

IRAQ'S TRANSITION: ON A KNIFE EDGE

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IRAQ'S TRANSITION: ON A KNIFE EDGE

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The situation in Iraq is more precarious than at any time since the April 2003 ouster of the Baathist regime, largely reflecting the Coalition's inability to establish a legitimate and representative political transition process. The broad plan sketched out by UN Special Adviser Lakhdar Brahimi, the apparent willingness of the U.S. to delegate at least some political responsibility to the UN and the decision to loosen the de-Baathification decree are all steps in the right direction. But critical questions remain both unanswered and, in some cases, unasked.

The history of post-Saddam Iraq is one of successive, short-lived attempts by the U.S. to mould a political reality to its liking. With each false start and failed plan, realistic options for a successful and stable political transition have become narrower and less attractive. Getting it right this time is urgent and vital. There may not be many, or any, opportunities left.

In undertaking his mission, Brahimi inherited several stark and in some ways conflicting political constraints: the U.S. commitment to "transfer sovereignty" to an unspecified Iraqi body by 30 June 2004; the unrepresentative character of the existing Iraqi institution, the Interim Governing Council; the absence for the foreseeable future of a credible and reliable Iraqi security force and therefore the need for a continued U.S.-led force; strong objection by the most influential Shiite representative, Ayatollah Sistani, to endowing any non-elected government with genuine authority; and the practical impossibility of holding national, democratic elections before January 2005.

Added together, these factors lead to two clear conclusions: first, fundamental change is needed soon if the growing vacuum separating the occupation's governing institutions from the Iraqi people is to be narrowed; and secondly, whatever

happens on 30 June will at best involve a delegation of something far less than full sovereign powers to a body falling far short of being representative.

The answer is not to scrap the 30 June date, as some have suggested, but to redefine what will happen on that day, and the lead up to it, as a serious redistribution of power -- more substantial even than the present Brahimi plan proposes -- between the U.S., the UN and the new Iraqi institutions. Four interrelated steps are required:

- **Political responsibility for the transition should be handed over to the UN, acting through an appropriately empowered Special Representative.** Before 30 June 2004, that empowerment should involve the capacity to appoint a provisional government (subject to later rejection by the proposed Consultative Assembly: see further below). After 30 June, it should involve certain residual powers to supervise the political process; break a deadlock between Iraqi institutions; act as a check on Iraqi executive decisions that may exceed its limited mandate; or, in the event a very broad consensus exists among Iraqis, approve of amendments to the Temporary Administrative Law (TAL).

The UN, worried that it lacks the capacity and fearing that it would be setting itself up for failure, is manifestly reluctant to play this latter role. However, the post-30 June Iraqi provisional government clearly will not be exercising full authority; nor do Sistani and others want it to. The powers vested in the Special Representative would be those, and only those, needed to maximise stability and the prospects of national, democratic elections in January 2005. The UN would enjoy far greater legitimacy than the U.S. in fulfilling this role.

Even so, such powers ought to be used extremely sparingly and cautiously. The real check on governmental decisions is likely to come from its multi-headed structure (president, vice-presidents and prime minister), and due deference should thus be accorded Iraqi governmental actions.

- **A provisional government of technocratic experts should be appointed by the UN Special Representative, marking a clear break in character and membership from the Interim Governing Council.** This government would be essentially a caretaker one, charged with running day-to-day affairs, focusing on public order, economic reconstruction and public services, and preparing general elections with the UN Special Representative's advice and assistance. Many Iraqis fear that those in charge today will do everything they can to perpetuate their rule tomorrow and that unelected politicians will take decisions with long-lasting impact. Limiting to the degree possible the participation of partisan, political leaders in the provisional government, strictly confining its powers and providing UN oversight will help assuage those fears. In presenting the outlines of his plan, Brahimi endorsed this view, speaking of a caretaker government composed of people of competence and integrity.
- **To widen political participation, a National Conference of Iraqis should be convened, which would elect a Consultative Assembly.** At a minimum, the Consultative Assembly should have the power to reject the composition of the new government and any decrees that it passes. Should the Assembly reject the government, the UN Special Representative would be tasked with proposing another; should the Assembly reject a government decree and, after resubmission in a modified form, reject it again, the Special Representative would step in as an arbiter to overcome the deadlock.

Since the ouster of the Baathist regime, Iraq has lacked any sense of political cohesion. As the U.S. has sought to micro-manage the political process, individual groups have at best struck separate agreements with the Coalition. The proposed National Convention could be an important first step toward creating a sense of collective ownership, and elaboration of a common political platform that eschews violence and commits participants to work for a

democratic political system. Religious and tribal Sunni leaders as well as followers of Moqtada al-Sadr, who have felt excluded, will need to be brought in, regardless of their opposition to the occupation.

In Brahimi's proposal, both the National Conference and the Consultative Assembly it elected would come into being only *after* creation of the provisional government. This is cause for understandable concern among some Iraqis: hand-picking a government and depriving these bodies of any role in its establishment risks undermining their credibility even before they have begun. But Brahimi is justifiably worried that reversing the sequence may unduly delay establishment of a government and overly politicise it.

- **Security arrangements should be redefined by a Security Council resolution which re-authorises the U.S.-led multinational force from 30 June 2004 until an elected government takes office and decides on its future but requires joint approval from the U.S. command and the Iraqi provisional government for major offensive operations.** While an international force presence is an indispensable necessity during the transition period, recent events in Fallujah and elsewhere have made clear that major offensive operations are potentially counterproductive unless undertaken with significant local support. If 30 June is to involve any power shift at all back to the Iraqis, and not be totally empty and cosmetic, some element of control over major security decisions must be involved. Clearly, operational matters involving force protection and responses dictated by immediate events must continue to remain the sole responsibility of the U.S. command. But where strategic choices are involved, and the multinational force is acting after deliberation, it is both possible and necessary that operations be jointly approved. And the only body capable in practice of giving that approval -- until general elections are held -- will be the provisional government.

The fiction that 30 June will be about 'transferring sovereignty' should be given up. As a legal matter, sovereignty is already vested in the Iraqi state and 'embodied' in its interim institutions, as provided by UN Security Council Resolution 1511. But as a practical matter, the sovereign *power* exercised by

the new Iraqi government will remain incomplete, and to pretend otherwise could do lasting damage to the very notion of sovereignty in Iraqi eyes. What Iraqis should be getting after 30 June, is *more* such power -- and the space to create a more inclusive and cohesive polity -- but still necessarily incomplete sovereign power until proper general elections are held. To minimise the friction associated with this necessarily incomplete power transfer, residual civilian powers should be exercised during the transitional period by the UN, not the U.S.

So far, the Iraqi people have been virtual observers to a *pas-de-deux* between the Coalition Provisional Authority and the Interim Governing Council: if they are not truly involved in the process, they can hardly be expected to defend it. The fact that Iraqis who heretofore had not supported either Moqtada al-Sadr or the insurgents in the so-called Sunni Triangle joined or tacitly backed the April uprisings gives credence to the notion that as long as basic grievances are not addressed, and a far wider spectrum of Iraqis is not included in the political process, violence will increase rather than diminish.

The options available today are few and bad, a measure of the staggering misjudgements that have plagued U.S. post-war management from the start, and there is no guarantee that even these steps can stem Iraq's descent toward instability and civil war. Nor is there any guarantee that this approach will find takers. The Bush administration may resist yielding ultimate control over developments in Iraq just when its electoral fortunes may turn on them. With anger spreading and strong-arm military operations in Fallujah, Sadr City and elsewhere likely to generate tomorrow's even stronger-willed insurgency, the UN may balk at getting dragged into what it once was kept out of, and a growing number of countries may be tempted to follow Spain and leave the Coalition rather than strengthen it.

But a U-turn from a stubborn administration, and engagement from a sceptical international community, may represent the last remaining chance of success.

RECOMMENDATIONS

To the United States, Other Coalition Members and the UN Security Council:

1. Agree as soon as possible to a new Security Council resolution that would vest primary authority and responsibility in a UN Special Representative to advise, assist and oversee the political transition, with powers as here defined.
2. Give the Special Representative, for the period prior to 30 June 2004, the powers to:
 - (a) appoint a provisional government to hold office until general elections, empowered to conduct day to day administration and, with the advice and assistance of the Special Representative, prepare those elections; and
 - (b) approve the Annex to the Transitional Administrative Law.
3. Give the Special Representative, for the period after 30 June, the powers to:
 - (a) convene a National Conference and oversee its election of a Consultative Assembly;
 - (b) propose a new provisional government in the event that the Consultative Assembly rejects the one initially appointed;
 - (c) break any deadlock within government institutions (should the Assembly reject a government decree and, after resubmission in modified form, reject it again);
 - (d) reject any decisions of the provisional government which exceed its caretaker mandate; and
 - (e) assist Iraqi authorities to organise elections in January 2005 (including elections to the National Assembly, and regional elections in Iraqi Kurdistan to the Kurdistan National Assembly, and local elections).
4. Renew authorisation for a multinational force led by the U.S., whose mandate would expire upon the establishment of an elected government but which could then remain should that government so request, and encourage member states to contribute to the multinational force and provide adequate security for a UN presence.
5. Limit the mandate of the multinational force by requiring it to consult with and have the approval of the provisional government for major offensive operations, while leaving to the military command sole responsibility for operational matters involving force protection and responses dictated by immediate events.

**To the (Newly Appointed) United Nations
Special Representative:**

6. On or before 30 June 2004, after consultation with a broad range of Iraqis, appoint a provisional government whose members are non-partisan and technocratic, with choices made on the basis of competence rather than sectarian or ethnic affiliation, and avoiding as much as possible current members of the Interim Governing Council when appointing the prime minister, president, and vice presidents.
7. Oversee the convening of a broadly based and inclusive National Conference that would aim at including all components of Iraqi society that pledge to work together for the common goal of managing the transitional period until the general elections, building a democratic Iraq and forswearing violence; and that would elect a Consultative Assembly.
8. Consult broadly and transparently in the process of putting together the National Conference in coordination with a preparatory committee, taking into account the need to:
 - (a) include Iraqis who have been excluded and have expressed their opposition to the occupation, such as religious and tribal Sunni Arab leaders, former Baathists and the Shiite urban underclass to whom Moqtada al-Sadr appeals; and
 - (b) build on the fledgling local structures established by the Coalition Provisional Authority at the municipal and governorate levels and to give adequate weight to grass-roots forces, above all business and professional and trade associations, as well

as other civil society representatives such as human rights and women's movements.

9. Make clear that the Transitional Administrative Law is an interim document governing the transitional period only; should members of the National Conference want to amend it, the UN Special Representative would make the final decision, taking into account the degree of consensus, the impact on Iraq's stability and the high presumption against amendment.
10. Facilitate the establishment of the Consultative Assembly elected by the National Conference, whose powers would include:
 - (a) endorsing the composition of the provisional government (should the vote be negative, the UN Special Representative would be charged with nominating an alternative government and submitting this for Assembly approval); and
 - (b) rejecting decrees of the caretaker government (should it vote against a decree, the government would have the opportunity to submit it in amended form; should it again be rejected, the UN Special Representative would break the deadlock as he or she sees fit).

To All Iraqi Political Actors:

11. Accept the Transitional Administrative Law as an explicitly interim document governing the transitional period only, and make a public pledge to abide by it during this period; contemplate amendments to it only if there is a broad consensus among all constituencies.

Baghdad/Brussels, 27 April 2004



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I. INTRODUCTION

It would be a mistake to interpret events in Iraq through the exclusive lens of the upsurge in violence in April 2004, and to see in the combination of Sunni insurgency and Shiite resistance an indication of generalised, nation-wide uprising of opposition to the occupation forces. But it would be an equal mistake -- and of far greater consequence -- to dismiss these developments as the work of small bands of isolated thugs and terrorists seeking to prevent the advent of democracy in Iraq.

Many Iraqis are enjoying benefits from the U.S. occupation, including the end of a ruthless authoritarian regime, a degree of freedom unknown in decades, significant economic progress in parts of the country and the prospect of massive reconstruction assistance and free elections. But while ICG interviews in Iraq over the past several weeks suggest majority backing for a continued coalition presence,¹ this support is both narrowing and softening. At this point, neither the insurgents in Fallujah and the Sunni triangle nor followers of Moqtada al-Sadr represent the Sunni or Shiite communities. But they are tapping into growing pools of dissatisfaction with, and resentment of, the occupation, which in their eyes has delivered neither democracy, nor security, nor economic benefit. Significantly, even if only relatively few Iraqis are prepared to take up arms against the coalition, virtually none are willing to denounce those taking up arms publicly, let alone fight on the Coalition's behalf. The issue is not only how many Iraqis are on each side, but how many Iraqis each side can mobilise.

At the root of the impasse is a series of flawed decisions stretching back to the onset of the occupation and covered in previous ICG reports:² the failure to restore law and order and basic services in the critical days after the overthrow of the Baathist regime; over-reliance on unrepresentative exiles in the establishment of the Interim Governing Council, thereby ensuring that it lacked credibility; the wholesale de-Baathification of Iraqi institutions and the disbanding of the Iraqi army, which created a large pool of jobless, alienated individuals and deprived Iraq of an indigenous security structure; the marginalisation of the Sunni community, which exacerbated its opposition to an occupation it viewed as hostile to its interests; and Washington's resistance to internationalising post-conflict management, which de-legitimised the occupation by giving it an exclusively U.S.-face and complicated efforts to kick-start reconstruction.

The message coming both from the mounting insurgency and the Iraqi people's reaction to it, is that the political process has failed to create credible institutions and has lacked sufficient input from the Iraqi people. The Coalition has preferred to deal with a handful of selected Iraqi politicians rather than with the necessarily more chaotic and messy reality of society; yet in seeking to micro-manage politics and steer them in a direction to its suiting, the Coalition has left the political process disconnected from realities on the ground.

The result is a perilous vacuum in which Iraqi governing bodies lack the necessary legitimacy and capacity either to make strategic, long-term political decisions or to conduct urgent security operations.

¹A member of the Supreme Council for the Islamic Revolution in Iraq (SCIRI), who had harsh words about U.S. political plans in Iraq, hastened to add, "we are not saying that they should withdraw their troops on 30 June. This would cause complete chaos". ICG interview, Basra, 30 March 2004.

² ICG Middle East Briefing, *Baghdad: A Race Against the Clock*, 11 June 2003; ICG Middle East Report N°17, *Governing Iraq*, 25 August 2003; ICG Middle East Report N°19, *Iraq's Constitutional Challenge*, 13 November 2003; and ICG Middle East Report N°20, *Iraq: Building a New Security Structure*, 23 December 2003.

One year after toppling the Baathist regime, the U.S. finds itself in precisely the circumstance it had wished to avoid: face to face with a restive population, without credible Iraqi political or security actors who can serve as intermediaries, and without a reliable plan to create them. The scheduled 30 June 2004 transfer of sovereignty offers an opportunity to put the political process back on track. In reality, it will not have much to do with sovereignty at all: formal sovereignty already is embodied in the Iraqi state and its interim governing institutions by virtue of UN Security Council Resolution 1511; but the practical exercise of sovereign power is incomplete, and the Iraqi government's exercise of sovereignty after 30 June will be incomplete as well. What the Iraqi people should witness is a reallocation of powers between the U.S., the UN and their own governing bodies.

II. THE POLITICAL DILEMMA

From the outset, the occupying forces were faced with the dearth of viable institutions and political parties that existed in the post-totalitarian state, as well as the deficit in credibility that many of the exile politicians encountered upon their return.³ Since June 2003, the Coalition has accordingly made several -- ultimately false -- starts in its attempts to define the political transition process simultaneously in ways broadly acceptable to the Iraqi people and responsive to domestic U.S. political imperatives. The U.S. also resisted granting the UN the preponderant role in the political process, a position that cost it dearly.

