

Power-Sharing in Iraq

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CONTENTS

Foreword	v
Map of Iraq	vii
Executive Summary	1
Council Special Report	5
Introduction	5
Context and Constituencies	7
Constitution-Making	12
Governance	14
Individual and Group Rights	23
Compromise and Consent	26
America's Role	28
Appendix	33
About the Author	41
Members of the Power-Sharing in Iraq Project	42
Mission Statement of the Center for Preventive Action	43

FOREWORD

Iraq's election on January 30 was an important step in the country's political transition. Still it is essential to keep a sense of perspective. In a democracy, power is distributed among an executive, a legislature, and an independent judiciary at the federal level; between the center and the local or provincial level; and between the state and the individual citizen, who must enjoy basic rights. All this comes from laws and institutions, not elections. Drafting and gaining the necessary support for a new Iraqi constitution from Iraq's minorities and not just its Shi'a majority will prove far more difficult and, if achieved, far more significant than anything accomplished to date.

This report by David Phillips examines the core concerns of Iraq's constituencies. It also provides recommendations on power-sharing arrangements, governance structures, individual and group rights, and a role for the United States and the United Nations in the constitution-making process. Iraqis face difficult decisions. I hope this report contributes to a process of achieving compromise and consent.

Richard N. Haass
President
Council on Foreign Relations

MAP OF IRAQ



Source: The CIA Factbook—Iraq.

EXECUTIVE SUMMARY

Iraq's elections on January 30, 2005, were a watershed in the country's history. Still, democracy involves much more than voting. It is about the distribution of political power through institutions and laws that guarantee accountable rule. The real fight for power will be over Iraq's permanent constitution.

Whereas the elections produced a wave of optimism, the delay in forming a government was intolerable to Iraqis who risked their lives to vote based on the expectation that Iraq's political leaders would quickly form a new government to address escalating violence and improve basic services. After ten weeks of agonizing debate, Iraqi politicians finally agreed on a division of responsibilities. If they can build on recent progress, a deal may be in the offing among Iraqis that preserves Iraq as a unitary state, establishes a federal system of governance, and is administratively viable.

For this to happen, hard choices must be made: Arab Shi'a will have to forego demands for Islamic law as the only basis for legislation; Arab Sunnis must accept that they no longer control Iraq's institutions; Iraqi Kurds must forego their dream of independence and sole control of oil in Kirkuk; and Iraqi Turkmen and Chaldo-Assyrians must recognize that they reside in federal Iraqi states where Arabs and Kurds constitute the majority. Iraqis face enormously difficult decisions about their future. Concessions are possible only if Iraqis believe that the permanent constitution safeguards their core concerns.

The National Assembly must now move quickly to compose a constitutional commission, define procedures for public participation, clarify the timetable, and consider an appropriate role for the international community. Iraqis face the daunting challenge of agreeing on the complex details of a permanent constitution by August 15, 2005, but they should try to meet the deadline. More important than staying on schedule, however, Iraqis should fully debate and assume ownership of the constitution. If a draft is not ready by June 30, 2005, the Iraqi government should convene the assembly and, consistent with article 61 of the Transitional Administrative Law (TAL), consider a delay of up to six months.

Some common ground already exists: Most Iraqis agree that the system of government should be republican, federal, democratic, and pluralistic. They agree on the need for a separation of powers and for checks and balances. Reflecting the Muslim character of Iraqis, many believe that Islam should be the official religion of Iraq and laws adopted by the national government within the scope of its authority should be consistent with Islamic law. Consensus is also emerging on assigning the national government specific powers to:

- Manage foreign affairs, diplomatic representation, and international treaties;
- Set foreign economic, trade, and debt policies;
- Assert border control, customs collection, and taxation;
- Formulate fiscal policy, issue currency, manage the central bank, and impose taxes;
- Issue commercial regulations and ensure unimpeded trade between federal Iraqi states;
- Promulgate telecommunications and transport rules;
- Command the armed forces to protect Iraq and maintain national security; and
- Manage the energy sector. (Note: It is envisioned that the federal government would retain a portion of oil revenues to pay for its operations with the balance distributed to federal Iraqi states based on their population percentage.)

In the new Iraq, federal Iraqi states should control all affairs not explicitly assigned to the federal government. Federal Iraqi states should be established using geographic not ethnic criteria. Since states will include minorities, protection of individual and group rights is critical to intergroup relations. Consistent with the principle of decentralization, federal Iraqi state and local authorities should have the ability to adopt laws that conform to local custom. Iraqi women should be guaranteed the right to vote and one-third of the seats in the National Assembly.

Based on geographic not ethnic criteria, and to enhance the sense among Iraqis that they are managing their own affairs, Iraq should be divided into five or six federal Iraqi states, one of which would be Baghdad. Each federal Iraqi state should be made up

of not less than three governorates. Two or three federal Iraqi states could be composed from the southern and central provinces of Basra, Dhiqar, Maysan, al-Muthanna, Najaf, Wasit, Babil, Karbala, and Qadisyah. A central and western federal Iraqi state unit could include the provinces of al-Anbar, Nineveh, Salahuddin, and Diyala. A northern federal Iraqi state called Iraqi Kurdistan could include the provinces of Erbil, Suleimania, and Dohuk. (Note: The United Nations [UN] has expertise assisting the political transition of post-conflict countries and could assist the return of displaced persons to parts of Ta'amim, Diyala, Nineveh, Suleimania, and Salahuddin provinces before a census and popular referendum determine governorate and federal Iraqi state affiliations.)¹

The need for local militias will decrease as Iraq's armed forces and police develop greater capabilities. Anticipating progress in developing Iraqi security forces, Kurdish and Shi'a leaders should allow the Peshmerga, Badr Brigade, and other protection forces to be renamed and co-opted into national government, federal Iraqi state, and local security structures. In this event, their members should enlist in the Iraqi army (i.e., "Iraqi Civilian Defense Corps"); join the federal Iraqi state civilian defense forces (i.e., "Constabulary"); perform policing functions (i.e., "Carabinieri"); or retire with pension. Other than national defense and border control, each federal Iraqi state should have responsibility for public security and safety, with local police reflecting the ethnic composition of the communities in which they serve.

What happens in Iraq will shape America's foreign policy for years to come. The U.S. strategy must be measured in milestones, not arbitrary deadlines. A precipitous departure would spark conflict between Iraqis and ignite a broader regional conflict. Failure and retreat in Iraq would embolden radicals and extremists throughout the Muslim world.

U.S. and coalition forces are needed in Iraq until a permanent constitution is adopted. Since Iraqi security forces currently lack counterinsurgency capabilities, only the continued presence of U.S. troops can ensure that the political process goes forward in relative safety. When the constitution is adopted and full sovereignty is restored to

¹ Guidelines are provided in article 58 of the *Law of Administration for the State of Iraq for the Transitional Period*, adopted on March 8, 2003.

Iraqis, the United States should consult with the Iraqi government on a new status of forces agreement and a schedule for drawing down force levels.

To foster compromise and consent among Iraqis, the United States should:

- Maintain a dialogue with all Iraqi political parties, impressing upon them the repercussions of dominance by any one group, and the risk of sectarian or ethnic conflict escalating to civil war;
- Assist Iraqi efforts, as requested, in drafting and building national consensus in support of the constitution;
- Convene a follow-up to the international conference of November 23, 2004, in order to establish an international “Contact Group” consisting of UN Security Council permanent members, major donors, and front-line states;
- Support a role for the UN providing resources and legal expertise to assist drafting of the constitution, coordinate input from international nongovernmental organizations (NGOs), and facilitate a national dialogue on the constitution; and
- Urge Iraq’s government to use a combination of carrots and sticks to encourage more constructive contributions by Iraq’s neighbors.

INTRODUCTION

Only a legitimate political process restoring full sovereignty can inspire confidence among Iraqis in their governing institutions and encourage them to confront the insurgency. This Council Special Report identifies the principle issues to be addressed in Iraq's constitution. It recommends power-sharing arrangements between Iraq's national government and federal Iraqi state governments. It proposes a role for the United States and the United Nations to play in this process, and suggests ways the Iraqi government can encourage cooperation with Iraq's neighbors. Recommendations are offered as a potential roadmap and to stimulate discussion.

Iraq's elections on January 30, 2005, were a watershed in the country's history. Amidst threats of violence, jubilant Iraqis demonstrated great courage in going to the polls to elect a provisional assembly and provincial councils. As expected, Arab Shi'a and Iraqi Kurds voted in large numbers. Arab Sunnis did not; most were alienated or scared by insurgent threats and chose not to vote. Since no political block won a super majority in the National Assembly, Iraq's political leaders are too divided to implement sweeping changes.

