that will entangle their competitors.⁴ Some of the organizations and electoral coalitions led by expatriates have grassroots organizations, as do their competitors. But the expatriates’ additional, special advantages are due to the material and technical support of foreign powers – principally the United States – and to the expatriates’ position as national authorities for the past 18 months.

All Iraqis will choose among a startling 98 political entities on the national ballot. These include 9 coalitions, 64 parties, and 25 stand-alone individuals. These will be distinguished on the ballot by a number, symbol, slogan, and the name of either the coalition, party, or individual. All told, there are more than 7,000 candidates for the 275-seat assembly. Of course, the vast majority of candidate names will not appear on the ballot. Most of them have places on the coalition and party lists, which are not readily available to the public. Thus, few Iraqis will be aware of more than a handful of the candidates they are choosing among.

More critically, there has been insufficient time -- one month -- to meaningfully distinguish among the 98 separate lists or “entities” with regard to their programs and ideologies. There has been little effective debate to challenge the claims and self-presentation of the contending parties. Given such an over-crowded field, attaining even basic name recognition will be difficult for most of the contending entities. For inexperienced voters confronted with a ballot offering 98 choices, simply finding and accurately selecting the candidate list that they support may prove challenging.

To succeed, candidates must cut through the fog that binds this election – and do so quickly. Who will pull ahead of the pack? Those who already enjoy name recognition, media pull, and sizable field organizations to drum their symbols, slogans, and ballot numbers into the minds of prospective supporters.

2.2. The advantages of the favored expatriate parties

- *First among these are the powers of office and incumbency.* The expatriate leaders and groups appointed by the United States to interim posts or to influential positions in reconstruction projects have had 18 months to build name recognition, power bases inside ministries, and networks of influence throughout Iraq. Government leaders also enjoy unparalleled access to the media and can use their positions as government spokespersons to the benefit of their electoral campaign. Expatriates were also significantly over-represented on postwar commissions controlling the media, the elections, “de-Baathification, and the registration and oversight of political parties and candidates
- *Nearly as important as their positions of control are expatriates’ access to outside technical support and financing – both private and governmental.* Prior to the invasion, expatriate organizations received more than \$100 million in overt US government support.⁵ After the invasion they received lucrative government positions and compensation as intelligence assets and military allies. In addition, the US Agency for International Development (USAID) has granted \$30 million to the National Endowment for Democracy (NED) to provide development assistance to what Washington views as moderate parties.⁶ Finally, Washington’s favored parties have probably also received support from private US NGOs and Iraqi expatriate communities outside Iraq.
- *Expatriate parties will benefit uniquely from the decision to give immediate voting rights to all Iraqi expatriates living outside the country who can document that they were born in Iraq before 1986.* There are perhaps two million expatriates who fit these criteria and at least half of them are expected to vote in one of the 14 countries providing voting facilities. This voting pool not only constitutes the expatriate parties’ primary base, it is virtually their exclusive domain. Due to resource constraints indigenous parties will have little access to this vote pool, which could easily constitute 8-12 percent of the total. The Interim Government, which is dominated by expatriates, has set aside more than \$90 million to support the expatriate vote effort – about 30 percent as much as it will spend on domestic voting.⁷

- *Expatriate parties also benefit uniquely from the decision to treat the entire country as a single electoral district with votes being cast for party “lists” that are largely opaque. This removes any requirement that these parties find and field identifiable local candidates – that is, it ameliorates their most serious weakness: their lack of local roots. Moreover it requires that stand-alone local candidates compete for office against the best known of national figures (who top the big party lists), while making any type of debate between the two virtually impossible.*
- *Finally, the \$500 million US effort to build civil society organizations and local governance bodies – which are supposed to be non-partisan – has helped create a base of supporters and campaigners for the more secular of the expatriate parties.⁸*

2.3. The differential impact of poor security

The security situation also affects different parties differently. The likely result of poor security is not merely a suppressed turnout, but also one that is badly skewed.⁹ Apart from the issue of turnout, some parties will be better able than others to work around the limits imposed by poor security. Candidates who already hold government positions, for instance, have superior access to security services, which facilitate their movement.

Generally speaking, lack of security has impeded open campaigning, rendering the conduct of mass rallies and neighborhood mobilizations almost impossible.¹⁰ This makes other avenues of voter mobilization much more important. These alternative avenues include appeals from the pulpit, mobilization of party cadre, reliance on the mass media and telecommunications, and campaigning inside the corridors of government, security services, and other public institutions (including the civil society organizations established by the occupation). Thus, Prime Minister Allawi’s easy and frequent access to the media takes on added significance. Counterbalancing this -- in what might be described as a *contest between the media and the mosque* – is the support that religious parties receive from the pulpit.

Finally, election security varies geographically in ways that imposes differential burdens on the competing parties. Obviously, security is stronger in Shiite and Kurdish strongholds. The implications of this are explored below, in the sections on “The Sunni Problem”. But it is also worth noting that Iraqi voters living outside the country are not constrained by the country’s security woes.