At the end of June 2003, Grand Ayatollah Ali Huseini al-Sistani issued a ruling that the new constitution, then rumoured to be in preparation, could only be drafted by a constitutional conference directly elected by the Iraqi people.⁴ Given Sistani's stature as the senior Shiite cleric in Iraq and an acknowledged *marja' al-taqlid* (source of emulation),⁵ it was difficult for the CPA to ignore his pronouncement. Instead it sought to circumvent the edict by pressing the freshly appointed Interim Governing Council to designate a Constitutional Preparatory Committee (CPC) tasked with identifying the appropriate mechanism for drafting the constitution.⁶

The CPC wrapped up its work by the end of September 2003 but failed to resolve the constitutional question. By November 2003, both Iraqi and international pressures were building on Washington to transfer additional powers to Iraqis more swiftly than anticipated in light of the escalating insurgency (or insurgencies) that were delaying reconstruction and thus undermining the authority of the occupying forces. Following consultations at the White House, CPA Administrator Paul Bremer presented the Interim Governing Council with a

³ "In Iraq today, the CPA faces a highly mobilised but largely atomised society that is unrestrained by effective state institutions or by political parties". Toby Dodge, testimony before the U.S. Senate Foreign Relations Committee, 20 April 2004.

⁴ ICG Report, *Iraq's Constitutional Challenge*, op. cit., p. 21. Sistani's statement is available from his website at: <http://www.sistani.org/messages/qanon-ara.htm>.

⁵ Of the four grand ayatollahs who make up the *marja'iyeh* of the Shiite *Hawza*, or centre of learning, Sistani is considered to be the most important. See ICG Middle East Briefing, *Iraq's Shiites Under Occupation*, 9 September 2003.

⁶ ICG Report, *Iraq's Constitutional Challenge*, op. cit., p. 22.

blueprint and timetable for the handover of sovereignty to a new Iraqi leadership. This plan became known as the 15 November Agreement.

According to the timetable, the Interim Governing Council would draft and approve by 28 February 2004 a "Law for the Administration of Iraq in the Transitional Period" -- also known as the "Transitional Administrative Law" (TAL) or the "Fundamental Law" and basically an interim constitution. Then, by May 2004, local caucuses would be convened in each of Iraq's eighteen governorates to elect delegates to a Transitional National Assembly (TNA), which in turn would elect from among its members an interim government that would assume full sovereignty over Iraq by 30 June 2004. By 15 March 2005, Iraqis would choose, through direct elections, members to a constitutional conference charged with drafting a permanent constitution. This would by 31 December 2005 be followed by national elections for a new government, completing the political transition.⁷

The 15 November Agreement thus conceded to Sistani his demand for a direct election to a constitutional conference. However, by (sensibly) decoupling the constitutional process from the transition of sovereignty, the accord shifted the controversy from the former to the latter, especially given the mechanism chosen for creating a transitional assembly: not general elections but a complex caucus process that would rely heavily on the role of local leaders selected by the CPA and the Interim Governing Council (whose members themselves were selected by the CPA in July 2003).

At the end of November 2003, Sistani issued a new edict from his home in Najaf, this time calling for "elections" to the Transitional National Assembly and insisting that the TAL be "presented to representatives of the Iraqi people for approval".⁸

⁷ Coalition Provisional Authority, "The November 15 Agreement: Timeline to a Sovereign, Democratic and Secure Iraq", available at: <http://www.cpa-iraq.org/government/AgreementNov15.pdf>.

⁸ Sistani's pronouncement came in the form of an electronically transmitted reply to a question posed by a reporter from *The Washington Post*. See, Anthony Shedin and Rajiv Chandrasekaran, "Leading Cleric Calls For Elections in Iraq", *The Washington Post*, 30 November 2003. Technically, the statement does not amount to a religious edict, but in Baghdad it is almost universally referred to as a *fatwa*. Interim Governing Council member Nasir Chadirchi is reported to have lamented the fact that Sistani's call for elections had been

The caucus idea was anathema to Sistani. As one close observer noted:

He asked what will happen if these caucuses proceed and leave Iraqis feeling they have no ownership of the process? And what will happen if people don't like what they see and begin to riot? In his view the key issue is that the proposed mechanism lacks popular legitimacy.⁹

CPA officials, meanwhile, expressed frustration at the apparently successful effort by the Shiite cleric to upset their caucus scheme and opposed his call for elections. "We gave Sistani elections to the constitutional conference" (in March 2005), exclaimed one frustrated official. "It will take that long to organise elections that are fair. He keeps moving the goal posts. We cannot let a single man do this".¹⁰

A season of feverish negotiations followed. Individual Shiite members of the Interim Governing Council trekked to Najaf repeatedly in December and January seeking to obtain further clarifications from the religious leader (did he mean "direct" elections? was he referring to a popular referendum to approve the TAL?¹¹) and signs of willingness to compromise. They also sought to persuade Sistani that the holding of general elections would cause an unacceptable delay in the transfer of power to a sovereign Iraqi government.

A suggestion ultimately emerged. If an independent body such as the United Nations were to send a delegation to investigate the possibility of holding elections under the current circumstances and conclude negatively, the religious leader might modify his seemingly inflexible stand. In early January 2004, Sistani clarified his views. He said

"transformed into a *fatwa*". Cited by Juan Cole, "Informed Comment", 13 February 2004, available at: <http://www.juancole.com>. The text of Sistani's statement, dated 28 November 2003, is available from his website, at: <http://www.sistani.org/messages/antoni.htm>.

⁹ ICG interview with an Iraqi policy adviser, Baghdad, January 2004.

¹⁰ ICG interview, Baghdad, January 2004.

¹¹ Sistani clarified his position on this last question in a media release issued after a visit by Adnan Pachachi, the Interim Governing Council's president in January 2004. He said the TAL was subject to approval by a freely elected Transitional National Assembly. Press release, 11 January 2004, available at: <http://www.sistani.org/messages/pachechi.htm>.

that reports presented to him by Iraqi experts had indicated it would be possible to hold credible and transparent elections in the remaining months before the date scheduled for the transfer of sovereignty. Because the CPA and Interim Governing Council had argued otherwise, he noted, it had been suggested to invite a UN team to Iraq. "If a team of experts does come and after working with its Iraqi counterparts reaches the conclusion that elections are not possible", Sistani said, it would be necessary "to identify another mechanism that most faithfully reflects the will of the Iraqi people". In any case, he asserted, the mechanism outlined under the 15 November Agreement was unacceptable as "it does not, in any way, guarantee fair representation of the Iraqi people in the provisional national assembly".¹² In announcing his decision to dispatch a team to Iraq to study the way in which the political process could best be handled, UN Secretary-General Annan said: "I have concluded that the United Nations can play a constructive role in helping to break the current impasse".¹³

Following visits to Iraq by two technical teams that looked separately at elections and security (6-13 February 2004), UN Special Adviser Lakhdar Brahimi issued a report that partially vindicated Ayatollah's Sistani approach by arguing that general elections were necessary. At the same time, however, it noted that they could not reasonably be held before the envisioned transfer of sovereignty by 30 June 2004. This presented a new dilemma, Brahimi reported, namely that "it is not possible to maintain the 30 June 2004 deadline while concurrently ensuring that sovereignty is restored at the outset to a democratically elected government".¹⁴ His proposed solution: just as the constitutional process was decoupled from the political one in the 15 November Agreement, so now the issue of elections had to be decoupled from that of sovereignty transfer, with the former postponed until "the end of 2004 or shortly thereafter".¹⁵

This new approach dictated the need for the establishment of a sovereign provisional government that would govern Iraq until general elections. However this government would be created, the report said, it could not be through the CPA-designed caucus process, because this "does not appear to enjoy sufficient support among Iraqis to be a viable option any longer".¹⁶ Sistani's office responded with a cautious endorsement of the UN's findings but requested a Security Council resolution guaranteeing compliance with the timeline specified in the report "to assure the Iraqi people that the issue will not once again be subject to further procrastination and stalling".¹⁷

In April 2004, Brahimi was back in Iraq, this time seeking a formula for the establishment of a sovereign government within less than three months. His task was clear: "to form and support a government that can gain popular legitimacy in the face of a growing nationalistic reaction against [the U.S.] presence and thus, to some degree, against any Iraqi group [the U.S.] explicitly support[s]".¹⁸

¹² Reply to questions posed by CNN, 6 January 2004, available at:

<http://www.sistani.org/messages/iraq.htm>.

¹³ Quoted in Elaine Sciolino and Warren Hoge, "UN to Send Expert Team to Help in Iraq, Annan Says", *The New York Times*, 28 January 2004.

¹⁴ UN Secretary-General, "The political transition in Iraq: report of the fact-finding mission", UN Document S/2004/140 (23 February 2004), para. 46, p. 11.

¹⁵ *Ibid.*, para. 50(4), p. 12.

¹⁶ UN Secretary-General, "The political transition in Iraq", *op. cit.*, pp. 10-13.

¹⁷ Statement available from Sistani's website at: <http://www.sistani.org/messages/saddam.html>.

¹⁸ Ivo Daalder and Anthony Lake, "Focus on Iraq Politics", *The Washington Post*, 16 April 2004.

III. SURVEYING THE OPTIONS

A. MOVING THE ELECTIONS UP

Given the political landscape, many Iraqi and foreign observers believe it impossible to devise a process that can bring about an Iraqi government commanding sufficient legitimacy to exercise full sovereignty in the next 80 days. A government designated by the UN or CPA, even after extensive deliberations with Iraqis, is unlikely to have the requisite legitimacy to take important political decisions, let alone either to get Iraqi security forces to clamp down on insurgents or to approve Coalition forces doing the same. At a minimum, a sovereign Iraqi government will need to enjoy sufficient legitimacy to be in a position to decide whether to invite a U.S. military presence, rather than merely passively acquiesce in it.¹⁹

Sistani's statements, while suggesting that some such formula may be found, also indicated a strong preference for a mechanism close to an election. In today's volatile atmosphere, his position on this issue -- and that of other Iraqis -- may well have hardened. Indeed, in interviews conducted by ICG in April 2004 with a broad range of Shiites, the most commonly echoed call was for immediate elections. Asked to comment on possible alternatives, two members of the Supreme Council of the Islamic Revolution in Iraq (SCIRI), a nominal U.S. ally before and after the war, refused to depart from their view that only elections could help Iraqi out of its current stalemate.²⁰

The Coalition powers are treating us as not mature enough to rebuild Iraq. This is a grave mistake . . . We want all parties and sectarian groups to have a role in deciding on the future of Iraq and a democratic system is the

foundation to do this. If no elections will be held, nothing will change after June 30.²¹

Suggesting a lack of confidence in Brahimi (whose relations with some Interim Governing Council members were strained by his reported preference for dissolving that body),²² the SCIRI official added:

The Interim Governing Council should organise elections now; this is the right moment to do it. This, in fact, was exactly what Lakhdar Brahimi told Sayyid Sistani when they met: elections in Iraq can be held within two months. But when he went to New York he changed his mind and began talking about the end of the year.²³

A Sistani representative in Basra indicated that any enlargement of the Interim Governing Council would have to be based on elections: "Under current conditions and given the temporary law [TAL], it will be the CPA that will appoint the transitional government and the president. We cannot accept that. It should be the Iraqis who make the decisions. Anything short of that we will refuse".²⁴ And a member of the Shiite Da'wa party asserted: "If we want to get out of this crisis, the only way is to hold elections in which all Iraqis will participate".²⁵

¹⁹ Of course, a popularly elected government would for the foreseeable future -- at least as long as there are no significant, well-armed and well-trained Iraqi security forces -- continue to depend on the United States as the ultimate provider of security. But being more representative, such a government would have more support than an unelected government to call in U.S. forces for specific operations. ICG interview with an Iraqi analyst, 7 April 2004.

²⁰ ICG interviews with Taher Mater al-Haashimi, prominent SCIRI member, and Husein Adhaab, a legal adviser to SCIRI, Basra, 30 March 2004.

²¹ ICG interview with al-Haashimi, op. cit.

²² There also have been reports that some Shiites on the Council regarded Brahimi with scepticism because of his Sunni background. One senior Iraqi official in the interim government, a secular Shiite, said: "I don't question Brahimi's integrity, but he has an image problem in that some members of the Interim Governing Council say he has been very close to Adnan Pachachi and Jalal Talabani for many years. And many Shiites don't trust him, saying he helped Saddam Hussein in the past and orchestrated the meeting between Saddam and Kofi Annan in Baghdad in 1998. Perhaps, in today's Iraq, the UN mediator should have been an Anglo-Saxon to be effective....As the saying goes, 'The neighbourhood singer doesn't satisfy' [*mughannit al-hayy laa yutrib*]" ICG telephone interview, Baghdad, 18 April 2004. Some observers claim that the anti-Brahimi campaign was in fact instigated by Ahmad Chalabi, an Interim Governing Council member opposed to his plans to disband the Council. ICG interview, New York, April 2004.

²³ ICG interview with al-Haashimi, op. cit.

²⁴ ICG interview with Sayyid 'Imad al-Batat, Basra, 29 March 2004. It is not clear that this is an accurate representation of Sistani's views, which in any case are unlikely to be static.

²⁵ ICG interview with Sayyid Ali Sayyaf al-Musawi, Da'wa party, Basra, 1 April 2004. He added that as an initial step, local elections should be held at the governorate level;

Sistani's initial call for early elections was motivated in part by an Iraqi Planning Ministry assessment, presented to the Interim Governing Council in the days before the 15 November Agreement, that from a technical point of view nothing stood in the way of direct elections within a relatively short timeframe.²⁶ While the lack of security is a powerful contrary argument, two rebuttals have been offered: first, that nothing guarantees the security situation will improve by the end of the year; and second, that by instituting rolling elections over days or weeks, coalition forces could ensure maximum protection for particular polling stations on specific days.²⁷ In late March 2004, a Sistani representative in Basra argued:

Elections can be held despite the far from ideal security conditions. They can be held via the municipal councils [*majalis baladiyyat*], the provincial councils [*majalis muhafazat*] and the Interim Governing Council: they can organise the elections. With the ration cards [from the sanctions era], we can identify the voters. The UN should choose for each governorate [*muhafaza*] a judge [*qadi*] or supervisor [*mushraf*] or monitor [*haaris*] to oversee the elections process. There really isn't a problem. The current conditions allow us to reach every family.²⁸

However, moving the elections up from the end of 2004/early 2005 to some time closer to 30 June ultimately is unrealistic. The UN team concluded unambiguously that January 2005 was the earliest elections could be held, and many UN officials complain privately that even that timetable is far too ambitious and supposes a smooth process that nothing in Iraq's short post-Baathist history would suggest is likely.²⁹ The UN Electoral Assistance Divisions director, Carina Perelli, concluded that "eight months [are] necessary in order to be able to conduct the technical preparations leading to elections after basic agreements have been established" on issues such as

successful candidates would then convene to form a transitional council charged with organising national elections.
²⁶ ICG interview with a policy advisor, Baghdad, January 2004.

²⁷ ICG interviews, Washington, March 2004.

²⁸ ICG interview with al-Batat, op. cit. His statement could be read as self-serving, as Shiite leaders realised full well that the situation in Shiite-majority areas before the outbreak of unrest in April 2004 was far better than in the so-called Sunni Triangle, therefore likely to yield higher voter turn-out.

²⁹ ICG interview, New York, April 2004.

who can vote, who can run, what the electoral system will be and who will organise the elections.³⁰ Even under her most optimistic scenario, in which all these agreements will have been reached to Iraqi satisfaction by May 2004, elections could not be held prior to January 2005.

The CPA and UN also have expressed genuine concern that if elections were held under prevailing, highly unsatisfactory security conditions, they might not be orderly or, in case polls could proceed in some areas and not in others, would yield skewed results (for example, disenfranchising Sunni Arabs, given the greater instability in localities where they predominate).³¹ They also fear that early elections would favour those who had a head start, in particular the Shiite religious parties who, while violently repressed by the Baath regime, managed to maintain their organisational structures and earned significant legitimacy precisely because of their bravery and persistence in the face of the regime's depredations.³²

B. PUSHING 30 JUNE BACK

Because neither a credible representative government nor a more stable security situation are likely to be achieved by 30 June 2004, an increasing

³⁰ Perelli News Conference, 15 April 2004. Among the most vexing problems: what will happen to those who were not registered under the old ration card system, or whose nationality is in doubt (e.g., Iraqi Shiites expelled to Iran in the 1970s and 1980s on account of their alleged Iranian origins).