Despite progress, it is important to maintain perspective. Democracy involves much more than voting. It is about the distribution of political power through institutions and laws that guarantee accountable rule and the development of civil society organizations and cultural norms that reinforce institutional arrangements. Iraqis face a daunting challenge. The Transitional Administrative Law (TAL) envisioned that the government would appoint a constitutional committee to draft Iraq's permanent constitution by August 15, 2005. The draft would be disseminated, debated, and approved by the assembly before a popular referendum by October 15, 2005. And Iraqis would go to the polls to elect a new government for a five-year term on December 15, 2005.

Democratizing Iraq will not be easy; nor will adhering to the timetable. Whereas the elections produced a wave of optimism, the delay in forming a government was intolerable to Iraqis who risked their lives to vote based on the expectation that Iraq's new political leaders would quickly form a new government to address escalating

violence and improve basic services. After ten weeks of agonizing debate, Iraq's new political leaders finally agreed on a division of responsibilities. Meanwhile, terrorist attacks have continued threatening to derail the process. Delays in forming the government revealed the extent to which Iraqi politics are defined by regionalism and the degree of distrust between ethnic and sectarian groups. Given Iraq's history of confrontation, negotiations over the constitution are sure to sharpen differences; not everyone will be fully satisfied with the outcome.

The drafting process does not necessarily have to entrench hardline positions. It could be a tool for national dialogue, reconciliation, and conflict resolution. If Iraqis are willing to compromise, a deal may be in the offing: Arab Shi'a will have to forego attempts to make Islamic law the only basis for legislation; Arab Sunnis must accept that they no longer control Iraq's institutions; Iraqi Kurds must relinquish their dream of independence and sole control of oil in Kirkuk; Iraqi Turkmen and Chaldo-Assyrians must recognize that they reside in federal Iraqi states dominated by Arabs or Kurds.

Though Iraqis face enormously difficult decisions about their future, some common ground already exists. Most Iraqis recognize the benefits of a governance system that is republican, federal, democratic, and pluralistic. The problem with Iraqi governance has been the concentration of power in the national government. To prevent this from happening again, Iraqis concur on the need for power-sharing between the national government and federal Iraqi states, as well as the decentralization of authority from federal Iraqi state government to governorates, districts, counties, and municipalities. Many espouse a system of constitutional federalism in which each level of government has a guarantee, anchored in the constitution, against encroachment by the other. And they recognize that the separation of powers and checks and balances among branches of the national government can also limit power and curb its abuses.

CONTEXT AND CONSTITUENCIES

Historical experience and ethnic, religious, and tribal affiliations affect the sense of “Iraqiness” and the approach of Iraqis to future governance.

HISTORICAL CONTEXT

Under Ottoman rule, Iraq was divided into distinct administrative regions called “villayets,” with provincial capitals in Basra, Baghdad, and Mosul. Arab Sunnis represented only about 20 percent of the population, but the Ottomans assigned them leading positions in overall administration. When the modern state of Iraq was created after World War I, Britain preserved the dominant role of the Arab Sunni elite. Though they constituted a majority of the population, Arab Shi’a were marginalized by the Ottomans, British, and Ba’athists.

Kurdish aspirations were also neglected. While the 1920 Sevres Treaty gave Kurds the right to independence, the pledge was never implemented. Despite a promise by the League of Nations, Iraq made no special arrangement for the Kurds when it became independent in 1932. Later, Saddam Hussein extolled “brotherhood” between Arabs and Kurds, but then launched the Anfal campaign in 1988 killing more than 100,000 Kurds.

As the two primary victims of the Ba’ath regime, Iraqi Kurds and Arab Shi’a are natural allies. After the 1991 Gulf War, the United States incited uprisings by the Kurds and Shi’a, but then stepped aside, allowing Saddam to launch brutal reprisals. Fearing weapons of mass destruction, more than one million Kurds fled to Turkey and Iran. At least 200,000 Arab Shi’a were killed during the crackdown and a half million more were rendered homeless when the southern marshes were drained. Welcoming the promise of liberation, Kurds and Shi’a supported the U.S.-led military action in 2003, and both played an important role in the Iraqi Governing Council (IGC), which was established by the Coalition Provisional Authority (CPA) to fill the vacuum of governance in post-

Saddam Iraq. However, the CPA's mistakes, such as delaying the handover of sovereignty and dismantling Iraqi institutions that were needed for security and self-rule, turned many Iraqis against the United States. Most of all, the worsening security situation embittered Iraqis.

Adopted by the IGC on March 8, 2004, the TAL enshrined democracy, pluralism, and federalism in Iraqi governance. It also included a bill of rights and measures to promote women's rights unparalleled in the Muslim world. Iraqi Kurds embraced the TAL because it recognized Kurdish cultural identity, made Kurdish an official language of the Iraqi state, and required the use of Kurdish in "federal institutions and agencies of the Kurdistan region."² Grand Ayatollah Ali al-Sistani, Iraq's most prominent Shi'a cleric, objected. He asserted that only an elected body could adopt laws binding Iraqis. He also expressed concern that the TAL fostered disunity by giving preference to the Kurds.

It has been two years since the United States launched a military campaign to depose Saddam Hussein. Despite efforts by the insurgency to derail Iraq's democratic development, the January 30 elections have given many Iraqis hope for the future. The full restoration of sovereignty via a legitimate political process will further inspire Iraqis with confidence in their governing institutions and the motivation to stand against the insurgency. For Iraq to become a viable state, the permanent constitution must establish a system of governance that addresses the core concerns of Iraq's diverse ethnic and sectarian groups.

CONSTITUENCIES

Ethnicity, religion, and tribal affiliation matter to Iraq's mosaic of Arab Shi'a, Arab Sunnis, Kurds, Turkmen, Chaldo-Assyrians, and Yazidis. For power-sharing to work, Iraq's constitution must consider tensions between groups as well as factions within groups.

² *Law of Administration for the State of Iraq for the Transitional Period*, article 9.

Arab Shi'a

Arab Shi'a factions include conservative clerics who demand a primary role for Islamic law, secularists who want to preserve the country's nonreligious identity, nationalists who seek a strong central government, and separatists who prefer an autonomous Shi'a entity in the south that would include the Rumaila oil fields. The interpretation and incorporation of Islamic law in Iraq's constitution are the most divisive issues.

Endorsed by Sistani, the United Iraqi Alliance includes the Supreme Council for Islamic Revolution in Iraq (SCIRI) and the Da'wa Party. The alliance has a majority of seats in the assembly despite the recent defection of some members. Though Sistani comes from a "quietist" tradition, separating spiritual and political affairs, he was deeply involved in defining the timetable for elections. However, Sistani pledges to leave the writing of Iraq's constitution to the assembly, as long as the constitution respects the Islamic identity of the Iraqi people, does not pass laws in direct violation of Islam, and draws on Islam as a source of legislation. Abdul Aziz al-Hakim, SCIRI's head, and Ibrahim al-Jaffari, of the Da'wa, share Sistani's view on the role of religion.

Moktadar al-Sadr, the fundamentalist young cleric who draws support from the unemployed and uneducated Shi'a masses, is the most notable exception. He demands that Islam be the only source of legislation and, similar to the Council of Guardians in Iran, calls for the establishment of a twelve-man committee made up of clerics and Islamic lawyers to ensure the harmonization of Iraqi and Islamic law. The only secular Shi'a leader is Ayad Allawi, whose Iraqi List has forty members in the assembly. Even if Shi'a leaders do not follow the Iranian model of "direct rule by religious leaders" (*Wilayat al-Faqih*), Iraq's top religious Shi'a scholars, known as "Marjaiya," will wield considerable influence behind the scenes.

Arab Sunnis

Arab Sunnis include rejectionists who want to restore the power and privilege they enjoyed under the Ba'athists; Wahhabists and Salafists who want U.S. forces to stay in Iraq so they can wage holy war against them; and moderates who are tired of the insurgency and prefer a system of governance with minority rights and decentralized self-rule.

Arab Sunnis, whose future is uncertain in a country potentially dominated by Shi'a and Kurds, were most affected by Iraq's de-Ba'athification, demilitarization, and democratization. On May 16, 2004, the CPA "disestablished" the Ba'ath Party. One week later, a second decree eliminated the Iraqi armed forces. The Arab Sunnis' feeling of disenfranchisement was further exacerbated when the CPA decided to endorse a list system for the January 30 elections favoring Shi'a and Kurdish political parties with national organizations. The insurgency's stronghold is the Sunni triangle north and west of Baghdad. The insurgency cannot be defeated by military means alone. Therefore, extra efforts are needed to lure Arab Sunnis into the political process.

Though Arab Sunnis barely turned out to vote, there is too much at stake for them not to participate in drafting Iraq's constitution. The Iraqi Islamic Party has dropped its boycott. Adnan Pachachi, the former foreign minister and a leading Arab Sunni politician, has called for a conference on national reconciliation; Sheik Ghazi al-Yawar has embraced a government of national unity. Ministerial positions were set aside for Arab Sunnis in the new government, which has guaranteed Arab Sunnis a role in drafting Iraq's permanent constitution. The big question is whether moderate Arab Sunni leaders can deliver peace in exchange for a role in the political process.