Due to their accumulated advantages, the expatriate parties will be able to thoroughly dominate the 30 January election, much as they dominated the August 2004 Iraqi National Conference -- a putatively “grassroots” affair meant to counterbalance the interim government. (The National Conference experience provides a lens on the power and stratagems of the expatriate parties. Unfortunately, the

event escaped broad scrutiny. See *Addendum 2: A Forewarning -- The Iraqi National Conference, August 2004.*)

2.4. Expatriates triumphant

The Iraqi expatriate organizations – including Islamist ones – have enjoyed a symbiotic relationship with the US occupation. Their special prerogatives and quick rise to predominance over local rivals in post-Saddam Iraq are due to US largesse. In turn, the privileged Islamist organizations have helped mediate and contain Islamic opposition to the occupation – with the expectation that they will eventually break free of the coalition and attain true state power. Some tribal-based expatriate leaders, such as IGI interim president Ghazi Al-Yawar, occupy a similar position.

It is only among the secular-oriented expatriate groups that the United States could hope to find genuine supporters of its vision of a neo-liberal, free market state aligned with America and supporting its regional objectives. Relative to the Islamists, these groups have weak grassroots ties. This makes them more reliably dependent on the US coalition, but also less able to carry the country. An important objective of the United States during the interim period has been to develop the base and organizational strength of those secular groups that are amenable to US plans for regional transformation. This it has pursued through USAID and NED programs and by giving them positions in government, as noted above.

The association of the expatriate organizations with the occupation is double-edged – a source of influence and power, but also public disapprobation. However, while several parties have participated in one or another of the occupation governments, only one electoral list is broadly perceived as representing the current government: Ayad Allawi’s “Iraqi List”, which draws heavily on the Iraqi National Accord.

There are three other major electoral lists that are led by expatriates who served at one time or another as leaders in the occupation governments:

- The United Iraqi Alliance list (involving principals of SCIRI, Al-Dawa Party, and Ahmed Al-Chalabi’s Iraqi National Congress),
- The Iraqis Party (led by IGI interim president Ghazi Al-Yawar, a Sunni expatriate and tribal leader), and
- The Assembly of Independent Democrats, lead by Adnan Pachachi, former member of the IGC rotating presidency.

Other Iraqis – some expatriate and some not -- who have served in the US-appointed governments include leading candidates of the Kurdish Alliance list, the Iraqi Islamic Party, the People’s Union (Communist Party) list, the Iraqi National Movement and Civil Society Alliance list, the Patriotic and Democratic Party, and the Iraqi National Democratic Coalition.

Most of these have maintained greater distance from US policies than has Allawi, occasionally opposing them. Indeed, the Iraqi Islamic Party is boycotting the election and both Adnan Pachachi, leader of the

Assembly of Independent Democrats, and Naseer al-Chadarchi, leader of the Patriotic and Democratic Party, have spoken out against its timing. Nonetheless, the United States would probably find acceptable any government coalition incorporating these parties -- so long as the secularists are well represented (especially those aligned with Allawi).

It has been Bush administration policy to hedge its bets by lending support to an array of individuals and organizations that it considers "moderate" and "pragmatic". The measure of their pragmatism is their willingness to abide occupation for an indeterminate period -- ie. "for as long as it takes." Opposition, even obstreperous opposition, to discrete US policies is manageable, as long as it is peaceful and does not tip over into "rejections". Indeed, a governing coalition that incorporates *non-rejectionist* opposition voices has distinct benefits: it can absorb some of the dissent in Iraq society and will appear more independent of the United States (and, hence, more legitimate).

For several reasons (explored below), the administration believes that it can achieve its policy goals across a broad range of likely electoral outcomes. The key immediate questions for the administration are: Will the new governing coalition abide occupation? Who will be Prime Minister? And who will command the most important ministries: Defense, Interior, Foreign Affairs, Finance, and Oil.

2.5. Likely electoral outcomes and their significance

- The big winners of the 30 January ballot will be the three major expatriate alliances: The United Iraqi Alliance, Ayad Allawi's "Iraqi List", and the Kurdish alliance. Together, these three will gain more than 50 percent of the vote. Smaller expatriate led parties may garner another 10+ percent. The remainder will be scattered among the other 90+ political entities.
- The only significant uncertainties are overall turnout and how the votes will divide between the UIA and the "Iraqi List". (The UIA encompasses the most popular, Islamic expatriate parties. The second, Allawi's list, includes those groups and individuals who most enjoy the benefits of appointed incumbency and the other interventions listed above.) The UIA, while garnering more votes than any other list, will not win an absolute majority of seats. Allawi's list, which is preferred by the United States, will do better than expected, winning around 20 percent of the vote.
- The two large Shiite fundamentalist parties who lead the UIA -- al-Dawa and SCIRI -- will together directly control less than 30 percent of the Assembly seats. Once in the Assembly they may try to combine all Shiite fundamentalists, both inside and outside the UIA, into a bloc. This effort would include, for instance, Moqtada al-Sadr's stealth candidates, who are found both inside the UIA and in Fatah al-Sheik's Independent National Leaders list. But, taking this path also will not give the big Shiite parties a controlling majority in the Assembly -- and certainly not the two-thirds required to unilaterally select a government.