³¹ A Sunni leader in Basra and member of the Ha'iyat al-Ulema al-Muslimin [Committee of Muslim Ulema] told ICG: "Many Iraqis now seem to be calling for immediate elections. But do the current security conditions in our country really allow for such elections to be just and truly free? . . . We have to think twice before we hold elections". He made clear that his real fear was of a "Shiite-controlled Iraq", noting: "Directly after the fall of Saddam, we at the Ha'iya held a meeting with Sayyid Sistani, and we were all happy and ready to hold general elections. That was because there weren't so many different religious parties around then who later came from abroad. We were only with real Iraqis. Things started to change when the Americans appointed the Interim Council. First we were delighted to hear about a temporary government but then we found out that they had created a sectarian council". ICG interview with Yussif Yaaqu Hassan, Basra, 1 April 2004. Sunnis also charge that many Iranians have entered Iraq since the war and that Shiites have deliberately been organising population movements from the South to increase the Shiites' presence in Baghdad. ICG interview with Dr. Jassem Mohamad Issawi, Baghdad University professor, 12 December 2003.

³² ICG interviews, Baghdad, January 2004.

number of U.S. policy-makers, both Republicans and Democrats, have questioned the wisdom of the deadline and urged that it be delayed.³³ Some Iraqis agree: "Dates have no value whatsoever", said a senior Iraqi official.³⁴ "We should produce something that is of benefit to Iraqis. This date -- 30 June -- has no value". Similarly, Interim Governing Council Member Mahmoud Othman said:

30 June is a date the Americans want. Iraqis don't care so much, but for the Americans everything revolves around it. This is the whole problem, and this is why they have failed in Iraq, time and again. They think only in American ways and according to American interests -- the elections in November -- not according to Iraqi interests.³⁵

Postponing the date, it is argued, will give more time to agree on the process for establishing an interim government and to implement it.

However, there are powerful counter arguments. While the 30 June date was arbitrary and, in the minds of many Iraqis and even officials at the CPA, driven more by the U.S. electoral cycle than by Iraqi political interests, it has acquired emotional and symbolic value for Iraqis eager to shake off the national humiliation of the occupying powers' pervasive and intrusive administrative control.³⁶ Likewise, too much U.S. credibility is invested in it.

To scrap the date, like so many other self-imposed plans and timetables, would further erode confidence in the U.S. and, in today's volatile atmosphere, be read as yet another setback.³⁷ Even Iraqis originally sceptical of the timetable would be quick to denounce its abrogation,³⁸ while others would see the delay as a demonstration of their ability to use force to change U.S. plans. Moreover, the reasons why a genuine transfer of sovereignty cannot occur by 30 June are very likely to be equally valid for months thereafter. Any process short of a popular election will be open to challenge, and security problems will endure beyond June.³⁹

Ultimately, the 30 June deadline ought not to be regarded as sacred. Should Brahimi conclude that an extension is required to produce a more representative interim government -- for example, to convene a national conference (see below) -- this ought to be considered seriously. But three conditions would have to be met: the extension would need to be relatively short; the rationale would have to be relatively strong (e.g., the national conference); and the UN would have to produce a clear timetable leading up to the new date. In the abstract, however, and short of such a plan, it is hard to see what good pushing back the transfer of sovereignty by a few more months would do.

C. REDEFINING WHAT WILL HAPPEN ON 30 JUNE

Nevertheless, the 30 June deadline as currently defined is unworkable. In the time that remains, it is difficult to envisage the emergence of a credible, representative and truly sovereign government, only

³³ Senator Richard Lugar, the Republic Chairman of the U.S. Senate Foreign Relations Committee, remarked that the 30 June deadline "might be a subject for more study and debate. . . . The time frame is very small to disarm the militia, to bring about a security situation in which the governing council, the 24 Iraqis or however many others they appoint, can govern the country". The ranking Democrat on the Committee, Joseph Biden, echoed that view: "Whether or not we go forward on June 30 is actually less important than whether we have a plan for success." News Hour Special Report, 5 April 2004. Senator Susan Collins, a Republican, added: "I think we would be wise to reevaluate the June 30 deadline. There are so many unanswered questions, not the least of which is to whom will we be turning over power". Reuters, 7 April 2004. Two former U.S. officials echoed this view, concluding that "we should delay the handover of sovereignty past June 30....[T]here is not now, nor will there be by June 30, a functioning Iraqi government -- let alone a viable state -- to transfer sovereignty to". Daalder and Lake, op. cit.

³⁴ ICG telephone interview, Baghdad, 18 April 2004.

³⁵ ICG telephone interview, Baghdad, 18 April 2004.

³⁶ ICG interview with an Iraqi analyst, 7 April 2004, who said: "At this point, transferring even half sovereignty is better than transferring none".

³⁷ One U.S. official was quoted as saying that "the key to stability in Iraq is empowering Iraqis politically and economically, and the transfer of sovereignty is the symbol of that". Douglas Jehl and Warren Hoge, "U.S. Relies on UN to Solve Problems of Power Transfer", *The New York Times*, 10 April 2004.

³⁸ ICG interviews in Iraq, March-April 2004. A SCIRI official displayed this ambivalence by both calling into question U.S. attempts to perpetuate its domination and the significance of the 30 June date: "You keep asking us about what we think should happen after the 30th of June. But this date is not of our making. It comes from the Americans. For more than 30 years we have been suffering and waiting, so why such an importance given to 30 June? Nothing will really have changed after this date". ICG interview, Basra, 30 March 2004.

³⁹ For this reason, Daalder and Lake suggest that the transfer of sovereignty ought to await the holding of elections, op. cit.

-- at best -- a hodgepodge of either relatively more competent or slightly more representative Iraqi figures. Without such a government, Iraq's security forces -- paltry as they are -- will lack the legitimacy to tackle the various and growing insurgencies. An unrepresentative Iraqi government that called upon U.S. forces to quell them would further undermine its own standing and fuel popular resentment. To claim that such a government is fully sovereign could do damage to the very notion of sovereignty in Iraqi eyes; that description should be reserved for the Iraqi government that will emerge out of the January 2005 elections.⁴⁰

The solution is to keep the date but modify its content: agree that something significant needs to happen on 30 June to change the course of events and put the political process back on track, but not what heretofore has been advertised. 30 June, as noted above, is not, strictly speaking, about transferring sovereignty since in a legal sense, and as stated in UN Security Council Resolution 1511, sovereignty already resides in the Iraqi state and is 'embodied' in its interim institutions.⁴¹ But sovereign power is not being exercised fully by Iraqi institutions before 30 June; likewise, it will not be fully exercised by the new institutions established after that date. As 1511 makes clear, the full exercise of sovereign power is reserved for a truly representative government that

must await the formation of a government based on nationwide elections.⁴² Indeed, because the convening of a constitutional convention is now pushed back until after elections are held, it is virtually untenable to argue that the 30 June government will in fact exercise such sovereignty; rather, it will be yet another milestone along that path.

If 30 June will not be about the transfer of sovereignty, it should nonetheless be about two other transfers in order to endow the process with greater legitimacy and pave the way for elections:

- of governmental powers from the exile-dominated Interim Governing Council to a broader-based set of Iraqi institutions; and
- of any residual political authority from the U.S. to the UN.

A member of a European mission to the UN closely involved in Iraq policy said: "30 June should reflect three criteria: it should mark a clear break from the past; it should embody continuity where it is useful, such as prolonging the mandate of competent ministers; and it should increase the representativeness of Iraqi institutions".⁴³ Many of these principles appear to underlie the proposal Brahimi presented publicly on 14 April 2004.

⁴⁰ Stressing that the new Iraqi government will be fully sovereign also risks crossing one of Ayatollah Sistani's red lines, since he has been adamant that only an elected government should be vested with that kind of authority. Ayatollah Sistani's representative in Basra told ICG: "How can the Iraqi army be under U.S. control in a sovereign country? If the U.S. will control the Iraqi army, then the transfer of sovereignty becomes meaningless. So the occupation would still go on. If the U.S. wants us to take sovereignty, why do they want to stay here with their troops"? ICG interview with al-Batat, op. cit. U.S. officials have taken different views on this issue. While for the most part they have spoken of a transfer of sovereignty, Marc Grossman, the Under Secretary of State for Political Affairs, suggested that the new government would have only "limited sovereignty". Testimony before the Senate Armed Services Committee, 20 April 2004; see also *The New York Times*, 23 April 2004.

⁴¹ UN Security Council Resolution 1511 affirms in its preamble the basic principle that "the sovereignty of Iraq resides in the state of Iraq"; it further provides that the Interim Governing Council and its ministers "are the principal bodies of the Iraqi interim administration which, without prejudice to its further evolution, embodies the sovereignty of the State of Iraq during the transitional period until an internationally recognised, representative government is established and assumes the responsibilities of the [Coalition Provisional] Authority" (para. 4).

⁴² According to UN Security Council Resolution 1511, the CPA will temporarily exercise specific responsibilities "which will cease when an internationally recognised, representative government established by the people of Iraq is sworn in and assumes the responsibilities of the Authority" (para. 1), and "the convening of [a constitutional conference by the Interim Governing Council] will be a milestone in the movement to the full exercise of sovereignty" (para. 10).

⁴³ ICG interview, New York, 13 April 2004.

IV. THE BRAHIMI PROPOSAL

Lakhdar Brahimi described his 14 April proposal as "preliminary thoughts and . . . very tentative ideas" for the political transition, based on many days of discussions with Iraqis, albeit discussion hampered by the upsurge in violence during his stay. The ideas are both vague and liable to be revised, depending on reactions from Iraqis as well as UN members. Secretary-General Annan described them to Security Council members as preliminary comments only and underscored that the final report would emanate from New York.⁴⁴ Discussions with UN officials and Iraqis suggest that some very fundamental issues still need to be resolved. Still, and in particular given Washington's likely approval, they present the probable building blocks for the transition:

- By 30 June 2003, "the Governing Council, along with the CPA, will cease to exist". This seemingly puts an end to the debate about whether to continue or enlarge the Interim Governing Council. While some in Washington and, of course, in the Council itself, had advocated a different course, a U.S. official told ICG, "at this point, we should go all the way rather than tinker with the process and risk another failure. The Interim Council should be disbanded, even if most of its members ultimately are retained in a newly constituted government".⁴⁵ To soften the blow, Brahimi added that some of its current members "will no doubt be called upon to participate in various State institutions".⁴⁶

⁴⁴ ICG interview with UN delegates, New York, 14 April 2004.

⁴⁵ ICG interview, Washington, March 2004. This is not a unanimous view, even within Iraq. One of the Shiite political parties, the Supreme Council of the Islamic Revolution in Iraq (SCIRI), whose leader, Abd-al-Aziz al-Hakim is a council member, explained: "Yes, the council should continue, temporarily and with limited powers, and with a greater involvement of the United Nations. We accept and will accept the council as a necessary window for a limited period of time. But we would want to see a larger number of members, maybe up to 50 or 75, to include all parties in Iraq". ICG interview with Husein Adhaab, a legal advisor to SCIRI, Basra, 30 March 2004.

⁴⁶ Rejecting the option of keeping the Interim Governing Council, Brahimi noted that "all opinion polls [in Iraq] say that people want something different", and added that "a few" but "not all" current members could serve in the new government. ABC News, 25 April 2004.

- From then on, and until elections are held in January 2005, a "caretaker government" led by a prime minister will be in charge. Brahimi suggested it would be formed by May 2004. He made two other noteworthy observations: first, that it would be comprised of people "known for their honesty, integrity and competence", code-word for a technocratic government that, in its caretaker capacity, would seek to be as non-political as possible and focus mainly on day-to-day administration. This is a concession to Sistani, who had warned against any non-elected government that would make long-lasting decisions. Secondly, he mentioned that there would be a president and two vice-presidents -- likely a Shiite, Sunni and Kurdish trio to respect the ethnic and sectarian balance.⁴⁷
- Brahimi suggested that a large National Conference should be convened to "promot[e] national dialogue, consensus building and national reconciliation". This appears to be an Iraqi version of the Afghan *loya jirga* in which Brahimi was instrumental in 2003-2004. Participants would be selected through the efforts of a "preparatory committee"⁴⁸ and the Conference "could take place soon after the restoration of sovereignty, in July 2004".
- In turn, the Conference would elect a "Consultative Assembly to serve alongside the Government". The combination of the government (named, notably, *prior* to the gathering of the Conference), the Conference and the Assembly aims to satisfy two needs that are somewhat in tension: first, to reassure Sistani and others that no decision-making body acting prior to elections will claim to be truly representative and therefore empowered (hence the formation of a strictly technocratic government); secondly, to show the Iraqi people

⁴⁷ There is a historical precedent for this in Iraq. The country's first republican government, installed after the coup that overthrew the monarchy in 1958, had a three-member presidency (*majlis siyadeh*) composed of a Shiite (Ibrahim Kubba), a Sunni (Najib al-Ruba'i) and a Kurd (Khaled al-Naqshbandi). Coup leader Abd-al-Karim Qasem (himself the progeny of a Sunni Arab father and a Shiite Kurdish mother) became the all-powerful prime minister, who -- at most -- consulted with the presidential council. In the set-up proposed for 30 June 2004, power should probably be less skewed toward the prime minister. ICG interview with an Iraqi political actor, Amman, 19 April 2004.

⁴⁸ Comprised of Iraqis, in particular "Iraqi judges", ICG interview with UN official, New York, April 2004.

that more legitimate and inclusive institutions are being set up (hence the establishment of broader political bodies).

- Elections are scheduled to be held in January 2005, and only then will "Iraq . . . have a genuinely representative Government". In other words, while Brahimi felt compelled to adhere to the 30 June deadline for the transfer of authority, he made clear that the real transition would only occur with the elections.⁴⁹

How Iraq's political class ultimately will react to Brahimi's ideas is unclear. Adnan Pachachi's Iraqi Independent Democrats responded relatively favourably,⁵⁰ but on the whole politicians so far have remained relatively quiet, and ICG found few willing to offer strong views. This is at least in part a reflection of the proposal's vagueness, which has given hope to some that it could be significantly revised. "Brahimi's plan is not very clear and can still be adjusted", said a political advisor to an Interim Governing Council member.⁵¹ Entifadh Qanbar, spokesman for the Iraqi National Congress, which is highly critical of UN involvement, saw this as an opportunity: "The process, and the structure of the new government, are still under discussion. [Contrary to Brahimi's plan] we want to enlarge the current council to create a new one. We are open to suggestions. Nothing is set in stone. It's okay for the UN to help but we don't want it to lead the political transition".⁵² More subtly, Safeen Dizayee of the Kurdistan Democratic Party said: "Mr. Brahimi's

outline is the right approach; we share his vision. But on technical detail there may be a number of differences".⁵³

Moreover, the short history of post-Baathist Iraq is replete with proposals initially accepted because U.S. support appeared to make their implementation inexorable (the 15 November agreement being the most notorious example), only to be challenged overwhelmingly once cracks began to appear. As a result, the political class's initial silence ought not be taken as automatic endorsement or nuanced acceptance as a whole-hearted embrace.

Some Iraqi politicians felt that the announcement had been preceded by insufficient consultation. While Brahimi certainly intended to consult widely, his ability to do so was severely constrained by the security situation.⁵⁴ Some Iraqis complained that they had not seen the proposal coming based on their meetings and had been caught off guard by its details.⁵⁵

Brahimi himself said that while his movements had been "somewhat restricted" because of security conditions he nevertheless was able to meet "a large number of people representing various constituencies, including members of the Governing Council, Ministers, political parties, trade unions, professional associations and other civil society organisations, women's groups, academics,

⁴⁹ "Joint press conference by Lakhdar Brahimi, Special Adviser to the Secretary-General, and Mr. Massoud Barzani, President of the Iraqi Governing Council - Baghdad", available at: <http://www.un.org/apps/news/infocusnews/iraq1.asp?sID=19#>.

⁵⁰ ICG interview with Basem Suleiman, member of the Supreme Board of the Iraqi Independent Democrats, 24 April 2004.

⁵¹ ICG telephone interview, Baghdad, 18 April 2004. "Brahimi gave us advice", he remarked. "After Bush and Blair endorsed it, it became very strong advice, giving Brahimi a strong hand in the selection of a caretaker government".

⁵² Qanbar cited several criticisms of the UN in general and Lakhdar Brahimi in particular. Brahimi, he said, "used to be a supporter of Saddam, and his first report [in February 2004] was not reasonable; his comments about the possibility of civil war were not well received. We also disagree with his criticism of de-Baathification [in Brahimi's press conference announcing his proposal on 14 April]. De-Baathification was carried out on the basis of a law passed by the Governing Council after much discussion. It's an internal Iraqi matter and not something for the UN to weigh in on". ICG telephone interview, Baghdad, 18 April 2004.