Iraqi Kurds

Iraqi Kurds were the big winners in Iraq's elections. As evidenced by the Shi'a-Kurdish agreement of March 10, 2005, the Kurdish Alliance, with seventy-seven seats in the National Assembly, has emerged as a pivotal power-broker.

Since 1991, the Kurdish region has functioned as though it were an independent state: Arab units of the Iraqi National Guard are barred. Central government ministries do not have representation in Iraqi Kurdistan. The Kurdistan Regional Government (KRG) controls Iraq's borders with Turkey, Syria, and Iran. KRG institutions fly the Kurdish flag and not the Iraqi national flag, which is a hated symbol of Ba'athist repression.

On June 1, 2004, Kurdish leaders Jalal Talabani and Massoud Barzani wrote President George W. Bush threatening to "disassociate" from Iraq unless the TAL was upheld. Their letter was primarily aimed at getting the United States to incorporate references to the TAL in UN Security Council Resolution 1546 that recognized Iraq's

interim government. Their brinkmanship failed; references to the TAL were omitted. Kurdish concerns were temporarily assuaged when Iraqi political leaders insisted that the TAL would apply until such time as a permanent constitution was adopted. Jaffari has recently reaffirmed that the TAL is still the benchmark guiding Iraq's political transition.

Despite progress securing Kurdish interests in the new Iraq, a generation gap exists among Iraqi Kurds. Today's Kurdish youth do not speak Arabic and have no Arab identity. The Kurdish referendum movement took an informal poll of voters on January 30: Kurds favored independence eleven to one. If Kurdish leaders compromise too much in negotiations over the permanent constitution, the referendum movement may transform into a political party, challenging the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK).

The Kurds are seeking enough concessions from Iraqi Arabs to justify their participation in the Iraqi state while, at the same time, building a system to become independent should the opportunity present itself. The Kurds are prepared to forego their dream of independence only if their core concerns are addressed. Kurds demand federalism, secularism, and the creation of a federal Iraqi state called Iraqi Kurdistan with Kirkuk as its capitol.

Iraqi Turkmen

Iraqi Turkmen and Iraqi Kurds share the same land, religion, and way of life; both suffered atrocities under Saddam. However, simmering tensions exist between them. Some Turkmen object to being considered a minority group within what they consider to be a minority region of Iraq (i.e., Kurdistan). The Iraqi Turkmen Front (ITF) claims to represent two million Turkmen in Iraq, including Shi'a Turkmen, but it received only 93,480 votes and three assembly seats. Kurdish leaders believe that the ITF is a stalking horse for Turkey's interests and that Turkey is fomenting conflict between Kurds and Turkmen as a pretext for reasserting control over the Kirkuk oil fields. Turkish generals have threatened to intervene in the event of ethnic clashes between Kurds and Turkmen, or if Kirkuk becomes the capitol of Iraqi Kurdistan.

Chaldo-Assyrians

Chaldo-Assyrians are a Christian, Aramaic-speaking community with a distinct culture and proud ancient history as an indigenous population of Iraq. Assyrians are concentrated in mostly rural communities on the Nineveh Plain (north and northeast of Mosul). Under Ba'athist rule, Assyrians were forcibly deported from villages and towns where they had resided for centuries in order to diffuse their resistance to Baghdad and break up their ethnic concentration. Today, most Assyrians, including the Patriarch, live overseas. Voting materials never made it to a Christian enclave northwest of Mosul, and Assyrians have protested their single seat in the assembly.

CONSTITUTION-MAKING

The primary responsibility of the assembly elected on January 30, 2005, is to promulgate a permanent constitution that is acceptable to all Iraqis. To this end, the assembly must compose a constitutional drafting committee, define systems for public participation, clarify the timetable, and consider an appropriate role for the international community.

MEMBERSHIP

The process of drafting Iraq's permanent constitution must be inclusive and involve meritorious representatives of Iraq's ethnic and sectarian groups. Outreach by political leaders, town meetings, and the media should target Iraqis who have heretofore been skeptical of the political process. Even though Arab Sunnis are underrepresented in the assembly, the Iraqi government should make sure they are included in the constitutional committee. In addition to assembly members, well-respected Iraqis, including lawyers, technocrats, and Iraqis with communications and community outreach skills, should participate in the committee. Consistent with their proportion in the assembly, women should comprise one-third of committee members. Turkmen and Chaldo-Assyrians

should also be represented in proportions consistent with their representation in the assembly.

PUBLIC PARTICIPATION

In phase one, Iraqis should have input into the broad principles of the constitution at traditional gatherings organized by village, tribal, and political leaders. In phase two, local government should convene town meetings so that constituents can debate and have substantive input to the draft text. In phase three, after the constitution is ratified by the assembly, the TAL provides that it will be submitted for approval to Iraqis in a popular referendum. Women's groups and civil society organizations can play a critical role ensuring broad-based popular participation. The media will also be indispensable in educating the public. Whereas transparency is important for the process to be legitimate, the drafters must be able to work behind closed doors as they explore ideas and develop consensus.

TIMETABLE

Despite delays forming a new Iraqi government, the National Assembly must now move quickly to compose a constitutional commission, define procedures for public participation, clarify the timetable, and consider an appropriate role for the international community. Though Iraqis face a daunting challenge agreeing on the complex details of a permanent constitution by August 15, 2005, efforts should be made to meet the deadline. More important than staying on schedule, however, Iraqis should fully debate and assume ownership of the constitution. If a draft is not ready by June 30, 2005, the Iraqi government should convene the assembly and, consistent with article 61 of the TAL, consider a delay of up to six months.

INTERNATIONAL COMMUNITY

UN Security Council Resolution 1546 calls on the secretary general's special representative and the UN Assistance Mission in Iraq to support Iraqi efforts in drafting and building national consensus in support of the constitution. International experts can help Iraqis by providing constitutional expertise as a neutral resource. To avoid confusion and delays, the Iraqi government should ask the UN to act as the primary body providing resources and legal expertise, assisting a national dialogue, and coordinating input from international NGOs. The United Nations must act strictly in a supporting role, providing technical assistance as requested by the Iraqi government. The UN Oil for Food Program has fueled questions about the world body's integrity and competence. Iraqis are sure to criticize a draft of the constitution, which they believe has been influenced by foreign powers. The United States must also act discreetly working behind the scenes to inform the views of Iraqis. Iraqis will reject the constitution if they believe the United States has tried to manipulate the process to advance U.S. interests.

GOVERNANCE

The constitution must define a system of governance that preserves Iraq as a unitary state, advances the aspirations of ethnic and sectarian groups, and is administratively viable. More than the devolution of some powers, a system of constitutional federalism—in which each level of government has a guarantee, anchored in the constitution, against encroachment by the other—is most suitable for harmonizing the competing claims of Iraqis.³

³ Federalism in Arabic is *Federalia* and in Kurdish is *Federali*. Federalism is not new to the Middle East. The United Arab Emirates is governed by a federal system.

WHY FEDERALISM?

The best way to balance the competing demands for democracy and unity is through a federal structure that assigns specific authorities to the federal government in Iraq while decentralizing power to regional and local governments. Federalism is a voluntary association between parties who decide it is in their common interest to form a unified state. In the case of Iraq, it is preferable to mere autonomy. While federalism is a contract binding equal groups, autonomy is bestowed by the central government to a lesser party. As opposed to systems that merely devolve power, federalism offers a greater guarantee than autonomy, whose entrenchment can be more easily revoked.

The Kurds currently prefer federalism over autonomy because of their past experience. The twelfth of President Woodrow Wilson's Fourteen Points affirmed that "[n]ationalities which are now under Turkish rule should be assured ... an absolutely unmolested opportunity of autonomous development." Wilson's assurances were not fulfilled. The 1920 Treaty of San Remo established local autonomy for Kurdish areas, which was never implemented. In 1943, Mulla Mustafa Barzani rebelled when demands for autonomy and a share of the region's oil were denied. After the Kurdish rebellion of 1968, the Ba'athists amended Iraq's constitution to provide for Kurdish cultural autonomy; Saddam committed genocide instead.

The Kurds are not the only Iraqi group to embrace federalism. Wary of subjugation by an overbearing power, Iraq's Arab Shi'a also see federalism as an antidote to abuses by the central government. So do some Arab Sunnis who recognize that federalism can ensure the interests of their group. Federalism goes hand-in-hand with minority rights' protection and promotion to limit the potential for arbitrary dominance by the majority.