Close cooperation among the expatriate organizations at the core of the three big winning lists provides the best opportunity for controlling the Assembly. These organizations are the two Kurdish parties, Allawi's Iraqi National Accord, al-Dawa Party, and SCIRI (Supreme Council for Islamic Revolution in Iraq). They have a history of working together and they can count on fairly disciplined blocs of votes in the Assembly. However, in order to control a reliable two-thirds of the Assembly and build a government, they will have to reach out to other organizations -- and former partners are to be preferred over new ones. These might include "The Iraqis Party," led by IGI interim president Ghazi Al-Yawar; the "Assembly of Independent Democrats," led by Adnan Pachachi, former member of the IGC rotating presidency; and, Naseer al-Chadarchi's "Patriotic and Democratic Party."

The fate of Ahmed Al-Chalabi is uncertain. He and his Iraqi National Congress lead the Shiite Political Council which is part of the UIA list. By virtue of linking up with the Shiite Islamic parties, his Iraqi National Congress may gain firm control of 10 Assembly seats. But he is disliked by many of the members of the prospective coalition and has lost favor with the United States.

At any rate: former government and expatriate parties will emerge from the election with a commanding control of the National Assembly. The advance of the Shiites will not be as surprising as will be the perseverance of Allawi. And these outcomes may not sit well with either the Iraqi electorate or the more than 6,000 candidates who will lose their bids for election -- most of them losing quite badly.

2.6. An election bound to breed suspicion

The structural bias of the electoral system, as explained above, and the effects of poor security will give losing candidates and the Iraqi electorate reason enough to challenge the election result. Other circumstances may prompt an even more extreme reaction: feelings that the election was literally stolen. Several unusual features of the electoral process will feed such suspicions:

- The election is being conducted in extreme secrecy -- with polling places, ballot collection points, and many candidate names either unknown or not to be known until the final days of the campaign.¹¹
- Few, if any, independent foreign monitors will observe the election inside the country. By comparison 122 observed the Afghan election and 800 the Palestinian election.¹²
- There will be local observers but their numbers -- perhaps one or two for each of 5,000 polling places -- also will be far below the standards set in Afghanistan and in the Palestinian territories. Drawn from Iraqi organizations, few of the monitors can be considered truly neutral with regard to outcomes.
- Moreover, ballots will be counted over several days at each of the polling places, rather than at central locations. This means that, in order to achieve levels of monitoring comparable to the

Palestinian and Afghan cases, the number of monitors used in Iraq would have to be proportionately greater, not fewer, than the number used in those earlier elections.

Election sceptics will find further fuel for their suspicions in the revelation of CIA plans to covertly assist Washington’s favored candidates and parties. (Under pressure from some Democratic Party members of Congress, the White House agreed in October to scale back these efforts.)¹³

2.7. The road not taken: essential features of a democratic electoral process in Iraq

The 30 January election may succeed in enhancing the legitimacy of the Iraq occupation, but it will fail to accurately reflect the will of the Iraqi people, bring the country together, quiet dissent, or channel dissent along avenues of peaceful political compromise. All of this might have been accomplished had the original Coalition Provisional Authority structured the electoral process differently and had it addressed Sunni concerns more deftly. The problem of the Sunni insurgency and its effects are addressed below. As for the problems of structural bias in the election process: these could have been avoided had the CPA respected the following principles and imperatives:

Nonpartisan oversight: *All efforts to develop Iraqi civil society and prepare the country for elections should have been directed by a nonpartisan international agency, such as the United Nations, unaffiliated with any political tendencies inside Iraq. The election itself should have been directed by such an agency.* All funds meant to support Iraqi civil society, democratic transition, party development, and elections should have been channeled through such agencies. The aim of these measures would have been to limit the extent to which outside states might attempt to shape the Iraqi political order to correspond to their own narrow interests.

Adequate and inclusive party development: *The elections should have been preceded by an inclusive, non-partisan process of party differentiation and development lasting a year.* A sensible first-step would have been to hold a series of meetings over several months on the national and provincial level *open to all political tendencies* with the aim of clarifying differences and facilitating fusion among similar groups and individuals. Next, those groups, new or old, that could pass a membership threshold would have received resources and training to support the development of basic party infrastructures and capacities for communication, recruiting, and electoral campaigning. These measures might have reduced the number of contending parties to fewer than two dozen – a number adequate to capture the diversity of the Iraqi polity. As a result, Iraqi votes might have had the benefit of a coherent electoral opposition to the expatriate parties.

Level playing field -- no “favorite son” government appointments: *Iraqi groups and individual hoping to run for office in the first postwar election should have been barred from government positions for at least the six months preceding the election.* In other words: no candidate or party should have been granted the powers of incumbency by an outside agency.