⁵³ ICG telephone interview, Baghdad, 19 April 2004. Some of the technical differences he mentioned had to do with the elections projected for January 2005. Many Kurds remain displaced, he said; they "should be allowed to return to their original homes" in advance of a general election. Moreover, he added, the timing of the elections may be unrealistic as long as the security situation remains unsatisfactory, and also in light of the difficulty of organising a poll in the Kurdish areas in the heart of winter.

⁵⁴ Brahimi was able to travel to Mosul, and briefly visited Basra on his way to Kuwait when leaving Iraq -- but *after* he held his press conference announcing his plan on 14 April. Whenever he left the relative security of the "Green Zone" in Baghdad, he had to move under heavily armed escort with Humvees and military guards. This "constrained his movement quite a bit", said another observer, who attended some of the meetings. Brahimi has presented a different point of view on the range of Iraqis he was able to consult.

⁵⁵ An adviser to an Interim Governing Council member told ICG: "Most Iraqis that Brahimi saw proposed that a National Conference be held before the appointment of a caretaker government, but obviously he did not reflect this in his press conference". ICG telephone interview, Baghdad, 18 April 2004.

intellectuals, and artists, etc."⁵⁶ Iraqis who were critical of the process expressed the hope that Brahimi would cover a much broader range of opinion when he returned (reportedly in early May), especially in preparation for the national conference, and would listen with an open mind.⁵⁷

Ordinary Iraqis were, if anything, even less loquacious, admitting to knowing little if anything of Brahimi's plan and often dismissing it as irrelevant -- yet another indication of the challenge the UN faces in establishing credible governing institutions. "I don't know it and I don't want to hear about it. I know that it will be ink on paper and that developments will be 'made in the USA'", was a typical comment to ICG.⁵⁸ Mahdi Shaheen al-Jorani, a 60-year old businessman added: "We understand that the upcoming government will be formed after consultations between the UN, Governing Council members and the CPA. That is not acceptable".⁵⁹

V. THE CHALLENGES AHEAD

A. THE UN ROLE

The U.S. appears to have shifted its attitude toward the UN recently. Eager to find a way out of the impasse and increasingly aware of its own diminished credibility, the administration agreed to entrust at least some responsibility for the political transition to the UN in the person of the special adviser, Brahimi, who is well respected by the White House.⁶⁰ UN officials said that, for now at least, Washington wanted to let the world body decide the way forward. In May 2003, a senior UN official had predicted that "the U.S. will wait until the situation becomes a complete mess before passing it on to us".⁶¹ That time appears to have come.

This potentially is an important step, one that ICG has called for from the outset of the occupation. Even prior to the April 2004 events, the U.S. reputation as the arbiter of Iraq's political transition was in serious question; in their aftermath, and given increased hostility among both Shiites and Sunnis, it is difficult to imagine any U.S.-managed process enjoying the necessary broad-based credibility. The CPA, for all its hard work and sincere effort to manage the transition toward the hand-over of sovereignty on 30 June, has lost much of the goodwill it once had because of its relationship to the Interim Governing Council; its design of an opaque and in the event unworkable caucus system; its reluctance to incorporate groups into the transition that feel left out of the benefits the occupying powers had promised to bring; and its signal failure to internationalise the coalition. A preponderant CPA role in the run-up to 30 June or a dominant U.S. embassy role in its wake risks tainting the political process, providing fodder to detractors and reducing the appetite of third parties -- in particular European or Arab states -- to assume their share of the political and military burdens. "Brahimi's proposal is not new", said an Iraqi official, "but coming from his mouth it has a different dimension", one that carries the additional weight and legitimacy of the UN.⁶² The optimal solution is

⁵⁶ Brahimi press conference, 14 April 2004. A UN official reinforced this point, saying that Brahimi and his senior aide, Jamal Benomar, had seen "more Iraqis in toto, and a more diverse group at that, than during their last trip" in February 2004. ICG interview, 22 April 2004.

⁵⁷ Public gatherings concerning the TAL Annex reportedly started on 27 April 2004 with, so far, seven meetings scheduled in Baghdad and another seven in the governorates (Barsa, Diwaniyeh, Hilla, Kirkuk, Mosul and Erbil). An aide to an Interim Governing Council member said that the Council had prepared lists of those to be invited (some 1,000), including representatives of "Islamic movements and parties, nationalist movements, democratic and liberal parties, trade unions, civil society organisations, women's groups, religious institutions and tribes, as well as independent politicians, academics, jurists and other professionals". The CPA and UN will be invited "to listen to their recommendations". E-mail communication from Bakhtyar Amin, an aide to Mahmoud Othman, 25 April 2004.

⁵⁸ ICG interview, Baghdad, 18 April 2004.

⁵⁹ ICG interview, Baghdad, 19 April 2004.

⁶⁰ A U.S. official conceded, "at this point, we will agree to anything Brahimi comes up with". ICG interview, Washington, April 2004.

⁶¹ ICG interview, Baghdad, May 2003.

⁶² ICG telephone interview with Muhyi al-Khateeb, Executive Secretary of the Interim Governing Council, Baghdad, 19 April 2004.

the appointment of a UN Special Representative with a clear and strong mandate as discussed below.

But while Washington's shift has been a necessary condition for a successful UN role, it is not sufficient:

- The change in attitude must prove to be both profound and lasting, not dictated solely by immediate political needs. Regardless of what happens after 30 June, the U.S. will have by far the largest military, economic and political presence in Iraq. While there is no escaping the fact that it will have significant influence, the political process can succeed only if it truly and transparently transfers responsibility for it to the UN.
- The UN's reputation in Iraq has been tarnished, and a degree of scepticism is evident in the country's political class about the desirability of its return. Rightly or wrongly, the institution is popularly held responsible for the sanctions of the 1990s. It has been widely criticised for the bureaucracy and red tape that marked its administration of the oil-for-food program; and recent allegations that UN officials (and others during the UN's watch) might have made illegal gains from oil coupons issued under that program have further undermined the organisation's public standing.⁶³ Also, as noted, Brahimi's visit left some Shiites in particular wary of his role. UN officials readily concede that they will not be warmly received by all,⁶⁴ especially Interim Governing Council members unhappy with the proposal to dismantle that body. For the UN, and Brahimi above all, this makes it all the more essential to establish a broad Iraqi consensus before taking any decision.
- It is not at all clear that the UN has the appetite to return to Iraq in force and take responsibility for the transition. In remarks to Security Council

members, the Secretary-General put forward three prerequisites for such a role: a Security Council consensus, a clear, "realistic, feasible and advisable" mandate, and, crucially, a proper security environment.⁶⁵ As a U.S. official put it, "The UN and Secretary-General Annan in particular are still traumatised by the tragic suicide bombing of August 2003".⁶⁶ The serious disturbances in Fallujah, Sadr City and the South hampered Brahimi's work during his April visit and likely curbed his enthusiasm for the job. Should the situation worsen, the UN's willingness can only be expected to diminish further. In conversations with foreign leaders, Annan has made clear that, while he is willing to see the organisation play a strong political role, the conditions currently do not exist for a significant ground presence -- a factor that will affect the UN's work on issues such as advising the caretaker government or assisting in running the elections.⁶⁷ The U.S. is seeking to assemble a strong international force to protect UN operations; it will be important for countries that have long called for a leading UN role to respond. For the moment, the UN has acted cautiously. In late March, a technical team arrived in Baghdad to assist Iraqis in preparing for general elections, consistent with the earlier offer of help.⁶⁸ Brahimi came a week later, also making good on a previous promise.⁶⁹ But the

⁶³ Several Iraqi officials conceded that the affair had tainted the UN's reputation, while stressing that important details were left unclear. ICG interviews with Ibrahim Bahr al-Ulum, Iraq's Oil Minister, Baghdad, 2 March 2004, and with a senior official at the Ministry of Planning, Baghdad, 10 April 2004. One UN official dismissed the affair as a masterstroke organised by those opposed to further UN involvement in Iraq. ICG interview, Amman, 14 April 2004. For updates on the UN's inquiry into the oil-for-food scandal, see: <http://www.un.org/apps/news/infocusRel.asp?infocusID=50&Body=Iraq&Body1=inspect>.

⁶⁴ ICG interviews, New York, April 2004.

⁶⁵ ICG interviews, New York, April 2004.

⁶⁶ ICG interview, Washington, April 2004.

⁶⁷ ICG interviews, New York, April 2004.

⁶⁸ Following its February 2004 assessment on the desirability and possibility of holding elections in Iraq, the UN expressed willingness to help with the creation of an electoral legal framework. See UN Secretary-General, "The political transition in Iraq", *op. cit.* Prior to its re-entry into Iraq, the UN had indicated that three conditions must obtain before it would agree to play a supporting role in the Iraqi transition: its presence must be indispensable to Iraq's transition and not an optional add-on to enhance an existing process; its role must be requested, if not unanimously, then at least by a broad consensus of Iraqi political, social and religious forces; and its mission must have the backing of a unanimous Security Council resolution. ICG interviews with senior UN officials working on Iraq, December 2003, New York. None of these conditions appeared to obtain in February 2004 or afterwards, explaining perhaps the minimal UN engagement to this point.

⁶⁹ UN Secretary-General, "The political transition in Iraq", *op. cit.*, which says in the recommendations: "The United Nations would be willing to offer its assistance to help build consensus among Iraqis on the specific powers, structure and

organisation has not taken the next step and deployed permanent staff, preferring to test the waters first.

It is critical that not only the U.S. but also those countries that opposed the war provide the UN with the mandate and other tools it needs, since on all counts the UN option is better than any realistic alternative. ICG interviews suggest that, despite strong misgivings, Iraqis are far more likely to accept a UN than a U.S. role.⁷⁰ A central and transparent mediating UN role, based on broad consultation, would put a stamp of international legitimacy on the process of selecting the caretaker government and other transitional institutions. Moreover, the UN would not be specifically beholden to any of Iraq's current political actors, including the Interim Governing Council. Ultimately, the UN's attitude will depend on the views of its key member states, most of whom have urged such a greater role from the start, and on the clarity of its mandate.

Even should all conditions be met, UN officials view the job hesitatingly. Brahimi's ideas imply that the UN will take the lead in forming the caretaker government and will help select the committee that is scheduled to choose participants in the National Conference; Perelli, the electoral assistance director, likewise explained that the UN would put together the electoral plan in tandem with Iraqi authorities and would be prepared to be "heavily involved in the selection and vetting of candidates for the [electoral commission]".⁷¹ But, pressed by ICG, UN officials made clear they were not interested in a role akin to that played in Bosnia or Kosovo where the organisation held real executive powers; nor do they intend to staff ministries with their own "shadow" representatives or run elections.⁷² "We will advise but not supervise", is how a senior official put it; another explained that, "unlike Bremer, we will have a light foot".⁷³ "We should not delude ourselves about what the UN can do: we are not entirely credible in Iraq, and we don't have the capacity to do it all".⁷⁴

composition of such a provisional governance body and the process through which it could be established".

⁷⁰ In interviews conducted in April 2004, after Brahimi had unveiled his proposal, ICG noted for the most part acceptance of a strong UN role, though there were also still many who dismissed Brahimi and the UN as U.S. pawns.

⁷¹ Perelli News Conference, op. cit.

⁷² Ibid.

⁷³ ICG interviews, New York, 13 April 2004.

⁷⁴ Ibid.

While the UN role should not be as extensive as in Kosovo, and while it legitimately fears being set up for failure in Iraq, its powers ought to be greater than the world body currently contemplates. The new Iraqi institutions will not exercise full sovereign powers: Sistani and others have made clear they will object to its taking any decision with long-term consequences, and there is no credible judicial branch to rule whether the government's actions are consistent with its limited, caretaker role or with the Temporary Administrative Law or to arbitrate differences between different branches of government.

Nor should it be assumed that all will go as planned. The 30 June deadline may slip if it proves impossible to reach a consensus on the identity and powers of government members, in particular of its three-headed leadership; likewise, difficulties in choosing members to the National Conference or electing the Consultative Assembly may delay or undo that step. Under either of these or other possible scenarios, the UN may be the only party capable of stepping in and compensating for the resulting vacuum.⁷⁵ Some argue that such protections are unnecessary given the very short time -- 6-7 months -- between 30 June and the elections. But it is a very real possibility that elections will not be possible by January 2005 because of security conditions; therefore, getting the process right for this provisional period is highly important. Ultimately, the UN may well need more extensive authority than it currently has in mind during the critical period leading to the national elections:

- **On or before 30 June 2004**, the UN Special Representative should:
 - appoint a provisional government; and
 - work with the Interim Governing Council on drafting the Annex to the Temporary

⁷⁵ Should the UN feel it is not up to the task, one possible fall-back alternative would be to appoint "an international High Commissioner" supported not by the UN but by a "consortium of key countries including not only the United States but also European and Arab, countries". Testimony by Samuel Berger, Senate Foreign Relations Committee, 20 April 2004. In addition to arguments concerning the UN's will and capacity, some observers point to inherent pitfalls in granting it anything akin to "reserved" or "residual powers". It could prevent or inhibit responsible decision-making by local political actors, who would be secure in the knowledge that they could posture and await UN arbitration, and it could further diminish the credibility of the local government.

Administrative Law that will spell out the governmental structures and power division during the period from 30 June to the national elections. In theory, the Annex is to be drafted by a committee set up by the Interim Governing Council and headed by Adnan Pachachi.⁷⁶ The UN has understandable reservations about this, as it would leave to a body that does not enjoy popular legitimacy and has only a few more weeks of existence, the heavy responsibility of defining the post-30 June governing structures. The UN Special Representative would have to approve the Annex, and would do so only after wide consultations with Iraqis.

- **After 30 June**, the UN Special Representative should have the authority to:
 - assist the government in preparing for elections;⁷⁷
 - appoint a new government in the event its first choice is rejected by the Consultative Assembly (as discussed below);
 - overrule government decisions that it views as exceeding the provisional government's mandate;
 - break any deadlock within the caretaker government or between it and the Consultative Assembly;
 - assist the Consultative Assembly in reviewing major new contracts as a means of checking against possible corruption; and
 - have final say as to whether to approve a possible National Conference proposal to amend the TAL.

All of these powers should be exercised sparingly and with extreme caution. The presence of a President, Vice-Presidents and Prime Minister -- presumably representing different ethnic and sectarian constituencies -- should constitute a powerful check on governmental action, making the UN role in this respect marginal. In any event, the Special Representative should show great deference to government decisions, which should be presumed to be valid and overruled only if deemed clearly to contravene limitations on its mandate or to be prejudicial to Iraq's transition. As for the TAL, for reasons explained below, there should be a strong presumption against any amendment. Should the National Conference propose a change, the Special Representative should ensure that it enjoys a wide consensus and will not harm Iraq's stability.

B. FORMATION, COMPOSITION AND MANDATE OF THE PROVISIONAL GOVERNMENT

The first test for the UN in Brahimi's plan will be selection of the caretaker provisional government. How this will take place remains extremely vague; UN officials would only say that it would be undertaken by the UN, together with the CPA, the Interim Governing Council and "other Iraqis", such as judges.⁷⁸ It should be noted that, according to the Temporary Administrative Law (TAL) signed by the 25 members of the Interim Governing Council on 8 March 2004, the composition and powers of a provisional government and the mechanism by which it is to be established, are to be detailed in an Annex to the TAL. This leaves the very real possibility of a tug of war between the UN and the Council, some members of which are, as noted, lukewarm to Brahimi's proposal.⁷⁹

Brahimi's description of a caretaker government composed of men and women of integrity and competence reflected a conscious effort to address Sistani's repeated insistence that, in the absence of immediate elections, any provisional government should have limited powers. According to a statement issued by his office in late February 2004:

⁷⁶ The Pachachi committee working on the Annex is the same as the one that drafted the TAL in January-March 2004. A CPA official told ICG that it functions by open invitation and that virtually everyone turns up, i.e., a majority of the members of the Interim Governing Council or their designated representatives. E-mail communication, 25 April 2004.

⁷⁷ Three sets of elections are scheduled to take place: for the National Assembly, the Kurdistan National Assembly and the local governing councils.

⁷⁸ ICG interview, New York, April 2004.

⁷⁹ Entifadh Qanbar, a spokesman for Interim Governing Council member Ahmad Chalabi, expressed a strong preference for an expansion of the Council rather than its elimination. ICG telephone interview, Baghdad, 18 April 2004.

