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IRAQ: NEGOTIATING A NEW CONSTITUTION

Briefing Packet for Kurd Delegation

Negotiation Simulation

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INTRODUCTION

With the transfer of power from the Coalition Provisional Authority to the interim government scheduled for June 30, 2004, the people of Iraq and their political representatives will soon find themselves deeply involved in the negotiation of a new constitution. While drafting a new constitution is a difficult and contentious process for any country, the challenges are substantially magnified for Iraq given its complex mosaic of ethnic and religious identities, the history of repression under Saddam Hussein, the likely continuation of an American military presence, and Iraq's complex relations with its neighboring states.

The overriding tension faced by the drafters of the new constitution will be the need to create a representative form of government, which adequately protects the rights and interests of all individuals within the various groups making up the Iraqi nation, while also preserving internal and external stability. The main issues to be addressed include the structure for a new Iraqi state, the position of the Kurdish region in relation to the central government, the composition of a new parliament and electoral system, and the installation of mechanisms to safeguard the rights of minorities as well as the basic human rights of all Iraqis. In each case, a careful consideration of options must be weighed against the political and security needs in each region.

The process of reconstituting Iraq's sovereignty will be highly complex and face many hurdles. The eclectic ethnic and religious make-up of Iraq will require the drafters to develop a sufficiently decentralized unitary state or federal structure that will secure Kurdish participation in the Iraqi state without undermining the functional integrity of Iraq or encouraging further secessionist tendencies. The Kurdish/Arab bargain must be accomplished while accounting for the Sunni/Shi'a split within the Arab community, and without neglecting the needs and aspirations of Iraq's minority populations, such as the Turkmen, Chaldeans, Yezidi, and Assyrians. Some of Iraq's numerous neighbors need to be assured of Iraq's territorial integrity, while others must be prevented from actively undermining its integrity or radicalizing its politics. All this must be accomplished while tempering flashpoints such as Mosul, Karbala, Nasiriyah, and Kirkuk, and integrating into the process a politically resurgent Shi'a community.

The purpose of this negotiation simulation is to raise key issues and potential solutions to the points of impasse which are likely to arise during the constitutional negotiations. It is important to note that the objective of the simulation is not to reach consensus on the precise nature of the new constitution. Rather, this negotiation simulation is designed to stimulate debate, surface points of impasse, and identify potential solutions. The negotiation simulation has been developed using the methodology employed by the U.S. Department of State's National Foreign Affairs Training Institute which runs similar negotiations to train U.S. diplomats prior to negotiations.

This simulation exercise is not intended to be a comprehensive review of all the issues involved, nor is it intended to endorse one view over the other. The participants in

the simulation naturally will have varying levels of substantive or area expertise, as well as professional commitment to the issue. Participants are therefore encouraged to draw upon their individual experiences as they deem appropriate. The background information and delegation instructions are provided to serve as a guideline and not necessarily to be adhered to rigidly.

To provide the necessary information to conduct this simulation, this briefing packet identifies the main parties to the debate and their principal interests, summarizes the views and influences of other relevant actors, and provides negotiating instructions for your delegation. The participants have been divided into four delegations: Shi'a, Sunni, Kurd, and a general minority delegation. Additionally, two delegations have been designated to serve as facilitators: the Coalition Provisional Authority and the United Nations. The simulation will proceed along a structured agenda, which is provided in the annex.

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

THE PARTIES

For the purpose of this exercise, the parties to the constitutional negotiation are the Iraqi Shi'as, Iraqi Sunnis, Iraqi Kurds, and the various Iraqi minority groups. A brief synopsis for each of the relevant parties follows, noting their most prominent objectives regarding the new constitution.