Multi-district election and local representation: *Elections to the new parliament should have occurred on the basis of provincial or sub-provincial electoral districts (which already exist in Iraq), rather than a single nationwide district. Moreover, candidates should have been required to reside in the districts that they proposed to represent. This approach would have allowed voters to consider a manageable number of lists and candidates. It also would have made substantive local debate more likely. And it would have ensured that more of the choices before the voters were known to them. An additional benefit is that this approach would have allowed elections to be selectively postponed, should security conditions warrant. (Under this arrangement, the votes of Iraqis living outside the country would have been counted in their last place of official residence.)*

Adequate and equal campaign support: *During the election campaign itself, more substantial provisions should have been made to support local debates and forums as well as a higher baseline level of free media access for all campaigning parties.*

3. After the ballot: the limits of Iraqi freedom

3.1. Detour on the way to forming a government

Soon after being seated, the new National Assembly will turn to selecting a Presidency Council, Prime Minister, and a Council of Ministers. Much of the effective power of the new government will reside in these positions.

- The Prime Minister will carry day-to-day responsibility for running the government and will serve, for practical purposes, as commander-in-chief of the armed forces. The Prime Minister will also choose a National Security Advisor who will enjoy a five-year term.
- The Presidency Council will confirm the juridical system’s Presiding Judge, members of the Federal Supreme Court, and other judges and prosecutors on recommendation of the Higher Juridical Council.
- The Presidency Council will be able to veto legislation passed by the National Assembly, which can overturn this veto only by a two-thirds majority vote.
- The individual members of the Council of Ministers will direct government business in all the ministries. As a Council they also will appoint the Director-General of the Iraqi National Intelligence Service and officers of the Iraqi Armed Forces at the rank of general or above (subject to confirmation by the National Assembly).

The process by which the Presidency Council and government ministers will be selected is a complicated one. And its first and most important step -- selection of the Presidency Council -- is not fully articulated in the Transitional Administrative Law. This provides an opportunity for the adoption of *ad hoc*

procedures. There is also an opportunity here for outside actors to apply pressure. As a result, the already tenuous link between "the popular will" and national governance will be further attenuated.

- The first step in forming a national executive is the selection of a three-person Presidency Council, including a President of State and two deputies. The National Assembly is supposed to confirm the council by a two-thirds vote. But the slate itself will probably be put together in private by a coalition of the big parties. (A similar process was attempted during the August 2004 Iraqi National Conference when it turned to select an executive council.)
- Next, the Presidency Council will name a Prime Minister, who in turn will recommend a Council of Ministers. The Council of Ministers must then be ratified by the Presidency Council. Following this, the Council will be subject to a vote of confidence in the National Assembly (decided by simple majority).

The entire set of executive positions – the Presidency Council, the Prime Minister, and the Council of Ministers – will be subject to backroom negotiations among the big parties. The agreement on the Presidency Council probably will be part of a package deal encompassing all the top executive positions. Gaining confirmation of these choices by the entire National Assembly will depend on how well the leading organizations – most them expatriate – can discipline their members' voting behavior.

3.2. Factors weighing on the formation of a government

Certainly, leaders of the big parties will each try to advance their favorites when brokering the top government positions. But all are operating within a set of conditions and concerns that will weigh on their decisions.

- Both the Sunni Arab and Kurdish community fear domination by the Shiite community – especially Shiite fundamentalists;
- All Iraqi communities fear the possibility of civil war -- which seems to be increasing in likelihood -- and none feel secure against ethnic violence or insurgent forces;
- The Sunni and Shiite communities are also concerned about the prospect of the Kurdish communities seeking independence;

We can summarize these concerns in terms of four imperatives that will preoccupy overlapping subsets of Assembly members: keep the country together, contain the insurgency, prevent civil war, and prevent domination by any one community. In responding to these imperatives, the Assembly must take into consideration several overarching realities:

- No community, including the Shiite, feel confident in their capacity to control the others or to impose social order generally.

- Despite two years of “reconstruction”, Iraq’s state institutions remain fragile, its infrastructure and economy are weak, and neither the Iraqi military nor its police forces are capable of even minimally performing their functions unaided.
- The most powerful political institution in Iraq – indeed, the only truly powerful one – is the US mission: its resources, organizational capacity, and armed might far surpass those at the disposal of the Iraqi government or any of the expatriate parties.

Iraq’s seemingly intractable woes and divisions give America considerable leverage in dealing with Iraq’s new Assembly – as does America’s powerful position inside the country. These realities and the fact that the major Shiite Islamic parties probably will not control an effective majority, will push party leaders toward a compromise government that resembles the last one -- as the United States prefers -- but with Shiite religionists in more prominent roles.

- Although Abdul Aziz al-Hakim of SCIRI has his eyes on the post of Prime Minister, he is disfavored by both the United States and some prospective government coalition partners. More palatable choices from within the UIA cluster are Hussain al-Shahristani or even Ibrahim al-Ja'fari of al-Dawa.
- Ayad 'Allawi might be “elevated” to the Presidential Council, but a more likely move is downward and lateral to the post of Defense Minister, which could become as pivotal a position as the prime ministership.
- The Sunni representative on the Presidential Council might again be Ghazi Yawar or possibly Adnan Pachachi, depending on their relative electoral showing.