NATIONAL GOVERNMENT AUTHORITIES

Federalism does not compromise national unity nor promote fragmentation if an essential role is preserved for the national government. Binding in all parts of Iraq, the constitution should assign responsibility to the national government to:

- Manage foreign affairs, arrange diplomatic representation, and promulgate international treaties;
- Set foreign economic, trade, and debt policies;
- Assert border control and collect customs;
- Formulate fiscal policy, issue currency, manage the central bank, and impose taxes;
- Issue commercial regulations ensuring there are no impediments to trade between federal Iraqi states;
- Promulgate telecommunications and transport rules;
- Command the armed forces to protect Iraq and maintain national security; and
- Manage the energy sector.

The constitution should ascribe to Iraq all the characteristics of a state such as a flag, anthem, emblem, and official languages (i.e., Arabic and Kurdish). All residents of Iraq would be Iraqi citizens. The national constitution should strictly limit areas where the national government can legislate. But when the national government is entitled to enact laws, such legislation should be the supreme law of the land.

Religion

The constitution should reflect the Muslim identity of Iraqis by making Islam the official religion of Iraq and requiring federal legislation to be consistent with Islamic law. The legislation of federal Iraqi states should be consistent with the universally agreed tenets of Islam. The constitution should not, however, require the application of Islamic law to family matters, such as marriage, divorce, and family inheritance, throughout Iraq. To do so would antagonize Iraq's secularists and run the risk of polarizing the polity. Family

law should be left to federal Iraqi states, which may enact any law they see fit, subject to the requirement that they do not violate the rights, including women's rights and rights of equal protection, that are enshrined in the Iraqi constitution. Federal Iraqi states should be able to apply laws at their discretion granted that such laws do not violate the constitution. Iraqi women should be guaranteed the right to vote and one-third of the seats in the national assembly. Conservative clerics must not push too hard. The Qu'ran is subject to interpretation. Unrest will ensue if Islamists try to enforce Islamic law without restraint.

Security

The need for local militias will decrease as Iraq's armed forces and police develop greater capabilities. Anticipating progress with the development of Iraqi security forces, Kurdish and Shi'a leaders should allow the Peshmerga, Badr Brigade, and other protection forces to be renamed and co-opted into national government, federal Iraqi state, and local security structures. In this event, their members should enlist in the Iraqi national army (i.e., "Iraqi Civilian Defense Corps" [ICDC]); join federal Iraqi state civilian defense forces (i.e., "Constabulary"); perform policing functions (i.e., "Carabinieri"); or retire with pension. The ICDC would guard Iraq's borders and protect the country from external threats. The constabulary would be used for special tasks in the event of natural disaster, civilian emergencies, and as a reserve in case of invasion. Carabinieri would be trained at a police academy in anti-terror techniques and "democratic policing" (i.e., human rights). Under the command of a federal authority and barred from possessing heavy weapons, local security forces should reflect the ethnic or sectarian character of populations that they serve.

Natural Resources

Iraq's oil wealth belongs to the people of Iraq. The national parliament should have responsibility for authorizing the federal government to retain a portion of oil revenues to pay for government operations. Based on their percentage of the total population, the balance should be distributed to federal Iraqi states with the requirement that each state's portion be used to support state government operations and for investment in social

welfare, development, and reconstruction. Co-chaired by national government and federal Iraqi state officials, joint energy development commissions would consider future energy projects. Regarding water rights, federal Iraqi states and local residents may use rivers flowing through their territory for power production and irrigation, provided that such use does not cause undue hardship for downstream beneficiaries. Hydropower may be used locally, exported, or sold to the utility. Federal Iraqi states and private landowners will have responsibility for agricultural production, forestry management, and mineral exploitation on their territories. (Note: Iraq's governance requirements will evolve. The constitution should include amendment procedures based on a supermajority of votes in the federal parliament and co-approval by the federal Iraqi states.)

NATIONAL GOVERNMENT STRUCTURES

Iraqis are wary of unfettered presidential powers, but they have always had a president and do not want the institution of the presidency to be eliminated. Iraqis envision future presidents as benign figures fostering unity and confidence. To establish accountable rule, enshrine a balance of powers, and guard against future abuses, Iraq should be a parliamentary system with a largely ceremonial president, a council of ministers that includes the prime minister, a parliament, and an independent judiciary. Following is a summary of their proposed responsibilities:

- *The president* should act as guardian of the constitution. Elected for a fixed term by the parliament, the president would formally invest the prime minister after he or she has been selected by the parliament. The president may be consulted on the appointment of ambassadors and envoys or asked by the prime minister to represent the country abroad.
- *The prime minister* should define and implement national policy, direct the day-to-day work of the government, and supervise its administration. The prime minister, who would be approved by members of the parliament and could be removed at any time through a vote of no-confidence by the parliament, would

preside over the council of ministers whom he or she appoints. Duties include formulating fiscal policy, drawing up the national budget, and implementing tax policy. The prime minister should be charged with proposing acts of parliament, answering to the parliament, and stewarding the proper implementation of laws passed by the parliament. The prime minister would nominate judges and act as commander-in-chief of the armed forces, and, with parliamentary authorization, be responsible for ensuring Iraq's independence and territorial integrity. He or she would represent the country abroad, appoint ambassadors and envoys, and ensure Iraq's adherence to international treaties.

- *The parliament* should include Iraqis who are popularly elected. A hybrid system of direct voting and party lists would ensure representation of all Iraqis including minorities and women. The hybrid system should allow women to comprise at least one-third of all assembly members. The parliament would enact laws and exercise oversight over the work of the executive, including the budget and dispatch of the armed forces out of Iraq. It would also approve judges nominated by the prime minister. Lustration laws should be adopted prohibiting persons accused of atrocities from running for office.
- *The judiciary* should be independent and comprised of jurists appointed for their merit, commitment to fairness, and impartiality. Federal courts should be the highest authority adjudicating matters concerning the application of federal law. Critical to the enforcement of federalism, a constitutional court should have special competence to harmonize national and federal Iraqi state laws, preserve the respective spheres of the national government and federal Iraqi states, and act as a final authority on matters of individual and group rights under the constitution. Judges should be approved by two-thirds of the National Assembly in order to ensure broad agreement that the jurists have the appropriate skills and temperament. The special war crimes tribunal should include international jurists whose participation will help ensure independence and protect domestic jurists from reprisals. To complement it, a truth and reconciliation commission should be explored through a broad popular consultation. Other national commissions should be established on human rights, property claims, and de-Ba'athification.

Iraqis representing different groups should be selected to serve in leadership positions (i.e., president, prime minister, and parliament leader). However, the goal should be to reduce the importance of ethnic or religious identity in Iraqi politics. As a sense of “Iraqiness” develops, the importance of ethnic and/or sectarian representation in leadership positions will gradually diminish.

IMPLEMENTING FEDERALISM

The underlying presumption should be that powers are reserved for the federal Iraqi states unless they are specifically allocated to the national government. Consistent with the practice of constitutional federalism, the national constitution should empower federal Iraqi states with governance responsibility. These constitutional limits would be enforced by the constitutional court. On issues where federal Iraqi states may be particularly sensitive about their prerogatives, the national constitution should establish safeguards to prevent unnecessary intrusion into their affairs, such as supermajority voting requirements and/or co-approval with state legislatures.

STATE STRUCTURES

Numerous arrangements are possible for organizing federal Iraqi states. Iraq could consist of two federal Iraqi states (i.e., one Arab and the other Kurdish). It could be comprised of three federal Iraqi states, each dominated by ethnic or sectarian groups (i.e., Arab Shi’a, Arab Sunnis, and Iraqi Kurds). It could be made of eighteen governorates, which was the ruling system of the Ba’athists. Alternatively, federal Iraqi states could cluster existing governorates into Iraqi federal states numbering between two and eighteen.

Interviews conducted with Iraqis since the fall of Saddam suggest a growing consensus toward reconfiguring the political structure of Iraq. As evidenced by recent meetings of the United Iraqi Alliance in Basra, the Iraqi Islamic Party in Baghdad, and

the Kurdish Regional Government in Erbil, Iraq's leading political parties prefer something other than the existing structure of eighteen governorates, which they associate with Saddam's rule and see as an attempt to foster divisions and compel loyalty to the national government.

The following criteria should be used to determine what political structure best recognizes group identities without promoting ethnic splits among Iraqis:

- The boundaries of federal Iraqi states and governorates should be established using geographic not ethnic criteria;
- Structures should enhance the Iraqis' sense that they are managing their own affairs;
- Federal Iraqi states should be administratively viable; and
- Federal Iraqi state structures should take into account historical realities, current conditions, and the future aspirations of Iraqis.

Even preceding Ottoman rule, Iraqis had a strong group identity based on ties to their village of origin, the shrines where they worship, language, and accents. Group identity became even more pronounced in response to colonial and authoritarian rule during the twentieth century. To the Iraqi polity, communalism is a fact of life.