The *marja'iyeh* demands that the non-elected body to which power is transferred on 30 June be a [quoting Sistani] "temporary administration with clear and limited authority that would prepare the country for free and fair elections and administer the country during the transitional period". It should not be empowered to take important decisions to which a government emanating from an elected assembly would be bound.⁸⁰

The selection of essentially non-political, technocratic experts is expected to meet that condition. Its role should be to manage the country's day-to-day affairs, run the budget and basic services, while shying away from major decisions, such as signing international treaties, that would have long-lasting impact and/or prejudice the will of a future popularly elected government. "Sistani won't oppose the Brahimi proposal", predicted unaffiliated Interim Governing Council member Mahmoud Othman. "It seeks to accommodate him: no legislative body, no law-making powers, a caretaker government -- in power for only seven months". Likewise, Safeen Dizayee, an official of the Kurdistan Democratic Party (KDP) said he expected "no conflict between the UN and Sistani".⁸¹

Of course, politics will not be entirely absent, as the selection of the president, vice presidents and prime minister are bound to be closely watched and controversial. Prominent members of the Interim Governing Council will be jockeying for those positions; given the Council's low standing with Iraqis, successfully resisting such pressures will be critical for the credibility of the UN and the process.⁸² As a possible way of further guarding against political manoeuvring or usage of political office to establish patronage networks, members of the caretaker government, including the president, vice presidents and prime minister, could be barred from running for office in the first nationwide elections.⁸³

Brahimi's proposal that the caretaker government should be established *prior* to convening the National Conference and elections of the Consultative Assembly is a further effort to insulate the government from the political process, though one that is raising some eyebrows in Iraq and elsewhere since it risks reducing the legitimacy of that government.⁸⁴ Although UN officials publicly explained that Brahimi had reached his conclusion based on the impossibility of holding the National Conference by 30 June, that argument is weak at best. If there had been a preference for convening the conference before establishing the government, and if, as Brahimi suggested, the conference can be held by July, the entire process could have been delayed a few weeks, with a clear justification and explanation. In fact, Brahimi's concern is essentially political: were the conference or consultative assembly to play a role, he feared the appointment of the caretaker government would be caught up in political, ethnic and sectarian jockeying, might well seriously delay -- or even jeopardise -- the formation of such a government, and might not yield a desirable result. In other words, the point was less that the National Conference could not be held by 30 June so much as that it *should not* be held before the formation of the government.

Some Iraqi politicians told ICG they agreed. In the face of popular upheaval, they argued, political continuity is a better recipe for restoring stability than the uncertainty that a more complex exercise, such as organising a national conference prior to 30 June, would bring. An advisor to Interim Governing Council member Adnan Pachachi explained that the proposal aims to offer a "seamless transition of governance" on 30 June by seeking to set up a functioning government by the end of May -- a full

⁸⁰ Statement issued on 25 February 2004, available at: <http://www.sistani.org/messages/saddam.html>.

⁸¹ ICG telephone interviews, Baghdad, 18 and 19 April 2004.

⁸² If Brahimi "succumbs" to the temptation to choose the president and prime minister "from the core of the [Interim Governing Council], then all the problems that dogged the IGC, its lack of legitimacy, its inability to forge meaningful links with the population and criticisms of it being appointed and not elected will surface". Toby Dodge, *op. cit.*

⁸³ Brahimi seemed to be hinting at something analogous in an interview with the U.S. broadcasting network ABC, "This

Week with George Stephanopoulos", when he said: "My personal view at this moment is that people who have political parties and are leaders of their parties should get ready to win the elections . . . and stay out of the interim government", 25 April 2004. The idea of barring leaders of the government from running in the subsequent election was suggested to ICG by an Iraqi analyst with regard to the original Interim Governing Council. ICG interview, Baghdad, July 2003. The Brahimi interview is available at: <http://abcnews.go.com/Sections/ThisWeek/>.

⁸⁴ The Head of Mission from a permanent member of the Security Council questioned the logic of Brahimi's sequence, arguing that the national conference should be given a role in endorsing the government. ICG interview, New York, 13 April 2004. Arguably, such an endorsement could take place after the fact and retroactively legitimise the government.

month before the transfer of sovereignty. "The caretaker government must be given some lead time so that they can run their ministries effectively on 30 June," the advisor said.⁸⁵ "Let's not forget this is a temporary situation", added Safeen Dizayee. "The primary objective of all Iraqis is to see an end to the occupation on 30 June".⁸⁶

But the downsides are also clear: a government put in place without the blessing of representative Iraqis will be more vulnerable to criticism. And a national conference or consultative assembly without a role in selecting the government risks being seen as meaningless and powerless. Some Iraqis question what appears to them a public denial of their own express suggestion to Brahimi -- that a national conference be organised first, based on broad consultation among Iraq's varied communities, social groups and political parties. This gathering should then elect from its ranks a (consultative or legislative) council, which, in turn, should appoint a caretaker government. This progression, they argue, promised a government with significant popular support. "We proposed to hold a national conference first", said Mahmoud Othman, "but Brahimi told us there would not be enough time to do this". "Brahimi has got it the wrong way around", remarked a senior Iraqi official.⁸⁷ Even if most political leaders were prepared to accept Brahimi's sequence, a vocal minority could quickly upset the consensus by denouncing it as an end-run around popular will.

Indeed, in interviews conducted throughout Iraq during the past several months, ICG found that cynicism about the intentions of the occupying powers and those viewed as their handpicked proxies -- the Interim Governing Council and the council of ministers -- is widespread and profound. As an official of the Supreme Council of the Islamic Revolution in Iraq (SCIRI)⁸⁸ put it recently: "What we fear is that the Americans and the British will just appoint some persons to their liking [on 30 June]. They will merely be passing on the *tarbush*⁸⁹ from

one head to the next. In the entire process, the Iraqi people are simply ignored".⁹⁰ The provisional government will be "pro forma" (*hukumeh shakliyah*), said another political activist.⁹¹ Prior to Brahimi's announcement, Interim Governing Council member Adnan Pachachi, who has a good reputation inside Iraq and is widely respected abroad, especially in the Arab world, had seemed to favour a process whereby a large national conference would create a legislative or consultative organ that in turn would appoint a caretaker government.⁹²

Ultimately, there are good reasons not to politicise the appointment of the caretaker government excessively, and there are real risks in conditioning the formation of such a government on the convening of a conference that may take far more time than Brahimi intimated. Should it emerge clearly in the UN's next round of consultations, however, that the bulk of Iraqi political opinion favours reversing the sequence and convening the conference first, the UN should seriously consider it -- even if the conference would have to be held shortly after 30 June. Under that scenario, the National Conference would elect the Consultative Assembly, which would then select the caretaker government. At a minimum, the UN should take great care to consult as widely and transparently as possible before naming this government, and the Consultative Assembly should be empowered to hold a confidence vote on the government as spelled out below.

But the timing of the National Conference may be the least of the UN's problems. Given the situation on the ground and the strong anti-occupation feelings held by some, it is not at all assured that the wide array of Iraqis needed to legitimise the National Conference will agree to attend. Indeed, it is precisely those constituencies whose presence is most essential -- the disaffected, marginalised groups, whether Sunni tribes or Shiite underclass -- that are least likely to come. This is yet another argument for ensuring that the process is clearly and unmistakably under the sponsorship of the UN, not the CPA or the U.S. There also is a potential

⁸⁵ ICG telephone interview with Fareed Yasseen, Baghdad, 18 April 2004.

⁸⁶ ICG telephone interview, Baghdad, 19 April 2004.

⁸⁷ ICG telephone interview, Baghdad.

⁸⁸ SCIRI, as noted above, is, of course, a long-time at least nominal U.S. ally and is represented on the Interim Governing Council.

⁸⁹ A *tarbush* is a flat-topped conical felt cap with a tassel worn by older Muslim men (particularly in urban areas during the late Ottoman and Mandatory periods), which suggests a degree of authority.

⁹⁰ ICG interview with al-Hashimi, op. cit.

⁹¹ ICG interview with al-Musawi of the Da'wa party, op. cit. A university student described the ruling political parties as "simply carving out their piece of the power system. We are sandwiched between the occupation forces and these political parties". ICG interview, Basra, 28 March 2004.

⁹² E-mail communication to ICG from a Pachachi aide, 11 March 2004.

problem of location: "held abroad or even in the Kurdish north, a National Conference may lack credibility; held in the U.S.-protected 'Green Zone,' it may lack legitimacy; and held anywhere else, it may lack security".⁹³

Across the board, Iraqis also deride the sectarian logic that has informed appointments to the governing bodies of the new Iraqi state, and express anxiety over its potential to give rise to a "Lebanonisation" of politics and, beyond that, to civil war.⁹⁴ The expected appointment of a Shiite president, and Sunni and Kurdish vice presidents -- clearly reminiscent of Lebanon's sectarian divisions -- while arguably politically necessary, is unlikely to lessen this anxiety.

Getting this issue right will be critical to the success of Brahimi's enterprise. Should the UN go down the path of a caretaker provisional government selected prior to the convening of a National Conference only to have to reverse course along the way, the costs would be high. Conversely, should it seek to hold the National Conference first, and should that body degenerate into bickering or, worse yet, never get off the ground, Iraq would continue being ruled by an illegitimate Interim Governing Council. General elections are being held out as a panacea, the mechanism that can pull Iraq out of the political morass early in 2005. But a continuing cascade of policy failures and aborted initiatives may pre-empt any salutary effect general elections could have on the political transition.

⁹³ ICG interview with Iraq analyst, 19 April 2004.

⁹⁴ "Muhassasa [the apportionment of spoils and privileges] is becoming the new principle of Iraqi politics", lamented an Iraqi businessman. ICG interview, Baghdad, March 2004. A CPA official told ICG that Bremer had to step in to prevent the Interim Council from making multiple nominations for deputy ministers on sectarian grounds. ICG interview, Baghdad, March 2004. As a result, on 25 February Bremer decreed that he alone would have the authority to appoint deputy ministers. In spite of this, several Iraqi officials told ICG that politicians were frantically seeking to build their "fiefdoms" so as to be able to claim that "at least we control this or that ministry". ICG interviews in Baghdad, April 2004. The phenomenon permeated the entire state administration in post-war Lebanon. For details, see Reinoud Leenders, "Public Means to Private Ends: State-Building and Power in Post-War Lebanon", in Eberhard Kienle (ed.), *Politics from Above, Politics from Below: The Middle in the Age of Economic Reform* (London, 2003).

C. THE NATIONAL CONFERENCE AND CONSULTATIVE ASSEMBLY

ICG interviews indicate that one of the principal problems in the US-led transition to date has been its opaque, narrow scope and the absence of broad Iraqi participation.⁹⁵ Since the fall of the Baathist regime, very little has been done to create a new political consensus or cohesion. The CPA has preferred to deal with a handful of selected politicians rather than with the necessarily more chaotic and messy reality of Iraqi society.⁹⁶ But the ensuing disconnect between Iraq's governing institutions and its people has been manifested in various ways, perhaps none so glaringly as the latter's at best ambivalent attitude during the April insurgencies in the Sunni triangle and Shiite areas. In the period prior to national elections and genuine transfer of sovereignty, it will be imperative to initiate the process of building a sense of national cohesion. An Iraqi official commented:

There is barely a national identity, hardly a sense of belonging to the Iraqi nation. I knew the Iraqi identity was weak but I didn't appreciate it was this weak. At this point the only remaining hope is that when these people see they are in danger and realise that they may not be governing anything, they will pull themselves together and start doing something about it.⁹⁷

This concern lies behind the idea of a National Conference and a Consultative Assembly. As in the case of the caretaker government, two crucial questions remain: what powers will these institutions have, and how will they be formed?

As to the first, Brahimi gave very little indication, beyond the fact that the National Conference would elect the Consultative Assembly, and the Assembly would "serve alongside the government". Important functions already have been removed from the scope of their authority: the appointment of the government (for reasons explained above), and establishment of the regulatory framework for elections (since, according to the UN, these need to be finalised no later than May 2004, before the formation of the

⁹⁵ ICG interviews, Baghdad, Basra, January-April 2004.

⁹⁶ Said one Iraqi entrepreneur: "The U.S. has more confidence in Iraqi expatriates: They think that in every Iraqi within Iraq lies a Saddam". ICG interview, Baghdad, 4 March 2004.

⁹⁷ ICG telephone interview, Baghdad, 18 April 2004.

government).⁹⁸ Brahimi also has indicated that neither body should have legislative powers, noting "that should be left to the government that will come out of elections".⁹⁹ As a result, the process already risks being tainted, and the two institutions could be viewed as token gestures without substantive content.

Some steps could be taken to alleviate this problem. The Consultative Assembly could be asked to endorse or reject the composition of the government after the fact -- in effect a vote of confidence. Arguing that the question of what should come first -- the appointment of a caretaker government or the staging of a national conference -- was a chicken-and-egg problem, the KDP's Dizayee commented that "the new caretaker government . . . will still have to face a vote of confidence in the new consultative or legislative council".¹⁰⁰ Should the government be rejected, the UN Special Representative would then have to name another, and it would have to seek approval of the Consultative Assembly, while the initial caretaker government remained in office until this was achieved.

The Assembly would not be able to legislate positively but could veto decrees issued by the caretaker government. Under such circumstances, the decree could be returned to the government for amendment; should the second attempt also fail to pass, the Special Representative would step in and arbitrate. The Assembly could also act as a check against possible corruption by reviewing major new contracts, with the UN once again acting as an arbiter in the event of disagreement. Finally, the Assembly could create committees to oversee the work of specific ministries, thereby permitting dialogue, discussion and some sense of feedback on ministry policies and programs.

For its part, the National Conference would seek to reach a broad political agreement in which all components of Iraqi society would pledge to work together for the common goal of managing the transitional period until elections, building a democratic Iraq and forswearing violence. Some UN officials have suggested it also could serve as a forum to clear up misunderstandings about the TAL, reaffirming both its temporary nature and agreement to abide by its provisions during this time.¹⁰¹ Some UN officials have gone further, suggesting that the National Conference serve as a forum for amending some of the more controversial provisions of the TAL, an idea discussed below.¹⁰²

As to the mechanism for establishing the National Conference, Brahimi spoke of a "preparatory committee", which "should be established soon to start the preparatory work" and whose composition would be decided by Iraqis. Each stage of this process -- from selecting a conference site, to selecting the Iraqis who will select the preparatory committee, to selecting the members of that committee to selecting participants in the conference -- will present considerable political obstacles. Brahimi's Afghan experience of the *loya jirga* clearly looms large; Iraqis and others interviewed by ICG have evoked a gathering of several hundred Iraqis representing a broad cross-section of society and the full range of political actors.

Ultimately, in order to be successful, any national conference will need to show a greater degree of inclusiveness in terms of Iraq's panoply of political forces, communities and tribes, which have felt sidelined since the selection of the Interim Governing Council in July 2003, and include those who have established popular credentials through their opposition to the occupation. Several guidelines ought to be considered:

⁹⁸ Perelli stated that the electoral legislation "technically would have to be signed by the CPA in consultation with the governing council", hardly a guarantee of widespread legitimacy. That said, she stressed the need for broad consultation with a wide range of Iraqis. News conference, op. cit.

⁹⁹ ABC News, op. cit. This view is consistent with Sistani's notion that Iraq's provisional institutions should have a very limited mandate. In making this point, Brahimi cited Iraqi concerns that, "We don't want a government, neither the government nor anybody else, to start . . . selling oil for 50 years or making arrangements, military or something, with anybody for a long time". Ibid.

¹⁰⁰ ICG interview with Dizayee, op. cit.

¹⁰¹ ICG interview, New York, April 2004. In response to a question regarding the role of the National Conference, Brahimi noted that it could play a role in clarifying misunderstandings. ABC News, op. cit.

¹⁰² One UN official suggested that the National Conference be given the responsibility to approve the TAL Annex, which could amend controversial sections of the TAL itself. ICG interview, New York, April 2004. That would lead to the odd situation of having the government, National Conference, and Consultative Assembly all come into being prior to approval of the document defining their roles and mandates. In a recent interview, Brahimi made the vaguer suggestion that the National Conference could "accommodate" Sistani's call for changes in the TAL. ABC News, op. cit.