Shi'as

The Iraqi Shi'as are by no means monolithic. Instead, the Shi'as possess a diversity of views and aspirations concerning the current U.S. deployment, the future political system, and the role of religion. The Shi'as compose approximately 60 percent of the population and, thus, have the potential to wield great influence over the rebuilding of Iraq. Generally, the Shi'as seek a unified Iraq and have a vested interest in preserving the country's territorial integrity. The Shi'as are concerned that if Iraq were divided into highly autonomous regions, they would lose their collective power as well as any share in oil revenues from the north. The Shi'as also believe a unified Iraq would allow Iraqi Shi'as to become a strong regional voice.

Sunnis

The Sunni Arabs, which comprise approximately 20 percent of the Iraqi Arab population, have controlled the Iraqi government for decades. While not all Sunni Arabs were Ba'ath party members, the Sunnis are likely to fear retribution from other ethnic and religious groups and will greet with skepticism all efforts to minimize their exercise of political power.

Sunni Arab leaders, especially from outside Baghdad, give high priority to the devolution of powers and guarantees based on tribal or regional affiliation in the national executive, parliamentary, ministerial, and judicial systems. Finally, although generally supportive of a unified Iraqi state, Sunni Arab political organization is subject to significant local and tribal orientation. Tribal leaders tend to be less nationalistic in outlook.

Furthermore, considerable tension exists between many Sunni Arabs and the Kurds, who were forcibly displaced from key towns in northern Iraq as a result of Saddam's Arabization policy. Some Kurds are currently trying to reclaim their homes of origin. These underlying tensions will manifest themselves in the negotiations over the new Iraqi constitution.

Kurds

The primary goal of the Iraqi Kurds is to secure as much autonomy and authority as possible in order to, at the minimum, retain the current system of semi-autonomy within Iraq. Over the past decade the Iraqi Kurds have established a near-independent level of autonomy and quasi-democratic state institutions, which they are reluctant to

surrender or dismantle. Since the mid-1990s, the Kurds have operated under the constitution of the Iraqi Kurdistan Region, and have established a functional Kurdish regional government. The Iraqi Kurds want any proposed constitution to include a state structure that is secular, pluralistic, and federal. The Iraqi Kurds have repeatedly stated their commitment to maintaining the territorial unity of Iraq and are not seeking an independent state; rather they are seeking some autonomous government structure within Iraq. They are also concerned that the new constitution includes sufficient mechanisms to protect group and cultural rights and provide for a secular, pluralistic Iraq.

General Minority Delegation

There are several minorities groups in Iraq, including the Turkmen, Assyrian/Chaldeans, and Marsh Arabs, who are all eager to ensure that minority rights and recognition are adequately protected in the new constitution. Saddam Hussein's regime has oppressed these groups and they will want to seek mechanisms that allow for restitution of property and the safe return of refugees and internally displaced persons. These minority groups would also prefer strong localized governments that represent community interests. They will have an interest in advocating for a pluralistic, democratic Iraq with adequate representation at the local and federal levels of government. It is necessary to note that the minorities within Iraq have substantially different interests and do not always agree upon the same course of action. For the practical purposes of this simulation, however, their interests are represented by a single delegation. The different members of the delegation are free to represent the divergent interests of the minority groups where appropriate.

The Iraqi Turkmen: The Turkmen have inhabited pockets of land in northern Iraq for at least several hundred years. Turkmen have been subjected to expulsions from Kirkuk and the surrounding area during the Arabization campaign. Despite having suffered similar repression and displacement by the regime of Saddam Hussein, the Kurds and Turkmen have, over the past decade, found little common ground in building governing structures in the north. A specific concern is the potential Kurdish-Turkmen rivalry for political and economic control of Kirkuk.

The Assyrians/Chaldeans: The Assyrians are the largest Christian group in Iraq and claim to be the descendants of the pre-Christian Assyrian empire. They are ethnically distinct from Arabs and Jews. The Iraqi government destroyed 200 of their villages in the mid-1970s, displacing the inhabitants to Baghdad. Since the first Gulf War and the establishment of the Kurdish Regional Government (KRG), the Assyrians claim that Kurds have settled on the land of the villages belonging to the Assyrians and that another 52 villages have had lands expropriated by Kurdish authorities. The Assyrians will have to continue to confront issues of denominationalism and fragmentation, Islamic fundamentalism, Arabization, cultural immersion and absorption into Arab societies, and mass emigration to the West.