However, a sense of "Iraqiness" based on loyalty to the "new Iraq" is gradually evolving. This process is just beginning and will take time. Iraq's current political leaders should carefully nurture the development of national identity. It should avoid choices composing federal Iraqi states that would cause conflict. For example, establishing two states—one Arab and the other Kurdish—would spark civil and regional strife as it looks like a pit-stop on the path to an independent state of Iraqi Kurdistan. Establishing three federal Iraqi states would intensify ethnic and sectarian divisions. Keeping Saddam's structure of eighteen governorates is also undesirable; it would be seen as a throw-back to Ba'athist rule, disappointing Iraqis aspiring to manage their own affairs.

The most efficient and viable structure would involve five or six federal Iraqi states, one of which would be Baghdad. Each federal Iraqi state, comprised of not less than three of Iraq's existing governorates, would be composed on a geographic basis,

while taking into account regional interests and cultural affinities. Two or three southern and central Iraqi states could be composed from the provinces of Basra, Dhiqar, Maysan, al-Muthanna, Najaf, Wasit, Babil, Karbala, and Qadisyah (which include mostly Arab Shi'a, as well as Arab Sunni and Kurdish populations). A central and western Iraqi state could be composed from the provinces of al-Anbar, Nineveh, Salahuddin, and Diyala (which include mostly Arab Sunnis, as well as Shi'a, Assyrian, Kurdish, and Turkmen). A northern federal Iraqi state called Iraqi Kurdistan could be composed from the provinces of Erbil, Suleimania, and Dohuk (which include mostly Kurds, as well as Arabs, Turkmen, and Assyrians).

As part of Saddam Hussein's "ethnic correction" policy aimed at diluting the influence of ethnic groups, the Revolutionary Command Council (RCC) reapportioned territories within the provinces of Kirkuk, Salahuddin, Nineveh, and Diyala in 1974. All RCC decrees except this one were rescinded in 2003. Consistent with article 58 of the TAL, the United Nations should assist the return of displaced persons to parts of Ta'amim, Diyala, Nineveh, Suleimania, and Salahuddin provinces before a census and popular referendum determine governorate and federal Iraqi state affiliations.⁴

In conjunction with UN experts, the Iraqi government should undertake a systematic effort to return displaced persons to their original homes based on the principles that they have the right to (a) return in safety without risk of harassment, intimidation, persecution, or discrimination on account of their ethnic origin; (b) have restored to them property of which they were deprived; and (c) be compensated for property that cannot be restored. The United Nations could also assist with a census and referendum involving the residents of Kifri and Kirkuk in Ta'amim province; of Khanaqin, Mandali, and Jalawlain in Diyala province; of Sinjar, Shekhan, Aqra, and Zimar in Nineveh province; of Kalar and Chamchamal in Suleimania province; and of Tuz in Salahuddin province, determining to which governorates and federal states they will affiliate. The United Nations should take the lead in returning displaced persons and organizing a nationwide popular consultation demarcating governorates and federal states.

⁴ Proposed federal Iraqi states would not be homogeneous. For example, 35–45 percent of Basra is Arab Sunni. One-half of Mosul is Kurdish, Turkmen, and Chaldo-Assyrian. Wasit has a large Kurdish population and Suleimania is home to many Arabs.

Redrawing governorate and establishing federal Iraqi state boundaries is a difficult process that can spark conflict. Resolving the status of Kirkuk will be especially contentious. To avoid disagreement, options have been proposed for Kirkuk such as “special status” and designating it an “open city” whose status would be resolved through international mediation. In spite of difficulties, it would be better for Iraqis to address Kirkuk’s status now. Deferring action would entrench positions, poison interethnic relations, and invite outside interests to manipulate the process. Postponement would lead to greater conflict in the long run.

INDIVIDUAL AND GROUP RIGHTS

Group rights are most effectively promoted by strengthening individual rights and through institutional arrangements defining systems for power-sharing. Enshrining the rule of law, Iraq’s constitution should adopt human rights precedents from the 1925 constitution and include a bill of rights reflecting international standards. Legislation adopted by the national parliament within the scope of its powers should also protect individual and group rights.

BILL OF RIGHTS

There are several ways of advancing human rights, including the protection of individual rights by independent courts, equal protection regardless of race, religion, or gender, and strict enforcement of collective group rights. Together they represent the best way to promote human rights in Iraq.

Iraq’s constitution should enumerate specific inalienable rights for all Iraqis including:

- Equal protection under the law;

- Freedom of expression, thought, conscience, religious belief, and practice;
- Peaceful assembly and freedom of association for political parties, labor unions, and civil society organizations, etc;
- Privacy that may not be violated by police, investigators, or other public authorities without due process;
- Freedom from arbitrary arrest and detention, right to counsel, and a fair, prompt, and public hearing by an independent and objective court;
- Freedom from torture, cruel, inhuman, and degrading treatment;
- Free and fair elections and the right to vote for all persons, including women; and
- Freedom of movement in all parts of the country as well as to travel abroad and return.

The constitution should also be aspirational and exhortatory by affirming rights in social sectors such as the right to education, health care, ownership of private property, and employment of one's choosing.

GROUP RIGHTS

Given Iraq's history of ethnoreligious conflict, ethnic and sectarian groups want explicit constitutional provisions protecting them from discrimination, promoting equality, and enabling groups to preserve their unique identities (as they choose). Beyond protection, measures should conform to international standards⁵ and pro-actively promote the rights of minorities to:⁶

⁵ These are the UN Charter; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the International Convention on the Elimination of Racial Discrimination; the 1990 Copenhagen Document of the Organization for Security and Cooperation in Europe; and the 1991 UN General Assembly "Declaration on Minority Rights."

⁶ Examples are found in the Constitution of India adopted on January 26, 1950. See Part III: Fundamental Rights (articles 29 and 30).

- Participate in public life by having elections, holding public office, and engaging in other political and administrative functions;
- Assemble and form associations and political parties in order to aggregate their interests and influence regional decision-making;
- Establish advisory or consultative bodies to assist planning and policy implementation;
- Seek laws upholding their customs and customary law;
- Participate in public security and policing functions through local security bodies that reflect the ethnic composition of communities they are serving;
- Maintain unimpeded contact across frontiers with citizens of other federal Iraqi states with whom they share a common ethnic origin or religious belief;
- Resist involuntary relocation without free and informed consent or compensation;
- Enjoy equal access to education;
- Organize their own education programs, including the establishment and maintenance of schools that encourage knowledge of the group's history, traditions, language, and culture;
- Exercise language rights and use the group's language in official proceedings;
- Display local names, street names, and other topographical indications in the minority language;
- Enjoy religious rights, including the right to establish religious institutions and organizations;
- Have access to media without discrimination, including access to media in the group's language; and
- Participate fully in economic activities.

To ensure universal participation, federal Iraqi state government positions and seats in federal Iraqi state parliaments should be reserved for women and the representatives of minority groups.

DECENTRALIZATION

Decentralization is another way to enhance group rights. Consistent with the principle of decentralization, federal Iraqi state, governorate, county, district, and municipal governments should be able to adopt laws conforming to local customs just so long as such laws do not contradict the constitution or laws enacted by the national parliament within the scope of its powers. Federal Iraqi states should be encouraged to devolve authority to the local level to the greatest extent practicable. For example, Shi'a political leaders in Sadr City could ban alcohol sales with exception for Christians who use alcohol in religious rituals. Chaldo-Assyrians could adopt laws on religious practice and education in Nineveh province. Iraqi Turkmen could adopt rules protecting Turkmen language media and education in predominantly Turkmen districts of Kirkuk. Decentralization would also apply to the distribution of oil revenues and reconstruction funds.

COMPROMISE AND CONSENT

The logic of compromise and consent is not reason enough for Iraqis to suddenly abandon their entrenched demands and become conciliatory. Iraqis will only change their approach if they believe that doing so is in their interest.

Dialogue, compromise, and consent have not been a part of modern Iraqi politics. However, Iraq's leaders have a growing appreciation of the need for mutual accommodation. They increasingly recognize that politics is not about brute force and that negotiations are not a zero-sum game. Iraqis are a proud people who are tired of living in a failed state and being a pariah nation. Despite provocations by the insurgents, Iraqis have not allowed a cycle of violence to engulf their country. Instead, they are looking over the horizon and realizing that compromise does not mean defeat nor does consent surrender their constituents' core concerns.