- **An effort should be made to build on the fledgling local structures established by the CPA at the municipal and governorate levels.** Even if these councils have not been elected, they arguably possess the greatest degree of legitimacy of any interim political institutions in Iraq. More often than not they are derived from internal elections, held by gatherings of notables and community representatives -- local figures untainted by close association with the previous regime.¹⁰³
- **Members also should be drawn from the indigenous voices that have started to project themselves into the political arena since the end of the war.** Even if few have had the chance to gel into significant political organisations with national programs, they offer a rich pool of candidates through their leadership in political parties, national and regional unions, civic organisations and professional associations, weak though these might still be. A senior Iraqi official compared them favourably to earlier exercises -- starting with the first post-war conference organised by the U.S. on Iraqi soil, in Ur/Naseriyeh in April 2003 -- that, he said, had been "a complete disaster. The Americans brought turbans [clerics] and tribal people. The Iraqi people are not only those categories! We have many secular people and technocrats. And women. There were no women at all. If the national conference [under the Brahimi plan] is going to be anything like this, it will again be a disaster. They should bring together Iraqis from all corners of the country, and then it might work".¹⁰⁴
- **The conference will need to integrate those who have been excluded and have expressed their opposition to the occupation.** It is critical to bring in religious and tribal Sunni Arab leaders as well as partisans of Moqtada al-Sadr

(though probably not al-Sadr himself) if the goal is to co-opt forces that can be persuaded to integrate themselves into the political process but, if excluded, might otherwise resort -- or continue to resort -- to violence.

1. The Sunni community

Since Saddam Hussein's ouster, much of the Sunni Arab population has felt politically besieged. The decision to disband the army and de-Baathify the administration had a disproportionate impact on Sunnis and was perceived by many among them as a deliberate attempt to stigmatise the community as a whole unfairly. "Arab Sunnis have been ruling Iraq for eight decades", and not only during Saddam's reign, noted a member of that group. "Little wonder that they feel unjustly punished by the decision to disband the army, all the more so since the U.S. is demilitarising Sunni areas while allowing Shiite militias to freely operate".¹⁰⁵ The selection of Interim Governing Council members on the basis of sectarian and ethnic lines confirmed in their eyes that political power in post-Saddam Iraq would be apportioned according to such criteria, thereby consigning them as a matter of principle to marginal status. Sunni Arabs occupy roughly 16 per cent of the Council's seats.¹⁰⁶

This diminished position is all the more painful given the dominant status they have enjoyed in Iraqi institutions and political elite. By attributing predominant weight to communal ties, the approach adopted since Saddam's fall has had the net effect of weakening secular Iraqis, exacerbating sectarian and ethnic divisions, and reinforcing the Sunnis' sense of

¹⁰³ In a major exercise to "refresh" governorate councils and set up new municipal councils, the CPA backed away from sectarian divisions and reliance on notables in early 2004 to draw on the leaderships of a number of new civic organisations -- teachers, health workers, students and women's groups, among others -- whose formation, or revival, it had encouraged and within which it had organised mini-caucuses. Political parties have organised their own internal elections at times and have managed to place some candidates in civic group caucuses. ICG interviews throughout Iraq, January-April 2004.

¹⁰⁴ ICG telephone interview, Baghdad, 18 April 2004.

¹⁰⁵ ICG interview with Hatem Mukhlis, president of the National Iraqi Movement and a Tikriti Sunni, Baghdad 16 December 2003. Echoing this distinction between Sunnis and Saddam's rule, Sheikh Mohamad Bashar al-Faydi, a member of the Committee of Muslim Ulema, said: "Saddam was secular, not Sunni. All coup attempts in the 1990s emanated from what is now referred to as the Sunni triangle". ICG interview, Baghdad, March 2004.

¹⁰⁶ Sunnis interviewed by ICG also for the most part challenge demographic figures showing a Shiite majority. In the absence of credible statistical data, even wild estimates can be heard. "The Sunni triangle is a concept invented by the Americans in order to diminish our numerical and geographic importance. They want people to believe that we are a minority whereas in fact Sunni Arabs and Kurds represent over 18 million citizens out of a total population of 25 million" ICG interview with Shaykh Hassan al-Nu'aimy, member of the Committee of Muslim Ulemas, Baghdad, 11 December 2003.

isolation. Despite laudable efforts, tensions between Shiites and Sunnis have grown; there has been a series of attacks against Shiite mosques as well as Sunni mosques and imams, and several Sunni mosques in Baghdad, Hilla, Najaf and Basra have fallen under Shiite control.¹⁰⁷ As a member of the Sunni Committee of Ulema saw it: "The Shiites approved the U.S. occupation in order to take revenge on the Sunnis and dominate the country".¹⁰⁸

The political consequences are conspicuous. Sunnis are regrouping around their geographic bases, such as the so-called Sunni triangle, which has become a stronghold of resistance to the occupation. In Baghdad, the small Sunni enclave in Adhamiyya lives in fear of a Shiite attack from neighbouring Sadr City, and there are regular firefights with U.S. troops. Walls are littered with strident anti-American graffiti as well as black flags, emblems of "martyrs" killed by the occupation forces. Fallujah, a sizeable provincial town traditionally known for its religious conservatism and even opposition to Baathist rule, suddenly has become a symbol of resistance against the Americans. More broadly, even many Iraqi Sunnis who have not joined the insurgency are expressing some understanding for its goals. While viewing the resistance as futile, they express satisfaction at the thought that, through violence, the insurgents could force the occupation forces to focus on how little has been achieved in economic reconstruction, and, in particular, job creation.¹⁰⁹

As demonstrated by events in Fallujah and ripple effects throughout Sunni-dominated areas, addressing the grievances of the Sunni community is of critical importance. Recent decisions by the CPA to loosen the de-Baathification policy and to seek to reintegrate former members of the disbanded Iraqi army are important steps in this direction. Finding representative interlocutors will be a harder task. To begin with, it is largely misleading to speak of a self-consciously cohesive Sunni -- or, for that matter, Shiite --

community. Iraqi Sunnis are no more monolithic than their Shiite counterparts. Regional and tribal affiliations play an important role (there is, for example, strong hostility between Tikrit and Samarra, and the predominantly Sunni city of Mosul has its own, separate identity); significant political tensions exist between secular and Islamist Sunnis; the Islamist movement itself is divided; and one must distinguish between orthodox and Sufi trends within Sunni Islam.¹¹⁰

Further complicating matters, there is no Sunni equivalent to the Shiite religious leadership embodied in the *hawza*, as Sunnis do not possess a highly structured and clerical hierarchy.¹¹¹ Also unlike Iraq's Shiites, the Sunni clergy has not enjoyed independence -- in particular financial independence -- from the central state. Americans, who were able to quickly identify Sistani as a credible, legitimate representative of at least a powerful current of Shiites (though they might well have exaggerated that status, to the exclusion of others such as Moqtada al-Sadr, as discussed below), found no equivalent among Sunnis. In reaction, Sunnis complain about the privileged status accorded to Sistani as the *de facto* mediator between Iraqis and coalition forces: "Why did the Americans turn Sistani into Iraq's supreme reference? In their eyes, Iraq has become a gigantic Shiite Vatican!"¹¹²

Still, there are signs the Sunni community is seeking to become a more effectively organised presence. The Iraqi Islamic Party is, so far, the only Sunni political organization that is playing an official role in the CPA-appointed institutions. Its leader, Mohsen Abdel Hamid, sits on the Interim Governing Council. The party, whose origins lie in the Society of the Muslim Brotherhood and which was established in London after the 1990-1991 Gulf

¹⁰⁷ Complaining of a Shiite/American conspiracy, several Sunnis evoke the memory of Ibn Al-Alqami, the Shiite vizier who betrayed the last Abbassid (Sunni) caliph of Iraq, leading to Baghdad's ruin at the hands of "infidel" warriors from Mongolia in 1258. ICG interviews, Baghdad, December 2003. (Interestingly, Saddam Hussein had evoked this analogy in one of his messages taped before his arrest. See "A Letter from Saddam Hussein to the Iraqi People and the Arab Nation", 30 April 2003.)

¹⁰⁸ ICG interview with Shaykh Hassan Al-Nu'aimy, Baghdad, 11 December 2003.

¹⁰⁹ ICG interviews, Baghdad, Basra, April 2004.

¹¹⁰ There is a heavy Sufi influence in Fallujah, for instance.

¹¹¹ On Iraqi Shiites, see ICG Briefing, *Iraq's Shiites Under Occupation*, op. cit.

¹¹² ICG interview with Shaykh Abdel Qadir Al-Ani, member of the Committee of Muslim Ulema, Baghdad, December 2003. Criticism of the tendency to view Iraq through Sistani's eyes has come from a variety of quarters. Non-Shiites seized upon his denunciation of provisions in the Temporary Administrative Law that sought to protect minority rights to underscore that he did not represent Iraqis as a whole but only one important constituent part. A CPA official commented: "Sistani has always tried to convey himself as a father figure for the Iraqi nation, speaking in the interests of all Iraqis. But on this point he showed that his interests are far too parochial". ICG interview, March 2004.

War, adheres to a moderate form of Islamism that respects political pluralism and in its outlook is relatively close to the Turkish model. The U.S. eyed Hamid suspiciously because of his Islamist roots, and he has made a series of inflammatory statements that discredited him in many eyes, though he and his party have emerged as important mediators between the coalition and Fallujah insurgents. But it is principally an organisation of the middle class and professional cadres, and its popular appeal remains untested. Its decision to join the Interim Governing Council was highly controversial. Although the majority of the party believed that participation in post-Baathist institutions was necessary to ensure Sunni representation, a minority disagreed sharply and defected. Some reportedly have joined semi-clandestine Salafi groups that are particularly active in mosques.¹¹³

Sunnis also have sought to establish their own representative religious institutions. They formed the Committee of Muslim Ulemas, to which most Sunni clerics belong. Headed on a rotating basis by Sunni religious leaders, it aspires to be the principal religious authority but also the political representative of the Sunni community. So far, it appears to be playing an effective role -- a counterpart both to the Sunnis working with the coalition and to the Shiite *hawza*. The Committee is active in the media and has offered its services to alleviate tensions between Sunnis and Shiites and, more recently, between Sunnis and coalition forces.

Commenting on the attitude of Iraqi Sunnis, a U.S. official said, "regardless of what we do, the Sunnis will feel embittered and betrayed because, at the end of the day, they have lost -- power, privilege and perks".¹¹⁴ While there is considerable truth to the statement, certain policies are liable to antagonise them further and to backfire, including the strong military tactics used in Fallujah. It is imperative to seek to mollify the community both through policies and politics, by emphasising reconstruction efforts in the Sunni heartland, persuading them that their material and political interests will be taken into account, and allowing important Sunni constituencies -- including those with ties to the Baathist regime and those who

have expressed strong hostility to the occupation -- to occupy a place in Iraq's future institutions.

2. Partisans of Moqtada al-Sadr

Moqtada al-Sadr's movement often is depicted in Washington as a marginal band of thugs whose principal objective is to disrupt Iraq's march toward democracy. This is wrong and dangerously misleading. While he does not enjoy Sistani's prestige or authority, and his movement includes a mob-like following, many of whom joined in the wake of the Baathist demise, al-Sadr cannot be summarily dismissed. His influence and legitimacy stem from several factors: his lineage to one of the more revered Shiite leaders in contemporary Iraq; the fact that, unlike many others, his movement remained in Iraq during the years of Baathist rule and sought to resist it; and its social constituency. Although Sadr possesses few religious credentials and is viewed with disdain by many in the clerical elite, and although his movement may be relatively insignificant in military terms, it is an important actor in the ongoing political struggle within the Shiite community.

Moqtada al-Sadr is, above all, an inheritor. He largely owes his position to the influence of his father, Grand Ayatollah Mohammad Sadiq al-Sadr. Prior to his murder by the Baathist regime in 1999, Mohammad Sadiq al-Sadr had built an impressive following among poorer Iraqis, especially from the principal urban centers, and developed an educational, social and economic network independent of the state, but also of the clerical establishment in Najaf. He capitalised on methods of political mobilisation that often were varied, innovative and energetic, including the distribution of audio cassettes and tracts and the revival of the Friday Prayer, a practice that had stopped among Shiites.¹¹⁵ He also sought to straddle the Sunni-Shiite divide and, appealing to Iraq's sense of nationalism, resisted Iranian influence over the Shiite community.¹¹⁶ Unlike many of his colleagues, he spoke in an Arabic dialect average Iraqis could understand and about everyday issues (whether one could chew gum, listen to music, smoke cigarettes) about which they cared. His powerful if covertly expressed attacks on Saddam's regime were accompanied by equally virulent denunciations of the

¹¹³ For example, they took control of the mosque of Oum al-Toboul in Baghdad, renaming it the Ibn Taymiyya mosque, in honour of one of the more orthodox thinkers of Sunni Islam whose writings inspired the Wahhabis.

¹¹⁴ ICG interview, Washington, February 2004.

¹¹⁵ See ICG Briefing, *Iraq's Shiites Under Occupation*, op. cit., p. 16 and note 74.

¹¹⁶ Ibid, pp. 15-16.

U.S. and Israel. To this day, he remains the most popular source of political emulation for Iraqi Shiites.

Al-Sadr was left with his father's vast network of charities, schools and mosques as well as some of his significant popular following and much of his mythology and thematic arsenal -- including a powerful populist appeal, nationalistic rejection of Iranian-born clerics such as Sistani, and strong anti-American feeling.¹¹⁷ His followers, who remained in Iraq throughout the Baathist years, also inherited a political culture powerfully shaped by the old regime: a reliance on street mobilisation, the use of crude "anti-imperialist" slogans and the organisation of cultural festivals in which prizes are distributed for poems extolling the late Mohammad Sadiq al-Sadr.

Al-Sadr's power base is in the impoverished slums of Baghdad and areas in southern Iraq, and most of his supporters are native Iraqis who remained in the country, endured the Baathist regime and feel represented neither by the returning exiles nor by the less politicized, less populist clerical class in Najaf or Karbala (including Sistani), which they accuse of having remained silent during Saddam's rule and not coming to Sadiq Sadr's aid. They feel as marginalised under the CPA -- which has opted to deal with Shiite exile organizations such as the *Da'wa* and the Supreme Council for the Islamic Revolution in Iraq (SCIRI) -- as they were during the Baathist rule. In the words of a young member of *Rabitat al-Ahrar* [League of the Emancipated], one of al-Sadr's many cultural and humanitarian associations in Sadr City:

We have all come out of Saddam's prison cells! Our families sacrificed their lives under the dictatorship. We have nothing to do with all these political parties that lived lives of luxury abroad, in London, Washington or Tehran. It is not fair that these individuals return now to govern us.¹¹⁸

Operating in disciplined fashion, Sadr's followers filled the power vacuums that existed in the aftermath of the war in parts of the South and of Baghdad. Sadr City is the real center of the movement's power; when demonstrations take place,

young Sadr City dwellers are immediately bused to the provinces. Understanding its significance, therefore, is critical to appreciate the depth and nature of Sadr's influence. A poor suburb on Baghdad's eastern flank, it was previously known as *madinet al-thawra* (City of the Revolution) or Saddam City, before being renamed Sadr City upon Saddam's ouster in honour of Sadiq al-Sadr. While its exact population is unknown, it is Baghdad's most populous neighbourhood and in all likelihood its most densely populated one as well. Its inhabitants are generally destitute, almost exclusively Shiite peasants who migrated from the South beginning in the 1930s and 1940s.¹¹⁹ Their southern identity [*shroug*] is an important factor and is passed on from generation to generation, cemented by feelings of exclusion and marginalisation, and by the stereotypes from which they suffer. *Baghdadlah* [Baghdad inhabitants of urban origin] typically view and treat them with contempt and are quick to blame them for any disturbance, such as the pillaging that followed the occupation forces' entry into the capital.

Sadr City has long seen itself as not sharing in the county's wealth and has traditionally been an area of intense socio-political mobilization. It rallied to the communists in the 1960s and 1970s and later to the Islamist *Da'wa* party. Under the Baathist regime, it was regarded as a danger zone, populated by poor peasants with strong tribal ties, unruly and hard to assimilate in an urban environment. During periods of political unrest, the regime would swiftly dispatch its elite forces to bloc any possible movement from *madinet al-thawra* toward the rest of Baghdad. Saddam City was the only area of Baghdad in which there were insurrectional attempts in the 1990s: in 1991, out of solidarity with the southern insurgents and in 1999 to protest the assassination of Sadeq al-Sadr.