3.3. US military withdrawal: a moving goal post

Regardless of who comes to occupy Iraq’s executive positions, America’s key concern will be maintaining its own prerogatives in the country. Foremost, this means allowing the occupation to continue until “security is established”, or “until Iraqi security forces can stand on their own,” or “until a permanent government takes office”. All of these formulations, even the last one, are fairly open-ended.

The earliest date that a permanent government can take office is January 2006 – assuming that the transition government can compose a constitution that passes muster with the Iraqi electorate. If it cannot, then the election of a permanent government could be delayed six months, one year, or even longer. And, of course, once a permanent government takes power, it can choose to reverse the decision regarding US withdrawal. A year’s delay means a year to affect this outcome. In the meantime, a false “compromise” is possible: the Bush administration can agree to soon begin reducing its presence from the current 150,000+ soldiers – as it must do at any rate.

3.4. America's enduring influence

While the Bush administration obviously prefers some Iraqi electoral outcomes to others, the United States will be able to make its influence felt in the country regardless of who leads it. America's enduring influence in Iraq rests on the following building blocks:

- A military presence of 150,000 personnel which is deeply intertwined with Iraqi security and police forces, who are heavily dependent on it;
- A dedicated development fund for Iraq containing \$16 billion in undisbursed funds and a willingness to spend \$50 billion or more *per annum* on military operations in the country; and
- More than 40,000 US civilian government personnel and contract employees operating throughout Iraqi government and public institutions at every level.

The new Iraqi government could decide to terminate or cut back the US mission -- at great cost and with some difficulty. But America's influence is also felt through structures and laws put in place by the former Coalition Provisional Authority, for instance:

- The Transitional Administrative Law, which was drafted by the CPA, remains the law of the land. Amendments to this law require the support of a three-fourths majority of the Assembly as well as the unanimous support of the Presidential Council.
- The CPA has bequeathed to the transitional government a set of control commissions whose members were appointed to five-year terms by the CPA Administrator. They can be dismissed only for cause. Among these are the Office of the Inspector General, the Board of Supreme Audit, the Commission of Public Integrity, and the Iraqi Communications and Media Commission. (The Iraqi Communications and Media Commission has control of telecommunications and media contracts and licenses, and it has the power to enforce censorship laws).
- The CPA also has bequeathed to the new government hundreds of judges and prosecutors -- including many exiles -- vetted, trained, and appointed by the CPA. In addition, the CPA appointed a Council of Judges, which is a watch-dog body with sole power to nominate Iraq's judges and prosecutors.

Because Iraq remains under a UN mandate, these legal interventions are not so easily set aside. The Iraq judiciary, as rebuilt and stocked by the CPA, is more independent of the other branches of government than is the case even in the United States. Any effort by the Iraqi government to step outside the procedures established by the CPA could prompt a constitutional crisis and might put the new government in violation of the UN mandate. This could establish a rationale for outside intervention.

4. The Sunni problem

Sunni disaffection with the electoral process predates the recent violence. It is not merely a reaction to the insurgency, but also a stimulus to it. And the reason is not hard to discern:

The election process and governance structure defined by occupation authorities in June 2004 do not offer Sunni regions a guarantee of representation in government proportionate to their population share.

For Sunnis the most worrisome possibility is that the Shiite majority will gain decisive, intractable control of the Iraqi state, giving them a capacity to impose a dictatorship of the (slight) majority. Other minority groups share the Sunnis concerns, but only the Kurds and Sunnis constitute minorities large enough to threaten the integrity of the Iraqi state. And the Kurds have made a separate peace. Mitigating Kurdish concerns – for now – are several circumstances: (1) The Transitional Administrative Law guarantees the Kurds an autonomous region for the transition period, (2) Their regional structures, party organizations, and militias are the best organized in the nation, and (3) They enjoy the closest relationship with the United States.

4.1. Local power and single district elections

The Transitional Administrative Law has some provisions to assure power sharing among Iraq’s main ethnic groups, as explained below. But the TAL incorporates other measures that increase the risk of under-representation facing Iraq’s minority communities.

Especially disadvantageous is the decision to treat all Iraq as a single election district. This makes it quite possible that disproportionately few seats will go to parties or candidates based in Sunni areas, for instance. Unlike the practice in the United States (and most other democracies), the new arrangement in Iraq does not root assembly seats to geographic subdivisions of the country.¹⁴ (In Iraq, as in many countries, the distribution of ethnic groups varies geographically).

Theoretically, Iraq’s system of single-district proportional representation would allow minority groups to capture a share of Assembly seats proportionate to their share of the national population. *But this assumes that the rate of voter turnout among the nation’s regions and ethnic communities is equal.* If it is not – due to regional security problems, differences in voter mobilization capabilities, differences in access to voting places, or other factors – Sunni areas could find themselves severely under-represented in government. (Of course, the majority community would also face the possibility of under-representation, but its potential impact would be much less. While the majority group would risk the possible loss of majority control in the Assembly, minorities would risk seeing their power reduced to insignificance. It is much easier to live with one of these outcomes than with the other.)