To harmonize competing claims:

- *Arab Shi'a* could forego dominance if they were able to realize their goals through the political process. To this end, the parliament will be popularly elected and will select the president and prime minister. Oil revenue-sharing would ensure that Iraq's energy wealth benefit the Shi'a population. Decentralization would allow the adoption of laws in Shi'a areas that conform to local custom. Arab Shi'a should not seek domination, which would fuel the Arab Sunni insurgency and provoke Kurdish demands for independence.
- *Arab Sunnis* could accept that they have lost control over Iraq's institutions if their interests were secured in the constitution. Instead of using violence to achieve political objectives, Arab Sunnis can advance their goals through the establishment of a predominantly Arab Sunni federal Iraqi state and via decentralization. Though Arab Sunni territories do not have oil, revenue-sharing can assure them a stake in Iraq's energy sector. If they do not accept today's reality, Arab Sunnis will simply be overwhelmed by Arab Shi'a, who have so far resisted the efforts of predominantly Sunni insurgents to provoke sectarian strife.
- *Iraqi Kurds* could forego their dream of independence and relinquish sole control of oil in Kirkuk if they realized their goal of a federal, pluralistic, multiethnic Iraq. Though the Peshmerga will cease to exist, they will be reassigned or retired while retaining an honored position in Kurdish society. Rescinding the 1974 RCC decree would allow historically Kurdish areas the option of affiliating with Iraqi Kurdistan. Northerners will benefit from oil revenues and have a say over future energy development in Kirkuk and Tak Tak; the KRG will be able to broaden commercial contacts and enter into direct commercial agreements with Iraq's neighbors. Kurds should realize that pursuing independence could undermine their hard-fought progress. Being part of Iraq is better than being isolated or living under threat from hostile neighbors.
- *Iraqi Turkmen and Chaldo-Assyrians* could accept that they reside in federal Iraqi states where Arabs and Kurds constitute the majority if they were assured robust protection and promotion of minority rights. Decentralization, which allows local

self-rule and local benefit from oil revenues and reconstruction funds, would also serve their interests, as would the economic development of Iraqi Kurdistan, which would benefit all northerners.

The general population of Iraq needs to be further educated through town meetings, tribal gatherings, and the media on the meaning of democracy. Support for Iraq's democratization could also be helped if Iraqis felt their daily lives were improving. Steady supplies of water and electricity would go a long way to investing Iraqis in their country's democratic future.

The emergence of Iraq's new democratic leaders does not obviate America's responsibility. To create conditions conducive to compromise and consent, the international community should focus on economic development. Donor countries and other countries participating in an international "Contact Group" should increase their reconstruction assistance emphasizing job creation; debtor nations should forgive Iraq's crippling external debt; and multinational corporations should explore investment opportunities and help rehabilitate Iraq's energy sector. Iraq's security, economy, and political transition are interconnected.

AMERICA'S ROLE

U.S. INTERESTS

What happens in Iraq will shape U.S. foreign policy for decades to come. Despite calls for an early exit, the United States must stay actively engaged, promoting dialogue among Iraqis on the constitution, training Iraqis in security lest greater violence undermine the political transition, and supporting economic reconstruction and job creation. A precipitous departure would be disastrous, sparking conflict between Iraqis and igniting a broader regional conflict. Failure in Iraq would have global implications with America's retreat, emboldening radicals and extremists in the Muslim world.

In the past, the Bush administration may have been prepared to go-it-alone, but now it appreciates the role of the United Nations, the European Union (EU), the North Atlantic Treaty Organization (NATO), and Iraq's neighbors. Likewise, members of the international community who opposed the war increasingly recognize the need to set aside disagreements and focus on their contribution.

What constitutes success in Iraq? It is important to be realistic. Short of fashioning Iraq into a liberal democracy, the goal must be to create a stable and secure environment so democracy can flourish. The United States and coalition forces are needed in Iraq until a permanent constitution is adopted. Since Iraqi security forces currently lack counterinsurgency capabilities, only the continued presence of U.S. troops can ensure that the political process goes forward in relative safety. Though Iraq's new leaders want the occupation to end and for U.S. forces to leave, they appreciate the need for American troops until Iraqi security forces have the capability to defeat the insurgency. For this to happen, the January 30 election must give rise to a legitimate government that enables the recruitment of an army that is able and willing to defend Iraq and its institutions. When the constitution is adopted and full sovereignty is restored to Iraqis, the United States should consult with the Iraqi government on a new status of forces agreement and a schedule for drawing down foreign forces.

To foster compromise and consent, the United States should:

- Maintain a dialogue with all Iraqi political parties impressing upon them the risk of ethnic or sectarian conflict further escalating civil war;
- Offer to assist Iraqi efforts, as deemed appropriate by the Iraq government, in drafting and building national consensus in support of the constitution;
- Convene a follow-up conference to the meeting of November 23, 2004, which included foreign ministers from twenty countries, as well as from the United Nations, the European Commission, the Arab League, and officials from the Organization of the Islamic Conference (OIC), in order to establish an international "Contact Group" consisting of UN Security Council permanent members, major donors, and front-line states; and

- Reaffirm publicly the UN's role, consistent with UNSC 1546, providing resources and legal expertise to assist drafting of the constitution, serving as the coordinating body for input from international NGOs, and facilitating a national dialogue on the constitution.

REGIONAL COOPERATION

Frontline states have a stake in keeping Iraq from becoming a failed state and a source of regional instability. Iraqis can constructively engage their neighbors by fostering economic partnerships. Regular bilateral consultations and meetings on regional cooperation can also forge common purpose or diffuse tensions in the events of problems or misunderstandings. In addition, the Iraqi government should work with the United States and the Contact Group to develop a combination of carrots and sticks encouraging positive contributions by Iraq's neighbors.

Turkey

Turkey is concerned about the establishment of a federal state called Iraqi Kurdistan with Kirkuk as its capitol. It worries that self-rule in Iraqi Kurdistan would inspire restive Turkish Kurds to demand greater rights, seek a comparable federal arrangement, or take steps aimed at breaking away from Turkey. Turkish generals warned that they were ready to intervene in the event of postelection clashes between Kurds and Turkmen. Calls for intervention intensified when General John Abizaid indicated that U.S. forces were too tied up fighting the insurgency and refused to take action against the Kurdistan Workers Party (PKK). Ankara increasingly recognizes shared interests with Iraqi Kurds. Both are concerned about the emergence of radical Islam in Iraq and want to bolster Iraqi Kurdistan as a bulwark against the spread of fundamentalism. In addition, Turkey is the primary beneficiary of commercial contacts in northern Iraq.

To enhance cooperation with Turkey, Iraq should:

- Give priority to Turkish business, emphasize the purchase of Turkish goods, and liberalize procedures for foreign investment and ownership; and
- Pressure PKK fighters to demobilize/disarm and urge Turkey to declare a targeted amnesty allowing PKK reintegration under an internationally supervised process tied to foreign aid and other benefits for Ankara channeled through the central government in Ankara.

Iran

The Shi'a of Iran and Iraq have deep ties forged by more than 1,300 years of persecution as a minority in the Muslim world. Extensive trade occurs across the 900-mile Iran-Iraq border; Iran hopes to re-open the Basra pipeline, resume electricity sales, and strengthen its rail, road, and communications links with Iraq. For decades, Iran has cooperated with Iraqi political groups, providing moral and material support to SCIRI and Da'wa, and maintaining close contact with Iraqi Kurdish parties. Iran has also infiltrated Iraq with agents and money to influence the political process.

To enhance cooperation with Iran, Iraq should:

- Link commercial agreements that encompass trade and investment and increases in the number of bilateral trade-promotion offices in both countries with Iran's noninterference in Iraq's internal affairs; and
- Strengthen cooperation in the fight against terrorism by deporting the People's Mujahadeen (MEK) from Iraq.

Syria

Syria is a command center for the Iraqi insurgency. The Iraqi government also maintains that \$3 billion was taken illegally from Iraq and deposited in Syrian banks and that these funds are used to finance insurgent activities. Since the demise of the Ba'ath Party in Iraq, Syrian prodemocracy activists are increasingly demanding an end to emergency rule in Syria; two million Syrian Kurds are looking across the border and wanting rights comparable to their brethren in Iraqi Kurdistan.

To enhance cooperation with Syria, Iraq should:

- Link oil exports to noninterference by Damascus in the affairs of Iraq, enhanced border control, the arrest of Saddam loyalists in Syria, improved human rights for Kurds in Syria, and the release of \$3 billion in disputed funds in Syrian banks; and
- Reward Syria with tariff reductions for Syrian commodities and consumer goods if conditions are met.

APPENDIX

FEDERAL AND AUTONOMY ARRANGEMENTS

Iraq is not the first country to seek a balance between majority rule and minority rights through federal and autonomy arrangements. The following examples are illustrative rather than prescriptive. Examples include extensive footnotes highlighting the relevant experience of other countries.

GOVERNANCE

- *Constitution*: State governments control all affairs not explicitly reserved for the federal government.⁷ Principles enshrined in state constitutions are harmonized with the federal constitution. It is best for the process of drafting and adopting state constitutions to mirror the process of drafting and adopting the federal constitution.
- *Governor*: Governors are independent of the federal government.⁸ The governor is a citizen of the state, elected via a ballot of eligible voters in the state. The

⁷ Åland Islands (Finland): See Finland's 1991, *Act on the Autonomy of Åland*, which holds that the government of the Åland Islands has control over all internal affairs not specifically reserved for the Finnish government. Jammu and Kashmir (India): See the Instrument of Accession, which gives authority over foreign policy, defense, and communications to the government of India, and all other issues to the government of Jammu and Kashmir. Micronesia (United States): See Micronesia, which has exclusive authority over all issues of governance except for certain foreign affairs matters for which the United States provides assistance.