The Marsh Arabs: In southern Iraq, the Ma'dan people, or the Marsh Arabs live in the marshland environment of the lower Tigris and Euphrates rivers. The manipulation

of the Tigris and Euphrates river systems to bring water to urban environments and to develop agriculture permanently altered the course of the Euphrates. In the wake of a 1991 uprising by Shiite Muslims in southern Iraq, the Iraqi government began an all-out push to complete marsh-draining projects and, as a consequence, to eliminate the Marsh Arabs.

THE FACILITATORS

In all likelihood the Coalition Provisional Authority and the United Nations will serve as facilitators in the negotiation of a new Iraqi constitution.

Coalition Provisional Authority

The primary concern of the Coalition Provisional Authority (CPA) is that the constitutional negotiation process does not break down. Furthermore, the CPA has articulated its desire to see a federal, democratic, and pluralistic Iraq. One of the main goals of the CPA is developing a substantive document that fosters the long-term peace and stability of Iraq. The CPA will most likely attempt to dissuade the adoption of any constitutional provision which would create an opportunity for Iraq to develop as an “Islamic state.” Regional security and Iraqi security are also high priorities. The CPA is focused on establishing a strong central government that can exercise significant control and will be responsive to western pressures. The CPA will be pulled in different directions by its interest in placating the interests of Turkey for a strong central government in Iraq, and fulfilling its moral obligation to the Kurds, who desire a decentralized state.

United Nations

The United Nation’s main concern is that the negotiation process be fair and well representative of all Iraqis. The UN will want to ensure that the new Iraqi state protects fundamental human rights and encourages the participation of the general public in government. It does not have a specific constitutional design, but the UN will want to see that the various claims of the Iraqis are debated and incorporated, and that the Coalition Provisional Authority does not unduly exert its influence. The UN is concerned that the constitutional debate be open and transparent and that the final outcome generally reflects the will of the Iraqi people. It will also seek to create an opportunity for the future participation and involvement of the UN and other international organizations in the rebuilding of Iraqi political institutions.

INFLUENTIAL NON-PARTY INTERESTS

While not formal parties to the constitutional negotiations, Iran, Syria, and Turkey, each possess a vested interest in the outcome of the negotiations and will undoubtedly seek to influence its course. These interests and positions likely will be a consideration in the minds of each delegation as they formulate their negotiating positions.

Iran

In principle, the Iranian Government welcomed the downfall of Saddam Hussein, but Iranians in general stood against the war. The Iranian government fears U.S. strategic ambitions to increase its influence in the region. Iranian President Mohammad Khatami has said his country will not recognize a U.S.-installed interim administration in Iraq. The Iranians in principle agree with the demands of the Iraqi Shi'as—laymen and clergy, particularly Ayatollah al-Sistani—in demanding that the people of Iraq should decide their own fate. Since the United States has removed Saddam Hussein, Iran has pursued a complex strategy with its western neighbor. Tehran is wary of any nearby U.S. military presence, especially since U.S. President George W. Bush categorized it alongside Iraq and North Korea in an “axis of evil.” The Iranian foreign minister recently declared that “the preservation of Iraq's territorial integrity, stability and unity is very important to Iran and Turkey, and we want a government arising from the will of the Iraqi nation that respects good-neighborliness.”