It is important to understand that the dynamics of ethnic relations in Iraq involve the intersection of ethnicity and locality: there are ethnic regions. This makes the potential impact of under-representation

greater, while also making the reaction to it potentially more powerful. Ethnic regions can be left to sink into widespread privation and underdevelopment; they also can become impenetrable bastions of insurgency, fueled by a combination of localism and ethnic identity. The liberal democratic remedy to the alienation of such regions, at least in the realm of governance, is to guarantee a set level of local representation in government. This would require an electoral system based on multiple electoral districts, each with a set number of seats.

A system of representation *based on multiple geographic districts* would guarantee a minimum of representation for residents of each district (or “state” in the US context). Combined with a requirement that candidates reside in the districts they propose to represent, this would indirectly mitigate ethnic concerns by ensuring that all representation is locally based. Whether 100 percent of Sunnis turned out to vote or 10 percent, the number of Assembly representatives coming from Sunni areas would be the same. *This approach would not literally guarantee that only Sunnis won those seats, but it would greatly reduce the likelihood of Sunni under-representation.*

The principal provision in the TAL for preventing domination by any one of Iraq’s communities is the three-member Presidency Council, which must be confirmed by a two-thirds majority of the National Assembly. Although the “two-thirds rule” lowers the likelihood that a Presidency Council will be selected without significant Sunni support, it does not rule it out. And considerable power hangs in the balance. For Sunnis, the two-thirds rule is a slim reed – especially given that the single-district electoral system does not tie any set number of seats to Sunni areas. While comprising 20 percent of the population, the Sunni community could easily find itself with a lower percentage of Assembly seats. The worst case scenario for Sunnis – which is quite plausible – would combine two features: fewer than 20 percent of the Assembly seats in Sunni hands and a Presidency Council disliked by a strong majority of them.

4.2. The price of national unity

While the current arrangement fails to guarantee that Sunni areas will be represented in proportion to their share of the population, there are good reasons to argue that Sunni and Kurdish areas should have been offered parliamentary representation actually *exceeding* their population share. This approach to nation formation would resemble one adopted by the most successful democracy on earth: the United States.

Key to the creation and development of the United States was the decision to allot representation in ways that limited the population-based power of the bigger colonies (later, states). In a nation divided by regional interests and cultures, there was no other peaceful way to induce “the small” to form a union with “the large”.

Thus today, Rhode Island, with a population only 5 percent as large as that of Texas, has 12 percent as many electoral votes as Texas, 6 percent as much power in the House of Representatives, and equal power in the Senate. For small states, this type of arrangement constitutes a hedge against the

"dictatorship of the big". For all states, it can be viewed as the price of national unity. The hope is that a country's disparate parts, once brought together as a single nation, might through their daily intercourse evolve toward "a more perfect union." Such arrangements can seem anachronistic and even retrograde in countries that have achieved high levels of national integration -- but they remain relevant in situations characterized by deep division.

How might this insight have been applied to Iraq? While seventy percent of the nation's assembly seats might have been allocated to the provinces in proportion to their population, thirty percent might have been allotted equally among three regional clusters regardless of their populations: the Sunni-majority provinces, the Shiite majority provinces, and the Kurdish majority provinces. Within each cluster, the seats would then have been assigned to provinces in accord with relative population size. The effective result would have been an increase in the probable parliamentary power of the Sunni and Kurdish communities.

A system that offered minority areas greater than proportional representation would not have been unusual in the experience of post-conflict and transitional societies -- although in the case of Iraq it probably would have faced Shiite opposition. Still a modest adjustment along these lines might have been negotiable. At any rate, the CPA proved itself willing and able to impose other innovative and controversial measures, notably: the rule requiring that 25 percent of parliament members be women. As a result of this initiative, the Iraqi parliament will have a higher proportion of women than does the US Congress: 25 percent versus 15. This cutting-edge measure not only challenged the conventions of many tribalists and Islamic fundamentalists, it probably gave a distinct electoral advantage to secular parties. A similar degree of flexibility with regard to minority representation would have helped avert the present impasse.

4.3. De-Baathification, insurgency, and Sunni electoral participation

Among the factors that have fed the insurgency were the large-scale dismissal of civil servants at the beginning of the occupation, the demobilization of the Iraqi army and police, and the broad-brush practice of "de-Baathification".¹⁵ Some de-Baathification measures affect electoral participation and these probably have contributed to Sunni disaffection with the elections.¹⁶

The de-Baathification policy, promulgated in May 2003, initially banned all but the lowest level of party members from employment in the public sector (which is quite large in Iraq). It also banned all full members from the top three levels of management in all public institutions, including schools and hospitals.¹⁷ Notably, de-Baathification measures are proactive and do not require proof that the affected individuals have themselves committed any crime.

