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

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Executive Summary

The balloting due to take place on 30 January will not fulfill the promise of democracy nor satisfy the Iraqi passion for self-determination. This, due to insecurity, voter confusion, secrecy, *ad hoc* and chaotic procedures, and the systematic favoritism afforded some candidates and parties over others. These problems attest to the fact that the US mission and the interim authorities it appointed have failed to create the necessary foundation for a democratic process. As a result, the balloting (and the government it produces) will not fairly represent the balance of interests and opinion in Iraqi society. Nor will it unite the country, quiet dissent, or channel dissent along avenues of peaceful political compromise.

Much attention has been focused on the problem of Sunni participation in the election, and rightly so. The election is supposed to serve and embody a process of consensus building and nation building. The abstention of a significant part of the Sunni community undoes this central purpose. But the problems with the Iraqi election 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. Iraqis will go to the polls expecting to achieve one thing while actually legitimizing a different outcome.

Opinion surveys have made clear what most Iraqis would like to see happen. The surveys 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 occupation.   Regardless of this, however, the election probably will lead to a reassertion of something resembling the current status quo. The new executive bodies -- Presidency Council, the Prime Minister, and the "power ministries" -- will prominently involve many of the same expatriate leaders and parties that the United States has advanced since it took control of Iraq. And the US occupation will not end. Indeed, no firm, near-term withdrawal date will be set.

While failing to accurately capture and convey the "will of the people", the election will succeed in one 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.

Factors affecting the vote

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

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- *Confusion will cloud the voters' choices.*[1] This, due to the structure of the voting process, the composition of the ballots put before voters, and the utter inadequacy of party development, voter education, and electoral support efforts. All Iraqis will choose among a startling 98 political entities on the national ballot. These will be distinguished on the ballot only by a number, symbol, slogan, and the name of either the coalition, party, or individual. There has been insufficient time -- one month -- to meaningfully distinguish among the 98 separate lists or "entities" with regard to their programs and ideologies. Thus, many Iraqi voters will not know who or what they are voting for.

- *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.[2] The expatriates' special advantages are due to the support of foreign powers – principally the United States – and to the expatriates' position as national authorities for the past 18 months.

Due to their accumulated advantages, the expatriate parties will be able to throughly dominate the 30 January election and emerge with a commanding control of the National Assembly. The advantages of the favored expatriate parties include:

- The powers of office and incumbency conferred on them by the Coalition Provisional Authority, which have given them 18 months to build name recognition, power bases inside ministries, and networks of influence throughout Iraq.

- Differential access to outside technical support and financing – both private and governmental.

- The decision to give immediate voting rights to all Iraqi expatriates living outside the country born in Iraq before 1986.

- The decision to treat the entire country as a single electoral district with votes being cast for party "lists" that are largely opaque. This redresses the expatriates' most serious weakness: their lack of local roots.

- The $500 million US effort to build civil society organizations and local governance bodies, which has helped create a base of supporters and campaigners for the more secular of the expatriate parties.[3]

The differential impact of poor security

The security situation also affects different parties differently.   Obviously, security is stronger in Shiite and Kurdish strongholds. Also, Iraqi voters living outside the country -- a strong base of support for expatriate parties -- are not constrained by the country's security woes. Inside Iraq, some parties will be better able than others to work around security problems. Candidates who already hold government positions, for instance, have superior access to security services, which facilitate their movement, and to the electronic

media. For the others, however: lack of security has impeded open campaigning, rendering the conduct of mass rallies and neighborhood mobilizations almost impossible.[4]

Likely electoral outcomes

- The big winners of the 30 January ballot will be the three major alliances that have received outside help: 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.

- The only significant uncertainties are overall turnout and how the votes will divide between the UIA and the "Iraqi List". 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.

Close cooperation among the expatriate organizations at the core of the three big winning lists provides the best opportunity for controlling 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. These might include "The Iraqis Party" (led by IGI interim president Ghazi Al-Yawar), the "Assembly of Independent Democrats" (led by Adnan Pachachi), and Naseer al-Chadarchi's "Patriotic and Democratic Party."