Syria

Like Iran, Syria has a complex relationship with both Iraq and the United States. Recent allegations that Syria is both harboring former senior Iraqi officials and that it possesses chemical weapons further complicate its relationship with the United States. The Syrian Government denies all accusations, but officials have been outspoken in their criticism of the invasion of Iraq. The United States has been sending messages to President Assad that Syria must fundamentally change or it will turn up the pressure either economically or diplomatically. President Assad noted in a recent television interview that Syria is opposed to any attempt to carve up its neighbor and fellow Arab state Iraq, and in particular to the creation of an independent Kurdish state. Syria is concerned with the prospect of Iraqi Kurds gaining significant autonomy, fearing it could destabilize Syria's own Kurdish population.

Turkey

Turkey's primary interest is to ensure a stable Iraq that maintains its territorial integrity and represents all of Iraq's constituents. Having recently quelled the activities of the PKK terrorist organization, Turkey is very concerned that Iraq will fragment, or a federal province of Kurdistan would ultimately lead to a resurgence of the PKK. Turkey is further concerned that autonomy for Iraqi Kurds will eventually lead to increased claims for autonomy of its own Kurdish population. Separately, Turkey worries about the

need to ensure protection for the human and cultural rights of the Turkmen population in Iraq. To protect its interests, Turkey has previously deployed its military forces into northern Iraq and has declared its intent to do so in the future if it perceives its interests to be threatened.

IDENTIFICATION OF ISSUES FOR A NEW IRAQI CONSTITUTION

For the purposes of this simulation, the following issues will be considered in constructing a new constitution for Iraq:

- The state structure for Iraq;
- The creation of an autonomous region for the Kurds;
- The design of a parliament;
- The structure of an electoral system;
- The structure of the executive; and
- The protection of individual and minority rights.

Choosing a State Structure

There are numerous options for the new state structure for Iraq. On the whole, the options fall within the category of a unitary state or a federal state.

Unitary State: A unitary state is organized so that there is a single central source of authority, and administrative units exercise their rights primarily through the common organs of the general government rather than through dual government structures. While regional political mechanisms may be established, they are constitutionally subordinate to and receive all their political authority from the central government. They do not independently represent citizens or undertake independent legislative or executive decisions. Examples include New Zealand, Lebanon, France, Jordan, Saudi Arabia, and Turkey.

To protect minority interests in a unitary state, the central government may grant autonomy to ethnically or religiously defined regions. Autonomous entities within a unitary state may exercise certain rights that enable them to protect and promote a unique culture, religion, or language. Autonomous provinces, however, rarely exercise substantial political power. Unitary states may also seek to protect diverse interests by designing a pluralistic executive structure or establishing set-aside parliamentary seats for minority groups.

The primary advantage of a unitary Iraq is that it would substantially further efforts to maintain an Iraqi political identity among the people of Iraq. If the transition to democracy is successful, internal stability will best be preserved where individual Iraqis owe their allegiance to the state of Iraq and not to a local entity. In contrast to federal states, unitary states tend to be more stable political endeavors. Recently a number of federal states have dissolved, while others are under substantial pressure. Unitary states are also increasingly flexible with respect to their internal arrangements and may provide an opportunity to maintain national unity while meeting many of the needs of the distinct ethnic and religious groups in Iraq.

A unitary Iraq also would provide the best assurances to neighboring states for the maintenance of Iraq's territorial integrity. Given that unitary states are rather

straightforward to administer, in comparison to federal states, it may be initially more efficient to reconstitute a unitary Iraq and develop democratic institutions. Other advantages of a unitary Iraq include the fact that since its inception Iraq has existed as a unitary state, and that all of the states in the region, except the United Arab Emirates, are unitary states.

The fact that Iraq operated as a unitary state under Saddam is, however, may also be seen as a substantial disadvantage. As explained by one Iraqi commentator, the desire to include federalism in the Ur Declaration of Principles was all important because a federal system of government would contravene everything for which the highly centralized authority of Saddam Hussein stood.