Although the restrictions can be relaxed on appeal, they apply to 50,000 or more people. Initially, nearly 30,000 lost their jobs. About half of these later received pensions or returned to work on appeal.¹⁸

The key provisions of de-Baathification involving the electoral process dictate that:

- Former members of the Baath Party above the lowest level are not allowed to run for Assembly seats, although exemptions are possible. This ruling affects between 15,000 and 30,000 individuals.¹⁹
- Former “full members” – a larger group – must sign a document of disavowal before becoming eligible to run for the Assembly and can lose their seat if a court establishes that they have any current “dealings or connection with Baath Party organizations”. (Insofar as the Baath Party no longer exists, the latter phrase might be taken to refer to insurgent or dissident organizations imputed to be residuals or reconfigurations of the Baath, its philosophy, or its members.) This ruling affects more than 50,000 people.²⁰
- Finally, all former members of the Baath Party -- a group comprising more than 1 million Iraqis – are barred from positions on the Presidency Council and from the position of Prime Minister, unless they left the party at least ten years before its fall (as did most of the former Baathists among the expatriates).²¹

The policy of de-Baathification represents a clear departure from the approach adopted in many other recent transitional societies. Rather than drawing on the experiences of Russia, Eastern Europe, or South Africa the policy draws on the practice of de-Nazification in Germany after the Second World War. But the analogy between the Baath and Nazi parties is a false one: Unlike the Nazi Party, the Baath Party did not have a membership broadly and deeply devoted to its leader and his policies – especially not after the Iran-Iraq and 1991 Gulf wars.²² A better analog is the moribund communist parties of the East, in which membership was nominal for many people. In Iraq during the Hussein years (as in many former communist countries) advancement in public institutions and in many professional fields required party membership.

Baath Party membership above the lowest levels was drawn predominantly (although not exclusively) from the Sunni community. Hence, broad-brush de-Baathification has cut more deeply into this community. And it covers many who, while formerly members of the Baath, have not been charged with a crime and who may still be regarded locally as prominent individuals, “good people”, or even leaders. Regulations that bar or impede their full political participation in the new government creates a powerful constituency for boycott or worse – and may feed a broader sense among Sunnis that the new order is not for them. A better approach would have focused sanctions more narrowly on those individuals most responsible for violations of international law and human rights. This would have accorded better with the recent successful experience of transitional societies in the East and in South Africa.

Addendum 1: Iraqi attitudes on the coalition, occupation, force withdrawal, and appointed Iraqi governments

A1.1. When Should Forces Leave?

February 2004: 33 percent want withdrawal within a year; 40 percent, withdrawal once an Iraqi government is in place; 27 percent, a longer or more open-ended stay. (Oxford Research International)

March-April 2004: 57 percent, "leave immediately"; 36 percent, "stay longer". (Gallup)

June 2004: 41 percent, "immediate withdrawal"; 45 percent, withdrawal after election of a permanent government; 10 percent, 2 years or longer. (Independent Institute for Administration and Civil Society/CPA).

June 2004: 30 percent desire immediate withdrawal, 51 percent want withdrawal after a government is elected, 13 percent said that Coalition forces should remain until stability was achieved. (Iraq Centre for Research & Strategic Studies).

June 2004: 53 percent say leave now or "within a few months" or "until an Interim Government is in place" or "in six months to a year"; 33.5 percent allow "more than one year" or "until permanent government is in place"; 13.6 percent, even longer if necessary. (Oxford Research International)

A1.2. Attitudes toward US forces

February 2004: 56.3 percent of Iraqis somewhat or strongly oppose the presence of Coalition forces in Iraq. "Strongly oppose" versus "strongly support" is 2.5-to-1. (Oxford Research International)

March-April 2004: 58 percent say US forces have behaved very or fairly badly; 34 percent say US forces have behaved very or fairly well. The ratio between those saying "very bad" and those saying "very well": 3-to-1. (Gallup/CNN/USA Today).

March-April 2004: 30 percent say that attacks on US forces were somewhat or completely justified; another 22 percent said they were sometimes justified. (Gallup/CNN/USA Today).

May 2004: 87 percent express little or no confidence in US coalition forces; 92 percent view coalition forces as occupiers, rather than liberators or peace keepers. (Independent Institute for Administration and Civil Society/CPA).

June 2004: 67 percent of Iraqis strongly or somewhat oppose the presence of Coalition troops; 30 percent support. (Iraq Centre for Research & Strategic Studies).

June 2004: 58 percent of Iraqis somewhat or strongly oppose the presence of Coalition forces in Iraq. Strongly oppose versus strongly support is 3-to-1. (Oxford Research International)

June 2004: 70 percent say Coalition troops are an occupying or exploiting force; 30 percent say a liberating or peacekeeping force. (Oxford Research International)

June 2004: Invasion of Iraq was absolutely right say 13.2 percent; somewhat right, 27.6 percent; somewhat wrong, 25.7 percent; absolutely wrong, 33.5 percent. (Oxford Research International).

A1.3. Attitudes toward the Coalition Provisional Authority and the Iraqi government

February 2004, Oxford: 31 percent express confidence in CPA, 69 percent do not. 43 percent express confidence in Iraqi government, 57.3 percent do not. (Oxford Research International).