An election bound to breed suspicion

The structural bias of the electoral system and the effects of poor security will give losing candidates and the Iraqi electorate reason enough to question the election result. Also prompting suspicions will be the secrecy that surrounds the election, the paucity of independent foreign monitors, and the relatively low number of local observers (whose impartiality is doubted, at any rate). Election sceptics will find further fuel for their suspicions in the revelation of CIA plans to covertly assist Washington's favored candidates and parties.[5]

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

The problems of structural bias in the election process 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.

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.

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.

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.

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 process by which the Presidency Council and government ministers will be selected provides an opportunity for the adoption of *ad hoc* procedures and opens a window to outside influence.

The first step is selection of a three-person Presidency Council. The National Assembly is supposed to confirm the council by a two-thirds vote. But the slate itself will probably be put together privately by a coalition of the big parties. 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. Of course, the US mission will make its preferences known.

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. Indeed, the only truly powerful political institution in Iraq is the US mission: its resources, organizational capacity, and armed might far surpass those at the disposal of the Iraqi government. 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 the United States. 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.

US military withdrawal: a moving goal post

Regardless of who comes to occupy Iraq's executive positions, America's key concern will be to maintain its own prerogatives in the country. For now, this means allowing the occupation to continue, at minimum, "until a permanent government takes office". The earliest date that a permanent government can take office is January 2006. This would give the United States a year to influence the composition of that government, which could then decide to allow the United States to stay longer. 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.

America's enduring influence

The United States will be able to make its influence felt in the country regardless of who leads it. America's enduring influence derives from a military presence of 150,000 personnel, a dedicated development fund for Iraq containing $16 billion in undisbursed funds, and more than 40,000 US civilian government personnel and contract employees operating throughout Iraqi government and public institutions at every level.

America's enduring influence is also felt through structures and laws put in place by the former Coalition Provisional Authority. The Transitional Administrative Law, which was drafted by the CPA, remains the law of the land until a new constitution is ratified. In addition, the CPA put in place a set of control commissions whose members were appointed to five-year terms by the CPA Administrator. 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 CPA also has bequeathed to the new government hundreds of judges and prosecutors -- including many exiles -- vetted, trained, and appointed by the CPA.

The Sunni problem

Sunni disaffection with the electoral process is a special problem. Recently, Sunni leaders have emphasized security issues as their primary reason for wanting to have the election delayed. But many have had concerns about the process since the CPA revealed it in spring 2004. And the reasons 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. The Kurds (and others) share the Sunnis concerns, but the Kurds have made a separate peace. Mitigating their concerns 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.

Structural issues with the electoral system

The decision to treat all Iraq as a single election district puts minority regions especially at risk. The system does not root assembly seats to the geographic subdivisions of the country. Relative rates of voter turnout will determine how well the various regions are represented. This makes it quite possible that disproportionately few seats will go to parties or candidates based in Sunni areas. A better approach would have been a system of proportional representation *based on multiple geographic districts*, which would guarantee a minimum of representation for residents of each area. Combined with a requirement that candidates reside in the districts they propose to represent, this would have indirectly mitigated ethnic concerns by ensuring that all representation is locally based.

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. 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".

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.

Issues related to De-Baathification

Some measures of "de-Baathification" affect electoral participation and these probably have contributed to Sunni disaffection with the elections.[6] The key provisions involving the electoral process dictate that:

- Former Baath Party members 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.[7]
- Former "full members" – a larger group – must sign a document of disavowal before becoming eligible to run and can lose their seat if a court establishes that they have any current "dealings or connection with Baath Party organizations". This ruling affects more than 50,000 people.[8]

- 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).[9]

Notably, de-Baathification measures are proactive and do not require proof that the affected individuals have themselves committed any crime.

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 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 1991Gulf wars.[10] 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, 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.

NOTES

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7. *Law of Administration for the State of Iraq For the Transitional Period* (Baghdad: Coalition Provisional Authority, 8 March 2004), Article 31 (B) (2).

8. *Law of Administration for the State of Iraq For the Transitional Period*, Article 31 (B) (3).

9. *Law of Administration for the State of Iraq For the Transitional*, Article 36 (B) (3).

10. Douglas Porch, "Germany, Japan, and the De-Baathification of Iraq," *Strategic Insight,* Center for Contemporary Conflict, 7 March 2003.