⁸ Åland Islands (Finland): See the Åland Islands, where executive power is held by the Executive Council, headed by a prime minister. Basque Country (Spain): See the Basque Country, where executive power is vested in the president of Basque. Catalonia (Spain): See Spain's 1979 Autonomy Statute of Catalonia, article 29, which holds that executive power in Catalonia is held by the president of the Catalanian government and with an Executive Council. Greenland (Denmark): See Denmark's 1979 Greenland Home Rule Act, Section 1(2) and 3, which provides that executive power is held by an Executive Council, headed by a prime minister. Micronesia (United States): See Micronesia's 1979 constitution, article X Section 1, which provides for a Micronesian president as the executive of the Micronesian government. Navajo (United States): See the Navajo reservation, where the executive power of the reservation is held by the Navajo Tribal Council, headed by a chairman. Puerto Rico (United States): See Puerto Rico's 1952 constitution, article IV, Sections 1 and 2, which holds that the head of the executive branch of the Puerto Rico government is the governor.

governor has the authority to present legislation to the state parliament, without interference from federal authorities.⁹

- *Local Legislature:* States have a legislative body independent of the federal government¹⁰ and members of the legislative body are elected directly by eligible voters in the state.¹¹ The state parliament exercises legislative power independent of federal authorities.¹²

⁹ Åland Islands (Finland): See the Åland Islands, where the Åland Islands' Executive Council is responsible for presenting bills to the legislature. Micronesia (United States): See Micronesia, where the executive presents bills to the local legislature, without interference from the United States. Gagauzia (Moldova): See Moldova's 1994 Special Status of Gagauzia Act, article 17 (2), which gives the Executive Committee the right to submit legislation to the Gagauzia legislature.

¹⁰ Basque Country (Spain): See Spain's 1979 *Statute of Autonomy for Basque Country*, article 25 (1), which states that the legislative power in Basque Country is exercised by the Basque parliament. Catalonia (Spain): See Spain's 1979 *Autonomy Statute for Catalonia*, article 30 (1), which states that legislative authority in Catalonia is vested with the Catalanian parliament. Gagauzia (Moldova): See Moldova's 1994 Special Status of Gagauzia Act, article 7, which provides for a National Assembly, the legislative body of the Gagauzia government. Greenland (Denmark): See Denmark's 1979 Greenland Home Rule Act, Section 4, which states that legislative power in Greenland shall be held by a 31-member legislature (the "Landsting"). Jammu and Kashmir (India): See Jammu and Kashmir, which has its own separate legislature. Micronesia (United States): See Micronesia's 1979 constitution, article IX Section 1, which states that the legislative body of Micronesia is the Congress of Micronesia. Netherlands Antilles (Netherlands): See the Netherlands Antilles, which has a local parliament, the Staten, that handles matters for which it has authority. Puerto Rico (United States): See Puerto Rico's 1952 constitution of the Commonwealth of Puerto Rico, article IV, Sections 1 and 2, which provides for a bicameral legislature.

¹¹ Åland Islands (Finland): See Finland's 1991, *Act on the Autonomy of Åland*, Section 13, which holds that the legislature of the Åland Islands shall be elected by secret ballot, with universal suffrage for persons of the Åland Islands over 18 years. Basque Country (Spain): See Spain's 1979 *Statute of Autonomy for Basque Country*, articles 25 (1) and 26 (1), which states that the Basque Parliament is elected directly by the persons of Basque eligible to vote. Cook Islands (New Zealand): See the constitution of the Cook Islands, article 39 (1), which states that the parliament of the Cook Islands shall be elected by the persons of the Cook Islands eligible to vote. Gagauzia (Moldova): See Moldova's 1994 Special Status of Gagauzia Act, article 8 (1), which holds that members of Gagauzia's legislative body, the National Assembly, shall be elected by the Gagauzia people eligible to vote. Greenland (Denmark): See Denmark's 1979 Greenland Home Rule Act, Section 2 (1), which states that Greenland's local legislature shall be elected directly by the persons of Greenland eligible to vote. Micronesia (United States): See Micronesia, where local government officials are elected by direct popular vote by the persons of Micronesia eligible to vote. Netherlands Antilles (Netherlands): See the Netherlands Antilles, where members of the local legislative parliament are elected by the persons of Netherlands Antilles eligible to vote. Puerto Rico (United States): See Puerto Rico's 1952 constitution of the Commonwealth of Puerto Rico, article IV, Sections 1 and 2, which holds that the Puerto Rico legislature shall be directly elected by the persons of Puerto Rico eligible to vote.

¹² Catalonia (Spain): See Spain's 1991 *Autonomy Statute for Catalonia*, article 30 (1), which states that the Catalanian parliament shall exercise the legislative powers assigned to it under the Spanish constitution and the *Autonomy Statute for Catalonia*. Gagauzia (Moldova): See Moldova's 1994 Special Status of Gagauzia Act, 12 (2), which states that the Gagauzia National Assembly has the power to make laws in five clearly defined areas. Greenland (Denmark): See Denmark's 1979 Greenland Home Rule Act, Section 4 and Schedule, which indicates that the Greenland legislature shall have independent legislative authority. Micronesia (United States): See Micronesia, where the local legislature, the Congress of Micronesia, has legislative authority independent from the U.S. government.

- *Local Judiciary*: States have a separate judiciary for all legal proceedings outside the scope of the federal government.¹³ For state laws, the administration of justice is the responsibility of states.¹⁴ Just as all citizens are eligible to serve in federal government posts, all citizens of the state would be able to assume positions in organs of state government.
- *Security*: Responsibility for public security and safety is the responsibility of each state, which has its own police force. Local police serving districts or municipalities reflect the ethnic composition of the communities in which they serve. The federal government controls external borders and customs collection.¹⁵
- *Movement and Citizenship*: There is free movement of persons between states and across the country. Whereas all persons are citizens of the country, state citizens only include permanent residents of the state or persons who originate from the state. State citizens are subject to the citizenship laws and other laws of that state. Such laws are harmonized with legal standards in the country as a whole and reflect international standards.
- *Participation in International Organizations*: In limited and specific instances, states are eligible for membership in international organizations.¹⁶ To promote trade activities for goods and services, states establish official trade-promotion centers and enter into international agreements on trade.

¹³ Micronesia (United States): See Micronesia's 1979 constitution, article XI Section 1, which holds that the Micronesia shall have its own separate judiciary.

¹⁴ Basque Country (Spain): See Basque Country, where the Basque government administers justice. Cook Islands (New Zealand): See the Cook Islands, which has responsibility for the administration of justice. Micronesia (United States): See Micronesia, where the authority is vested with the Micronesian government. Navajo (United States): See the Navajo, where tribal courts are responsible in the Navajo reservation.

¹⁵ Catalonia (Spain): See Catalonia, where the Catalan government is provided the right to create its own police force, but the Spanish government oversees the recruitment and training of this force, and a State security force has responsibility for nationwide investigations including within Catalonia. Greenland (Denmark): See Greenland, where the police force is composed of Danes and Greenlanders, and formal responsibility for policing is given to the Danish government.

¹⁶ Åland Islands (Finland): See the Åland Islands, which has representation in the Nordic Council. Gibraltar (United Kingdom): See Gibraltar, which is a member of the European Community and the sub-bureau of Interpol, but for all other international organizations it is represented through the United Kingdom.

ECONOMY

- *Natural Resources*: States control natural resources not specifically identified as under federal control or mandated for joint control between the state and the federal government.
- *Taxes and Customs*: States levy income taxes and retain sales taxes on specific goods, subject to agreement with the federal government.¹⁷ Revenue-sharing may include the transfer of tax revenues between the federal and state governments.¹⁸ Border control and customs collection are the responsibility of federal authorities.¹⁹
- *Banking*: The central bank governs monetary policy. States cooperate with the federal government regarding banking and foreign exchange policy.²⁰ All states use the national currency over which the central bank has sole control.²¹
- *Labor Issues/Land Ownership*: States have authority over labor matters,²² including the right to implement preferential hiring policies.²³ Property cannot be

¹⁷ Catalonia (Spain): See the Spanish constitution, article 133 (1-2), which holds that while the Spanish government has the original power to levy taxes, autonomous entities such as Catalonia shall have the right to levy certain taxes in accordance with the constitution. Additionally, the 1980 *Organic Law of the Financing of the Autonomous Communities* provides a mechanism for the autonomous entities of Spain to coordinate their tax policy with the Spanish government.

¹⁸ This model was practiced by Ethiopia for the then autonomous region of Eritrea (Eritrea became independent in 1994). The regime was established by a 1950 General Assembly of the United Nations resolution (General Assembly Resolution 390A [V]).