Since Saddam's ouster, the neighbourhood has continued to view itself as both marginalised and the decisive actor in Iraq's political future:

Iraq's future is in our hands, which is why all political parties vie for our allegiance. We are the only winning card in Iraq's political landscape. We will undoubtedly control power some day. If elections are held, we, the *shroug*,

¹¹⁷ Sadiq al-Sadr would wear a white shroud, the colour of the dead, in order to show that he expected to be killed at any time. Some of Moqtada's lieutenants wear the same white shroud, to show that their lives are threatened by the coalition.

¹¹⁸ ICG interview with a 24-year old, Baghdad, February 2004.

¹¹⁹ Rural migration has been a long and intensive process in Iraq, in more recent times spurred by the Baathist regime's neglect of the South. Sadr City also includes a small enclave inhabited by Kurdish Shiites known as *fayli* Kurds.

will garner a decisive majority. We will surely win in the democratic game. But we also can win in the resistance game. We would then struggle like the Palestinian people.¹²⁰

In the aftermath of the war, Sadr City saw young clerics from al-Sadr's movement seek to take control, impose law and order, protect hospitals and public buildings, offer neighbourhood assistance, enforce Islamic dress codes and gender segregation and close down music shops. They took possession of mosques, welfare centers, universities and hospitals. At the same time, there are daily reports of brutal killings of former Baath party officials.¹²¹ The power of al-Sadr's followers is not undisputed; tribal solidarities play a key role, and influential tribal chiefs -- whose allegiance generally is to Sistani -- have tense relations with the Sadrists.

In its earlier briefing on Iraq's Shiites, ICG wrote: "It would be a mistake to count al-Sadr out. He still enjoys considerable popular appeal and appears in control of a significant number of the mosques and other institutions to which he initially laid claim early on".¹²² ICG also cautioned that "since he does not have a seat on the Interim Governing Council, the street is the only arena where Moqtada al-Sadr can flex his political muscle".¹²³ These assessments remain valid, notwithstanding the pressure Sadr is under from fellow Shiite clergymen and divisions within his own movement.¹²⁴ While his followers are a minority among Shiites, they are a vocal and passionate one, far more susceptible of being mobilised than others. "The Sadr movement is still

only a marginal factor. But it can be a central one if it is poorly addressed and if missteps are committed".¹²⁵

Seeking to trivialise and exclude the movement was an initial misstep. The CPA's decision on 28 March 2004 to shut down his followers' newspaper -- which printed only a few thousand copies, had scant financial resources and was not widely read -- followed by the arrest of one of his senior aides on 3 April was another. The more he becomes a central focus of resistance against the occupation, the more his status will grow. As ICG witnessed, Iraqis who a week earlier had dismissively pointed to al-Sadr's "vanity" during mosque appearances, in which he craves publicity and media coverage, and to his blatant hunger for power, suddenly began to express support or even admiration.¹²⁶ Observations in Basra and Baghdad indicate that his supporters' defiance of U.S. military power gained thousands of new adherents in the first few days of protest. "Even people who hated him rallied behind him when he clashed with the U.S.", said one Iraqi.¹²⁷

It should be no surprise that al-Sadr's underprivileged, poor and long-repressed followers constitute the vanguard of resistance, as they fear being cut out of any political deal that results from the currently envisaged political transition. Nor should it surprise anyone that in doing so they are invoking the powerful symbols of the Iraqi Shiite community's past rebellions -- the 1920 and 1991 (and, for some, 1999) uprisings. They are thereby sending a strong message of their preparedness to act and their intention to emerge victorious this time. It is not for nothing that al-Sadr's armed supporters call themselves the Mahdi Army, an allusion to the Shiites' putative saviour, the long-awaited Hidden Imam, who is expected to return to put an end to Shiite suffering and oppression.

¹²⁰ ICG interview with Sheikh Raheem, Sadr City, February 2004.

¹²¹ ICG witnessed several of these killings.

¹²² ICG Briefing, *Iraq's Shiites Under Occupation*, op. cit., p. 20.

¹²³ Ibid, p. 22.

¹²⁴ Since mid-2003, a number of individuals have left Moqtada's movement and formed splinter organisations. These include *Hizb al-Fadila al-Islami* [Party of Islamic Virtue], which has opposed Sadr's recourse to violence against the occupiers and is urging elections as the "only option to bring to the fore a legitimate national representation". ICG interview with Dr. Nadeem Issa al-Jabiri, the party's secretary general, in Baghdad, 4 March 2004; and *Harakat al-Iraq al-Islami* [The Movement of Islamic Iraq], which adheres to a more modern approach to Islam. "Our Islam is not about self-flagellation. Today, the young people who follow Moqtada unthinkingly engage in rituals. They are highly emotional and easily get carried away". ICG interview with a member of *Harakat*, Baghdad, February 2004.

¹²⁵ ICG interview with Shiite analyst, London, April 2004.

Another analyst commented: "They failed to deal with him in the early days of the occupation while he was busy building an organisation and took him on when popular frustration was rising and he had gotten stronger. The CPA was wrong in its timing and in its assessment of the likely impact of its actions". ICG interview, London, April 2004.

¹²⁶ ICG interviews in Basra and Baghdad, April 2004.

¹²⁷ ICG interviews and observations during the first week of April 2004. An Iraqi student confessed to being "astonished" by al-Sadr's support. "It seems that any one who stands up to the occupation will gain popularity". ICG interview with an Iraqi student, Baghdad, 18 April 2004.

The al-Sadr movement represents an important Iraqi constituency -- the more impoverished and destitute Shiites of Sadr City and the South. Under the CPA, they have been and have felt left out, in contrast to other Islamist forces like *Da'wa* or SCIRI; their only recourse has been street politics and virulent denunciations of the occupation and of the political class that is cooperating with it. However the National Conference is put together, it should not repeat the same mistake.

As a prominent Iraq expert remarks:

The U.S. will simply have to accept that there are political forces on the ground in Iraq that it views as undesirable. It cannot dictate Iraqi politics without becoming a frankly colonial power. . . . It must draw those less savoury political forces into parliamentary politics so that they can learn to rework their goals and conflicts in the terms of democratic procedure.¹²⁸

D. THE TEMPORARY ADMINISTRATIVE LAW

The crisis over the Transitional Administrative Law (TAL) came to light on 5 March 2004 when five Shiite members of the Interim Governing Council balked at signing it. They cited objections of Ayatollah Sistani to two key paragraphs, one concerning the shape of the presidency, the other stipulating the right of any three governorates, by a two-thirds majority vote among the population, to reject the draft permanent constitution. The latter provision amounted to giving the Kurds veto power in the event they were not satisfied with the federal region and authority the document offered.¹²⁹ Feverish talks ensued involving Sistani's office and members of the Interim Governing Council, with Kurdish leaders saying they would make no concessions.

The immediate crisis was overcome by Sistani's apparent change of heart, and the TAL was duly

signed on 8 March.¹³⁰ Still, twelve of the thirteen Shiite members on the Council attached a reservation threatening to amend at a later date

¹³⁰ The TAL contained a bill of rights, as well as detailed provisions designed to govern the transition to a sovereign elected Iraqi government, including most notably:

The recognition of Islam as "the official religion of the State" that is to be considered "a source of legislation" (Art. 7(A)). In other words, contrary to demands by Islamists, Islam is not the sole or even the primary source of legislation in the new Iraq.

The right for Iraqis to carry more than one citizenship and the right to reclaim Iraqi citizenship for those who lost it or had it taken away (Art. 11).

The remaining in effect of all laws that are in force on 30 June 2004, including "laws, regulations, orders and directives" issued by the CPA (Art. 26).

The establishment of a 275-member National Assembly for the transition period, to be elected no later than 31 January 2005 (Arts. 30-31).

The rule that women will receive a quota of at least one-quarter of the seats in the National Assembly (Art. 30(C)).

The establishment of an executive authority, consisting of a Presidency Council and a Council of Ministers headed by a prime minister. The National Assembly is to elect the three members of the Presidency Council: a president and two deputies, who are to take decisions unanimously. The Presidency Council is to appoint a prime minister and a Council of Ministers (Arts. 35-38).

The establishment of an independent judiciary (Art. 43).

The recognition of an autonomous Kurdish region in the north (covering the governorates of Erbil, Dohuk and Suleimaniyeh, and parts of adjoining ones) as an exception to a federal structure for Iraq established along administrative (rather than geographic or ethnic) lines, with significant powers devolved to the country's governorates (Art. 53(A)). This constitutes an official acknowledgment of the political status quo (since 1992) in Iraqi Kurdistan and a repudiation of demands by many non-Iraqis that only a federalism of the 18 governorates would be an acceptable solution to the Kurdish question.

The right of a two-thirds popular majority in at least three of Iraq's governorates to block the adoption of the permanent constitution (Art. 61(C)). Because "three governorates" is a virtual code term in Iraq for the three Kurdish governorates, this provision is regarded as bestowing on the Kurds effective veto power over a permanent constitution.

The possibility to amend the TAL only through a three-fourths majority in the National Assembly and the unanimous approval of the Presidency Council (Art. 3(B)).

The description of the Iraqi Armed Forces as "a principal partner in the multi-national force operating in Iraq under unified command pursuant to the provisions of United Nations Security Council Resolution 1511 (2003) and any subsequent relevant resolutions", and the remaining in effect of this arrangement until the ratification of a permanent constitution and the election of a new government pursuant to that new constitution. (Art. 59(B)).

¹²⁸ Juan Cole, testimony before the Senate Foreign Relations Committee, 20 April 2004.

¹²⁹ The text reads: "The general referendum will be successful and the draft constitution ratified if a majority of the voters in Iraq approve and if two-thirds of the voters in three or more governorates do not reject it". On this see ICG Middle East Report N°26, *Iraq's Kurds: Toward an Historic Compromise?*, 8 April 2004, pp. 18-20.

portions they found unpalatable.¹³¹ And the ink was not yet dry when Sistani's office issued a new statement from the cleric stressing the TAL's lack of legitimacy as long as it had not been endorsed by an elected national assembly (leaving room, in other words, for modification or even rejection), and chastising it for obstructing the path toward a permanent constitution.¹³² In a letter to Brahimi on 19 March,¹³³ he complained that:

The future National Assembly will be shackled by many restrictions that will prevent it from undertaking what it sees as congruent with the interests of the Iraqi people. A non-elected council -- the Interim Governing Council -- in coordination with the occupying authority foisted upon the future National Assembly a "strange" law to administer the country during the transitional phase. It also dictated -- and this is most dangerous -- specific principles, rules and mechanisms with regard to the writing of a permanent constitution and organising a referendum.

Through this, the letter continued, the elections on which Sistani had expended so much energy "will lose a great deal of their meaning and will be of little use". Sistani singled out the TAL's provision for a three-member Presidency Council that must take all decisions unanimously as an obstacle to effective decision making and as "enshrining sectarianism" in the political system, thus auguring a possible partitioning of the country.¹³⁴ A Sistani spokesman

stated separately that the only way in which the TAL could acquire legitimacy would be through its ratification by an elected national assembly.¹³⁵ Such a procedure presumably would allow for its amendment by the same body and, therefore, potentially lead to repudiation in its current form.

Several weeks earlier, an organisation loosely affiliated with Sistani's office issued a list of objections to the TAL, which have been circulating widely.¹³⁶ It includes a stinging attack on the clause requiring a three-fourths majority in the National Assembly to amend any provision in the TAL as an attempt to undercut democracy and the power of the Shiite majority:

The majority of the Iraqi people, even a 74 per cent majority, will not be able to change any provision in this law, which has been enacted by non-elected individuals. Is this not the rule of the minority over the majority? [Moreover a single] member of the Presidential Council will be able to prevent the amendment of any article in this law even if all the members of the National Assembly agree to it. Is this the democracy they promised Iraq?¹³⁷

The clause effectively providing the Kurds with veto power over the permanent constitution was also singled out for criticism, as it might force the dissolution of the National Assembly and redrafting of the constitution: "We would remain in a vicious circle. Perhaps the drafting of a constitution would not be possible for years to come. Thus, the 'temporary law' would become permanent". This, the declaration says, is a true "achievement" of the occupying powers -- to have a "semi-permanent" constitution approved, one that "fulfils their strategic objectives even if it damages Iraq's unity". Iraqi citizens are called upon to "make their voices heard to demand that the law be amended by incorporating the

¹³¹ Dexter Filkins, "Iraq Council, With Reluctant Shiites, Signs Charter", *The New York Times*, 9 March 2004. The only Shiite not signing the reservation was Hamid Mousa, the head of the Iraqi Communist Party. Other sources question whether twelve members signed, or that the signatures of some were genuine or strictly due to peer pressure.

¹³² The statement said that, "any law prepared for the transitional period will not gain legitimacy except after it is endorsed by an elected national assembly. Additionally, this law places obstacles in the path of reaching a permanent constitution for the country that maintains its unity and the rights of its sons of all ethnicities and sects". Available at: <http://www.sistani.org/messages/ghanoon.htm>.

¹³³ Available at:

<http://www.sistani.org/messages/yasin2.html>.

¹³⁴ Since there is a widespread assumption in Iraq that the country's first president will be a Shiite and his or her deputies will be a Sunni Arab and a Kurd, Sistani's objection to the unanimity rule can be explained by his concern that a representative of a minority community would thus be able to block the decisions of the representative of the largest sectarian grouping in Iraq, the Shiites. "If we take into

account that we [the Shiites] constitute 64 per cent of the population, why do we only get one president while the Kurds -- a minority after all -- get one too? So we want an extra person, so that there are two Shiites on the presidential council". ICG interview with Sistani's Basra representative, in Basra, 29 March 2004.

¹³⁵ Quoted by Juan Cole, "Informed Comment", 27 March 2004, available at: <http://www.juancole.com>.

¹³⁶ Al-Nour Society for Islamic Culture and Consciousness, "Declaration on the Dangers Observed in the Transitional Law for Iraq", 12 March 2004, provided to ICG by Sayyid 'Imad al-Batat, Sistani's representative in Basra.

¹³⁷ Ibid.

necessary changes in the annex to be prepared in the coming months, and [to] organise a big campaign to collect signatures from citizens demanding this".¹³⁸

Sistani's high-level activism on the political transition filtered down to the Shiite street, triggering demonstrations against the TAL and a grassroots campaign to collect signatures for a petition denouncing it. The message that came out, while diffuse, was clear on one point: Sistani had the power to block implementation of the TAL in its current form, if not by direct order, then by the actions of his many supporters and the Shiite community more generally, especially its more radical elements whom he might not have the power to restrain.¹³⁹

Brahimi's plan is notably taciturn about the status of the TAL, mentioning it only once, as one of the bases for the termination of the Interim Governing Council on 30 June. He has made little secret of his uneasiness with the document, and in particular with the less than inclusive process by which it was drafted. UN officials have echoed that view, saying "the rush to the TAL in March is what created our

problems. It prejudices the final outcome and created a process that alienated Sistani and undermined Brahimi's role".¹⁴⁰

By maintaining his distance from the TAL, Brahimi clearly hopes to address at least partly Sistani's warning that he would "not be a party to any meetings and consultations undertaken by the [UN] international mission in its future task in Iraq unless the UN takes the clear position that the 'law' will not bind the elected National Assembly and will not be mentioned in any new Security Council resolution concerning Iraq".¹⁴¹ Interim Governing Council member Mahmoud Othman noted: "He [Brahimi] hasn't even talked about [the TAL], and the new Security Council resolution will, I think, also not mention it".¹⁴² For now, Sistani appears to have agreed to keep channels of communication open; during his most recent visit, Brahimi spoke by telephone to Muhammad Ridha' (Sistani's powerful son), though he was unable to travel to Najaf because of the security situation.

Whether Brahimi and the UN will recommend reopening the document is another, and far more delicate matter. Some, including at the UN, have advocated this -- and, in particular, renegotiation of provisions regarding the Kurds' veto powers and the assembly's ability to amend the TAL -- as necessary to bolster Sistani's standing among Shiites, curb Moqtada al-Sadr's growing appeal, and ensure the Shiite community fully backs the political transition process. Brahimi himself explained that at first an effort should be made to better "explain" the TAL to Sistani but, "if we need more than that, we will do more than that."¹⁴³ Proponents of reopening the TAL argue that dissatisfaction with the document created an opening for al-Sadr to move from passive resistance to active and violent protest in early April. They also argue that if there is no effort to address this issue now, Iraq's political system will be heading for a train-wreck as the elected Assembly will try to override the TAL. Under this logic, the National Conference or Consultative Assembly could, acting in concert with the UN, revisit the TAL and be given the opportunity to modify it in ways acceptable to Iraq's principal constituencies. They point out that an

¹³⁸ Sistani's representative in Basra, Sayyid 'Imad al-Batat, told ICG: "Sistani never rejected the temporary law in its entirety. He only objected to some -- crucial -- parts of it". The main objection: that the temporary law is actually a permanent one, because the TAL "in effect says that changes are only possible if everybody accepts them. Given our divisions, this will never be possible". ICG interview, Basra, 29 March 2004.