March-April: 42 percent of Iraqis judge CPA behavior to be fairly or very bad; 25 percent say it was fairly or very good. The ratio between those saying “very bad” and those saying “very good” is 4-to-1. (Gallup/CNN/USA Today).

May 2004: 85 percent of Iraqis express little or no confidence in the CPA; 66 percent express little or no confidence in the Iraqi Governing Council. (Independent Institute for Administration and Civil Society/CPA).

June 2004: 25.6 percent express confidence in CPA, 74.4 percent do not; 42.7 percent express confidence in IGC, 57.3 percent do not. (Oxford Research International).

October 2004: 55 percent say Interim Government does not represent the interests of people like them “very much” or “at all”. Nearly 50 percent find the government to be ineffective; 43 percent find it to be effective – a sharp decline since the government took office in June 2004. (International Republican Institute.)

A1.4. Is life better or worse?

March-April 2004: 46 percent say the US invasion has done more harm than good; 33 percent say more good. (Gallup).

March-April 2004: 42 percent say Iraq is better off today than before the invasion, 39 percent say worse, 17 percent say the same. (Gallup).

August 2004: 46 percent of Iraqis say their situation has improved since the fall of Hussein, 31 percent say it has grown worse, and 21 percent say it is unchanged. (International Republican Institute.)

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Addendum 2. Democracy Derailed: The Iraqi National Conference, August 2004 ²³

Drawing on the example of the *Loya Jirga* in Afghanistan, UN Security Council Resolution 1546 mandated the convocation of an Iraqi National Conference in July 2004, which would, among other things, select an ongoing Iraqi National Council. The Conference and subsequent Council were meant to build national consensus, advise Iraq’s interim government, prepare the nation for full elections, and enhance the legitimacy of the interim government as being representative of the Iraqi people. The powers of the Council, which would remain in force until the election of a transitional government, included the right to appoint replacements to the Presidency Council in cases of resignation or death, veto Interim Government orders by a 2/3 majority vote, and approve the 2005 Iraqi national budget. Unfortunately, rather than advancing democratic practice in Iraq, the National Conference process proved to be a travesty of democratic principles and consensus-building.

Initially the conference was to include 1,000 Iraqis representative of the country’s diverse communities and constituencies. Conference participants would, in turn, select most of the 100 members of the National Council. Nineteen of the seats had been set aside for former members of the US-appointed Iraqi Governing Council, which had ended its tenure in June 2004. Members of the IGC and the big expatriate parties also quickly took control of preparations for the conference. Participation in the conference was to be determined by a Preparatory Commission of 92 people, which included 20 former IGC members. The commission itself had been selected by a smaller five-person committee chaired by IGC members, who held four of the seats. While the Commission set out to choose half the participants, the other half were to be selected by provincial caucuses, drawing partially on the various local “civil society” and “good government” councils that were being established by US agencies and contractors.

Shortly before the conference was to begin, UN advisors intervened to say that the participant pool was not sufficiently inclusive. In their assessment, it still drew too much on the narrow base of government and expatriate party supporters. This assessment was an indictment of not only the government’s bias, but also the bias of the local “civil society” councils that were supposed to feed the process. Under pressure from the United Nations, the organizers agreed to postpone the meeting by two weeks and to select 300 additional delegates from under-represented groups. (Like the current proposal to delay the 30 January 2005, this one violated the explicit timetable set by Security Resolution 1546 and by the Annex to the Transition Administrative Law.)

Despite the UN’s last minute effort to broaden the National Conference, the big pro-government and expatriate organizations were able to reassert their control during the selection of the executive body, the National Council. Delegates were informed by the conference organizers that they would vote on a single-list of 81 candidates for the National Council that had been chosen by the organizers. This procedure, which had not been announced prior to the meeting, prompted 450 delegates to threaten a walk out. In response, conference organizers agreed to allow a competing ticket, but the ad hoc opposition could not assemble a stable one in the allotted time. Rather than lend their support to the proceedings, 300 delegates walked out. A panel of conference judges then ruled that the conference

organizers' slate had won by default, prompting additional walk outs. The slate was eventually affirmed by a show of hands among the remaining delegates. No secret ballot occurred.

As an experiment in and training ground for democracy, the National Conference failed. Although the process was certainly more open to the popular will than was the mechanism by which the Iraqi Governing Council and Interim Government had been appointed, it was easily subverted nonetheless. Relevant to the January 2005 elections, the experience illustrated how the big expatriate parties might use their superior organization, concerted action, and positions of authority in government to overwhelm an opposition that enjoyed none of these advantages.

Just as important, it showed those parties to have the inclination to give greater priority to their own advancement than to the goal of building a stable consensus. While the expatriate parties were able to extend the powers originally granted to them by the United States, they did so at the cost of increasing popular alienation from the government. What might have become a venue for constructive compromise in the Iraqi polity became, instead, a stimulus to further confrontation. Perhaps most disconcerting was the relative failure of the international media to critically examine the National Conference process. Remarkably little has been said or written about the affair, thus increasing the likelihood that the January elections will follow a similar path.

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