¹⁹ Faroe Islands (Denmark): See the Faroe Islands, where the Faroe Islands government and the Danish government have joint authority over imports and exports.

²⁰ Netherlands Antilles (Netherlands): See the *Charter of the Kingdom of the Netherlands Antilles*, article 3 (c)(1), which holds that the Netherlands Antilles government must cooperate with the Netherlands government regarding problems with the banking system and foreign exchange.

²¹ Åland Islands (Finland): See Finland's *Act on the Autonomy of Finland*, Section 18 (5), which holds that the currency of the Åland Islands is the Finnish markka, and the Finnish government retains total control over the currency. Basque Country (Spain): See Basque Country, where the official currency is the Spanish peseta. See also the Spanish constitution, article 149 (11), which states that the Spanish government shall have control over currency within Spain. Catalonia (Spain): See Catalonia, where the official currency is the Spanish peseta. See also the Spanish constitution, article 149 (11), which states that the Spanish government shall have control over currency within Spain. Chittagong Hill Tracts (Bangladesh): See the Chittagong Hill Tracts, where the official currency is the Bangladesh taka. Greenland (Denmark): See Greenland, where the official currency is the Danish krone, and the Danish government has authority over the krone. Northern Ireland (United Kingdom): See Northern Ireland, where the official currency is the British pound sterling, and the United Kingdom has authority over the pound. Puerto Rico (United States): See Puerto Rico, where the official currency is the United States dollar, and the U.S. government has authority over the dollar. South Tyrol (Italy): See South Tyrol, where the official currency is the Italian lira, and the Italian government has authority over the lira.

seized by state authorities except in the event of an emergency and, in such instances, just compensation is provided.

CULTURE

- *Cultural Rights*: States are responsible for matters of culture,²⁴ as well as for laws complementing federal guarantees of group and minority rights.²⁵
- *Education*: Education is the responsibility of states,²⁶ which have the authority to construct new schools,²⁷ employ and supervise teachers,²⁸ and coordinate academic curriculum with the federal government.

²² South Tyrol (Italy): See Italy's 1972 *New Autonomy Statute*, Section 8 (23) and 9 (5), which holds that South Tyrol has authority over labor issues. Faroe Islands (Denmark): See the Faroe Islands, where the Faroe Islands government administers labor issues.

²³ Chittagong Hill Tracts (Bangladesh): See the Chittagong Hill Tracts, where the Chittagong Tribal Council has authority over hiring practices, and may give priority to tribal citizens.

²⁴ Chittagong Hill Tracts (Bangladesh): See the example of the Chittagong Hill Tracts, where the Chittagong Hill Tracts Regional Council has authority over all cultural issues for the Chittagong Hill Tracts autonomous region. Navajo (United States): See the example of the Navajo Tribal Council, which has full power over cultural matters for the Navajo peoples. Puerto Rico (United States): See the example of Puerto Rico, which has authority over all cultural affairs. Netherlands Antilles (Netherlands): See the example of the Netherlands Antilles, where cultural affairs are administered by each of the Islands.

²⁵ Latvia: See Latvia's 1991 *Law of the Unrestricted Development and Right to Cultural Autonomy of Latvia's nationalities and Ethnic Groups*. Åland Islands (Finland): See Finland's Act of Autonomy of Åland, Section 18 (14), which holds that responsibility for all matters relating to culture in the Åland Islands are reserved for the Åland Island government. Catalonia (Spain): See Spain's 1980 Autonomy Statute for Catalonia, article 9 (24), which gives power over all cultural issues to the government of Catalonia. Faroe Islands (Denmark): See Denmark's 1948 Home Rule Act, which states that the Faroe Islands government has full control over cultural issues for the Faroe Islands. Gagauzia (Moldova): See Moldova's 1994 Special Status of Gagauz Act, article 17 (1)(h), which gives full control over laws and regulations regarding culture to the Gagauz local government, the National Assembly. Greenland (Denmark): See Denmark's 1979 Greenland Home Rule Act, which provides that Greenland's local government have authority over the cultural affairs of the autonomous entity. Nunavut (Canada): See the Canadian constitution Act (1867), Sections 91 (10) and 91 (13), which hold that Nunavut has authority to promote the Nunavut culture. Palestine (Israel): See the 1995 Palestinian-Israeli Interim Agreement on the West Bank and the Gaza Strip, Annex III, Appendix 1, article 32, which gives authority over cultural and religious affairs in Palestine to the Palestinian Authority. South Tyrol (Italy): See Italy's 1972 Autonomy Statute, which states that the South Tyrol government has full control over all cultural affairs.

²⁶ Åland Islands (Finland): See Finland's 1991 *Act of Autonomy of Åland*, Section 18 (14), which holds that responsibility for education is reserved for the government of the Åland Islands. Catalonia (Spain): See Spain's 1980 Statute of Autonomy, article 9 (14), which gives power to Catalonia for all regulation and administration for all issues concerning the region's education. Greenland (Denmark): See the example of Greenland, where education is administered by Greenlanders, by the Director of Education for Greenland. Micronesia (United States): See the 1983 Federated States of Micronesia constitution, article IX, Section 2, which holds that the Micronesian government has full authority to provide and promote education. Netherlands Antilles (Netherlands): See the example of the Netherlands Antilles, where education is

- *Language*: Official languages are taught in schools²⁹ and, while teachers must be proficient in all official languages, they must be fluent in the primary language of instruction at their school.³⁰
- *Language Use in Official Activities*: Persons may choose to use any of the official languages with federal government representatives.³¹ Official documents must be available in all official languages. Any official language may be used in legal documents and for legal proceedings.
- *Symbols*: States have their own seal and authority over the use of its seal.³² States may also have their own flags that fly side-by-side with the national flag.³³

regulated by the Netherlands Antilles Council of Ministers. Northern Ireland (United Kingdom): See the example of Northern Ireland, where education is administered by the Northern Ireland Parliament. Palestine (Israel): See the 1995 Palestinian-Israeli Interim Agreement on the West Bank and the Gaza Strip, Annex III, article 9, which gives authority over education in Palestine to the Palestinian Authority. Puerto Rico (United States): See the example of Puerto Rico, which has authority over all education issues.

²⁷ South Tyrol (Italy): See the example of South Tyrol, which has legislative control over school construction.

²⁸ Estonia: See Estonia's 1920 constitution (Section 2), which guarantees minorities in Estonia the right to organize, administer, and supervise public and private schools.

²⁹ South Tyrol (Italy): See Italy's 1972 *New Autonomy Statute*, Section 29, second paragraph, which provides that separate instruction shall be given for German, Italian, and Latin in schools, and that teaching in the other main language is obligatory.

³⁰ South Tyrol (Italy): See the example of South Tyrol, where all teachers must be proficient in the languages taught in South Tyrol Schools (Italian and either German or Latin), and must be native speakers of the primary language taught in a specific school.

³¹ Åland Islands (Finland): See Finland's *Åland Guarantee Act*, Sections 36, 38, and 39, which states that Swedish must be used for all communications by state organs that deal with the Åland Islands, including those communications that take place outside the Åland Islands, excepting non-Swedish speakers, who may use Finnish with state representatives.

³² Puerto Rico (United States): See the constitution of the commonwealth of Puerto Rico, article VI, Section 15, which states that the Puerto Rican Legislative Assembly determines all matters concerning the seal. Quebec (Canada): See the example of Quebec, which has its own provincial seal. Tatarstan (Russian Federation): See the Tatarstan constitution, article 160, which holds that Tatarstan shall have its own coat of arms.

³³ Åland Islands (Finland): See Finland's *Act of Autonomy of Åland*, Section 18 (3), which states that the Åland Islands has legislative powers with respect to its flag and its coat of arms. Greenland (Denmark): See Greenland's 1948 Home Rule Act, article 12, which states that the Faroe Islands may have and fly its own flag. Jammu and Kashmir (India): See the example of Jammu and Kashmir, which has its own state flag. Micronesia (United States): See the example of Micronesia, which has its own flag. Netherlands Antilles (Netherlands): See the example of the Netherlands Antilles, which has its own territorial flag. Puerto Rico (United States): See the constitution of the commonwealth of Puerto Rico, article VI, Section 15, which states that the Puerto Rican Legislative Assembly determines all matters concerning the flag. Quebec (Canada): See the example of Quebec, which has its own provincial flag. Tatarstan (Russian Federation): See the Tatarstan constitution, article 160, which holds that Tatarstan shall have its own flag.

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MEMBERS OF THE POWER-SHARING IN IRAQ PROJECT

The Council Special Report draws on the author's work with Iraqis since 1988, including his recent role as architect and facilitator of the Democratic Principles Working Group, which was a part of the State Department's Future of Iraq Project. Research involved interviews with Iraqi officials, Iraqi political figures, and Iraqi legal experts. *Power-Sharing in Iraq* represents the author's views alone. The Power-Sharing in Iraq Project is grateful to those who contributed their views and expertise:

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