¹³⁹ See, for example, "American plans for Iraq under fire", *Daily Star*, 15 March 2004; and Anthony Shadid, "Shiites Organize to Block U.S. Plan", *The Washington Post*, 29 March 2004. One cleric purportedly representing Sistani's point of view declared in Friday prayers that Sistani might issue a new edict "declaring illegitimate all those to whom power is transferred in June", if the changes to the TAL he demanded were not carried out, and might "also order the Iraqi people to protest or carry out major popular demonstrations and sit-ins in all Iraqi cities". Quoted in, John F. Burns, "Cleric May Warn Iraqis to Reject New Government", *The New York Times*, 28 March 2004. It is unclear whether the cleric, Muhammad Baqr al-Muhri in Kuwait, represented Sistani's views or was free-lancing. An aide to Sistani was quoted as saying in response to the statements of the cleric in Kuwait that Sistani would not go so far as to call for protests if his demands were ignored. Quoted in, "UN steps into Iraq sovereignty handover debate to spur elections", *Daily Star*, 30 March 2004. The aide also said that Sistani "is not thinking about calling for demonstrations in the country, since he does not want chaos". Quoted by Juan Cole, "Informed Comment", 29 March 2004, available at: <http://www.juancole.com>. A third cleric indicated that there might be protests but these would stay non-violent. Quoted in *The Washington Post*, 29 March 2004.

¹⁴⁰ ICG interview, New York, April 2004.

¹⁴¹ Sistani letter to Brahimi, op. cit.

¹⁴² ICG telephone interview, Baghdad, 18 April 2004.

¹⁴³ ICG interview, New York, April 2004. See, e.g., "The Iraq Crisis," *The Washington Post*, 11 April 2004; Yitzhak Nakash in *The New York Times*, 10 April 2004.

alternative can be found that accommodates both Sistani's concerns and the Kurds' need, for instance by requiring approval of the Constitution by 80 per cent of the National Assembly for its adoption -- thereby transferring protection for the Kurds from the popular vote to the parliamentary forum.¹⁴⁴

There is little doubt that the process was deeply flawed and that the TAL would have gained from being brokered by bodies more representative than the Interim Governing Council and the CPA. But notwithstanding the serious mistakes that were made, the dangers of re-negotiation are considerable. The original negotiations were arduous and required compromises by all involved. To reopen the TAL would be to open a Pandora's box of escalating demands by Iraq's various groups. A limited revision would be a practical impossibility, as even a seemingly minor change would likely lead to a large-scale overhaul. The so-called minority veto clause, in particular, was key to the Kurds' acquiescence; should it be eliminated, they could be expected to raise a host of other demands, focusing for example on the status of Kirkuk.¹⁴⁵ Indeed, Mahmoud Othman, an unaffiliated Kurdish member of the Interim Governing Council, implied in response to Sistani's intervention that the Kurds might secede, saying they "will not enter a unified Iraq another time without constitutional and international guarantees".¹⁴⁶

¹⁴⁴ ICG interview, New York, April 2004; see also Brahimi interview with ABC, op. cit.

¹⁴⁵ See ICG Report, *Iraq's Kurds*, op. cit. A CPA official told ICG: "The TAL will not be amended prior to 30 June and afterwards [unless] by the provisions contained in the TAL, which is to say only after the National Assembly is elected. Of course, a truly sovereign government will be able to do whatever it wants but the [Interim Governing Council] and we remain confident that the TAL will remain operative throughout the interim period, since otherwise there will be no clear legal framework in which the new government will function. Should the newly appointed government seek to amend it, they will likely have difficulties with the various communities within Iraq, especially the Kurds, who made various and sundry compromises to secure agreement on the TAL in the first place". E-mail communication, 25 April 2004.

¹⁴⁶ Quoted in, Charles Snow, "The Political Scene", *Middle East Economic Survey*, vol. 47, N°13, 29 March 2004, available at: <http://www.mees.com>. The language used by Kurdish leaders such as Mahmoud Othman is significant. The phrase "enter a unified Iraq" suggests the Kurds were outside Iraq (during 1991-2003) or never truly felt they belonged. From their perspective, with the regime gone, they are now considering joining the Iraqi nation state (which is thereby "unified") as full Iraqi citizens for the first time in their history.

Moreover, the degree of hostility toward the TAL among Iraqis is somewhat questionable. If Sistani had any support among Kurds and Sunni Arabs, it seemed to be fading because of his objections to the TAL¹⁴⁷ -- a principal reason, it is surmised in Baghdad, that he appeared to back down so that the document could be signed on 8 March. Observers say that Sistani had overstretched and blinked for the first time, since he realised that he had lost the moral high ground by shifting away from the issue of elections. "His simplistic view of democracy -- that it should reflect the will of the majority (with no regard for the interests of the minority) -- does not have the same appeal as his calls for elections", concluded one CPA official.¹⁴⁸ A European foreign ministry official commented: "With his call for democracy -- a brilliant stroke -- Sistani has spent his ammunition".¹⁴⁹

Rather than renegotiating the TAL, the fears of Sistani and his followers that long-term decisions are being made by unrepresentative bodies could be partially addressed in two ways: first, by emphasising that its provisions are transitional only and "will not bind the content of the permanent constitution" (though that, admittedly, will not deal with their objection to the minority veto power over the permanent constitution); secondly, by clearly limiting the powers of the caretaker provisional government. However, should the Iraqis assembled in the National Conference nevertheless take the view that an amendment to the TAL is necessary, it should be the responsibility of the Special Representative to assess whether a sufficient consensus exists and whether the TAL can be so

¹⁴⁷ The TAL reportedly enjoyed widespread support among Shiites (despite the protests under Sistani's banner), Sunni Arabs (with some exceptions) and especially Kurds. Iraqi Turkomans objected in particular to the recognition of a Kurdish region, with one (pro-Turkish) party, the Iraqi Turkmen Front, declaring the TAL to be "a failure.... We don't want to be taken as a minority. We are one of the main ethnic constituents of Iraq. We will continue seeking our rights". Sadettin Mohamed cited in *Turkmen News*, 3 March 2004, available at: <http://groups.yahoo.com/group/TURKMEN-MEDIA>. At least one U.S.-based Assyro-Chaldean non-profit organisation professing to speak for that community cautiously endorsed the TAL, saying it "offers some hope but it is a slim hoped lined with many clouds of concern" (having to do, primarily, with Kurdish domination in the north). The Assyrian Academic Society, "ChaldoAssyrians of Iraq & the Iraqi Interim Constitution", Position Paper (1), March 2004, available at: <http://www.aas.net/aasmain.htm>.

¹⁴⁸ E-mail communication to ICG, March 2004.

¹⁴⁹ ICG interview, March 2004.

amended without jeopardising Iraq's political stability and transition to an elected government.

E. THE STATUS OF THE OCCUPATION FORCES

One of the more vexing of the many looming issues concerns the status of the occupation forces after 30 June 2004. Currently, their presence is governed by UN Security Council Resolution 1511, which "authorises a multinational force under unified command", whose mandate "shall expire upon the completion of the political process" culminating in the creation of an "internationally recognised, representative government established by the people of Iraq".

This presents both a legal and a political issue. Legally, an argument can be made that this authority will survive the 30 June deadline since the government established at that time, even under the most optimistic scenario, cannot reasonably be said to have been "established by the people of Iraq" -- a stage that will occur only in January 2005, after general elections.¹⁵⁰

Politically, however, it is a different -- and far more difficult -- matter. On the one hand, the credibility of any new, allegedly sovereign Iraqi government would be severely damaged if it were given no say as to whether it wished to maintain foreign forces on its soil or as to how they were to conduct their operations. On the other hand, to ask the new government -- necessarily weak and inevitably of dubious legitimacy -- to agree openly to the presence of foreign forces would be to invite a huge political controversy and play into the hands of those intent on challenging its legitimacy and authority to make sensitive political decisions. It is, simply stated, a lose-lose situation.

As argued above, this once again calls into question the wisdom of describing what will occur on 30 June as a full transfer of sovereignty, rather than more candidly explaining that that step will only occur with the election of a new government. Several

measures should be considered to lessen the potential damage:

- The new Security Council resolution that is to emerge prior to 30 June should authorise continuation of the U.S.-led coalition presence in Iraq; such a step is necessary in the absence of a fully legitimate and representative Iraqi government able to invite or disinvite foreign forces. The multinational force would be authorised until an elected Iraqi government was in place; that government could choose to invite the force to remain. The multinational force would be responsible for, inter alia, continuing to establish and maintain stability and security in all areas of Iraq and to train, equip and assist Iraqi security forces to take on successfully the mission of being the primary provider of security within Iraq; and providing adequate security to UN facilities and personnel.
- Ideally, the Consultative Assembly would endorse that presence in a way that minimises the potential political harm. Two options have been mentioned: first, it could be given the opportunity to reject (but not to approve) the multinational force; in other words, short of an explicit vote disapproving of the force's presence, it will be deemed to have been accepted by the Assembly. Secondly, it could endorse, after the fact, the new Security Council resolution that both establishes the post-30 June institutions and re-authorises the multinational force.¹⁵¹ While some action by the Assembly indicating approval of the multinational force along these lines would be welcome, to force this issue by putting it squarely and openly on the table would present considerable risk, as it would add a highly volatile question to an already tense situation.¹⁵²
- Reflecting the enormous sensitivities generated by recent events in Fallujah and elsewhere, it is necessary that there be some mechanism established by the Security Council to ensure that major offensive operations by the multinational force are not conducted without Iraqi support -- for practical purposes that will

¹⁵⁰ Not all agree. A representative from a permanent member of the Security Council told ICG that the United States would be legally bound to seek a new Security Council resolution to renew its mandate after 30 June. ICG interview, New York, April 2004.

¹⁵¹ ICG interview, New York, April 2004.

¹⁵² A CPA official told ICG: "As far as I know, the Consultative Assembly . . . would not be asked to endorse the MNF as that will likely be done in a final UN Security Council resolution. Nonetheless, should it choose to do so, it would be welcomed". E-mail communication, 25 April 2004.

necessarily have to mean the provisional government. This would not involve a status of forces agreement -- a negotiation that will have to await the emergence of a fully representative government after the January 2005 elections -- nor should it intrude on the day-to-day operational decisions of the MNF. But there needs to be a process whereby joint approval is required for any planned offensive operation like that contemplated in the current case of Fallujah. Clearly, operational matters involving force protection and responses dictated by immediate events must continue to remain the sole responsibility of the U.S. command, and definitions will be important here. But where strategic choices are involved, and the multinational force is acting after deliberation, it is both possible and necessary that operations be jointly approved: the absence of any such arrangement after 30 June would certainly be viewed as confirmation that the Iraqi government was completely powerless and would intensify antagonism toward the U.S.¹⁵³

Providing the Iraqi government with a real say in strategic decisions is all the more important given the U.S. position that "the Iraqi Civil Defence Corps and Iraqi Army will, for purposes of operational control, be under the unified command of the Multi-National Force."¹⁵⁴ (In other words, Iraqi ICDC and Army forces will be under the operational control of the multinational force commander when joint operations are executed.)

There should be no illusions. As the contemporary history of the Middle East -- from Egypt to Iran to Saudi Arabia -- amply demonstrates, the status of foreign forces typically has been an explosive and volatile matter. Until and unless Iraq's various political constituencies can come together around a coherent political vision, the country possesses a legitimate, elected government and fields credible, effective security forces, the tension between the need for foreign troops to maintain stability and the nationalist opposition to such forces inescapably will continue to weigh heavily on the country's future.

¹⁵³ An official with Pachachi's party told ICG that he hoped for a strong UN role in the multinational force because the world body would not be seen as an occupying force. ICG interview with Basem Suleiman, op. cit., 24 April 2004.

¹⁵⁴ Statement by Deputy Secretary of Defence Paul Wolfowitz before the Senate Armed Services Committee, 20 April 2004.

VI. CONCLUSION

The violent protests that broke out in early April 2004 serve notice of the urgent need for a credible, transparent and inclusive political process. It is not, as U.S. officials have suggested, that the violence was fuelled by Shiite (and, in Fallujah, Sunni) radicals and foreign jihadists in order to torpedo a political process that threatened to give power to moderates.¹⁵⁵ The fact that Iraqis who heretofore had not supported either Moqtada al-Sadr or the insurgents in the so-called Sunni Triangle joined or tacitly supported the uprisings gives power to the notion that as long as basic grievances are not addressed and a wider spectrum of Iraqis is not included in the political process, violence will increase rather than diminish. So far, the Iraqi people have been virtual observers to a *pas-de-deux* between the CPA and the Interim Governing Council; if they are not truly involved in the process, they can hardly be expected to defend it.

Iraq is on a knife edge. The options available are few and bad, a measure of the staggering misjudgements that have plagued U.S. post-war management from the outset. Brahimi's approach, with some necessary correctives, may be the best available, though there is no guarantee that even it can stem the descent toward instability, insurgency and civil war. If the political transition comes unstuck, if Sadr's rebellion spreads -- in the direction of more moderate Shiites or more radical Sunnis -- Kurdish leaders may also choose to go their own way.

Nor is there any guarantee that the approach outlined in this report will find takers. Though it has been giving positive signals, the Bush administration may ultimately resist a radical course correction that turns over to others ultimate control of developments in Iraq just when its electoral fortunes may turn on them. With anger spreading and with strong-arm military operations in Fallujah and Sadr City and tactics in the Shiite heartland in Karbala and Najaf likely to generate an even stronger-willed insurgency, the UN may balk at getting dragged into what it was once excluded from. A growing number of countries may be tempted to follow Spain and rather than strengthen the coalition may opt to leave it.

¹⁵⁵ Cited in Douglas Jehl and Warren Hoge, "U.S. Relies on UN to Solve Problems of Power Transfer", *The New York Times*, 10 April 2004.

But a U-turn from a stubborn administration and engagement from a sceptical international community may represent the last remaining chance for success. There is no need to postpone that symbol-laden date, 30 June, in any significant way, but Washington should back away from its "transferring sovereignty" rhetoric, which raises unrealistic expectations of what can actually, at most, occur on that day. The UN should build on Brahimi's plan, though it will need to be refined, and the sequence -- first the caretaker provisional government, next the National Conference -- needs to be carefully thought through. And the international community should be prepared to get far more deeply engaged, diplomatically and militarily, as the U.S. makes clear its willingness to cede control to the UN and as the UN makes clear its conditions for assuming that responsibility.

While reasons for pessimism abound, grounds for hope also remain. As ICG found, there is, despite the spiralling violence, a foundation of goodwill toward the American and British presence at the popular level -- as long as it is truly temporary and delivers on its promises of democracy and reconstruction. There is also recognition that a precipitate withdrawal, including of military forces, would likely bring disaster to the country. This is true for the Shiites, who constitute the majority population, and the Kurds, but also for a significant proportion of the Sunni Arab community. This potential popularity should be harnessed by allowing for public consultation and open deliberation of the key issues facing Iraqis today, rather than trying to control or micro-manage a political process that inevitably will take on a life of its own.

"We have had two out of three strikes on sectarianism", said an international observer, using a baseball metaphor. "If we get it wrong one more time by engineering transitional institutions on a sectarian basis and failing to consult the majority of Iraqis, the Lebanonisation of Iraq will be irreversible".¹⁵⁶ The road beyond is still long, but if the next phase of the political transition is successfully handled, the subsequent step -- general elections -- can at least be contemplated, rather than be washed away in waves of frustration, anger and violence.

Baghdad/Brussels, 27 April 2004

¹⁵⁶ ICG interview, Baghdad, 9 January 2004.

APPENDIX A
MAP OF IRAQ



APPENDIX B

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The International Crisis Group (ICG) is an independent, non-profit, multinational organisation, with over 100 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

ICG's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers. ICG also publishes *CrisisWatch*, a 12-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

ICG's reports and briefing papers are distributed widely by E-mail and printed copy to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, www.crisisweb.org. ICG works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The ICG Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; and its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

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April 2004

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