With a unitary state there is also the risk that a single ethnic or religious group may exercise excessive influence over the interests of other groups, as was the case with the Sunni Ba'ath party. While the Sunnis are unlikely to regain power in the near term, there is substantial concern that if the Shiite population were to act in a homogeneous fashion—which may be an unlikely prospect—they may express a minimal desire to embrace the Kurds as equal partners in Iraq and may retaliate against Sunnis by discriminating against Sunni towns and villages in the distribution of oil revenue and in the provision of basic services.

An additional disadvantage is that a unitary state may not be able to effectively control the radicalization of politics at the municipal or village level as there are no regional democratic mechanisms to moderate radical interests.

Federal State: Federal states are designed to combine the values of unity and diversity within a political union. Federations are multitiered governments that involve a combination of shared-rule through central government institutions for some purposes and regional self-rule through the governments of constituent units for others within a single political system so that neither is subordinate to the other. As such, federations combine equally authoritative constituent units with a co-equal central government.

In a federation, legislative and executive authority is constitutionally divided between the central government and the constituent units, ensuring political autonomy for each government in defined areas and shared authority in other areas. The constituent units also are represented in the central government at the parliamentary level, sometimes within a pluralistic executive. Both the central government and the constituent units possess executive, legislative, and often judicial powers. There are currently more than twenty-five federal states, and examples include Malaysia, Pakistan, the United Arab Emirates, and South Africa, as well as the United States, Belgium, Canada, and Switzerland.

The primary advantage of a federal system is that it is designed for states in precisely the same set of circumstances that face Iraq—a diverse and pluralistic population with a desire to maintain national unity. In a federal structure made up of numerous constituent units, the diverse groups will have some stake in the central

government and may be able to protect and promote their interests through effective representation. Federal structures are more likely to produce moderate political leaders who must appeal to a broad political base because such structures group villages and municipalities into larger constituent units.

One of the concerns expressed is that a federal system might in fact promote separatist tendencies of the Kurds and other groups and lead to a balkanization of Iraq similar to the situation in the former Yugoslavia in the 1990s, which would then substantially destabilize the region. If properly designed and implemented, federalism tends to reduce centrifugal forces by providing an avenue for diverse ethnic, religious, and geographic groups to participate in the regional and national government, and thereby hopefully reduces the grievances that give rise to their desire to separate from the state.

Many commentators argue that disintegration based on ethnicity or religion is unlikely in the Iraqi context. Based upon available reports, the only ethnic group that has the potential to separate is the Kurds, who comprise 15 to 20 percent of the population. The Kurds, for now, have expressed their intent to preserve the territorial integrity of Iraq.

A federation will, however, require democratically constituted central government institutions (executive, parliament, judiciary, and administrative agencies) as well as a democratically constituted government for each constituent unit of the federation. As will be noted below, to decrease the likelihood of separatism, it is advisable to have numerous constituent units. The creation of so many governments may be too complex for a nascent Iraqi democracy, and thereby undermine political stability and economic progress.

Structuring Autonomy for Iraqi Kurdistan

Given past discrimination and human rights abuses coupled with de facto independence for the previous decade, the Iraqi Kurds will undoubtedly demand some form of heightened regional rights within a new Iraqi constitutional structure.

In a unitary state structure, this would take the form of autonomy, while in a federal structure it would take the form of an asymmetrical relationship to the central government and other constituent units. For example, China, Great Britain, Italy, and South Africa provide for autonomy for one or more administrative units, while Belgium, Canada, Malaysia, India, Spain, and Russia all provide for asymmetrical relationships for certain constituent units. For the purposes of this section, special status providing for substantial self-rule for an administrative/constituent entity will be referred to as autonomy.

In general the purpose of autonomy is to allow for the recognition and efficient integration into a state of constituent units that possess particular social, cultural, religious, or economic differences. Autonomy is designed to allow these relatively unique territorial units to protect and to promote their interests in order to relieve secessionist pressures.

Although there are many variations of autonomous structures, they can generally be divided into territorial autonomy and protective autonomy.

Territorial autonomy is created by providing for a constituent unit to exercise exclusive or shared jurisdiction of matters that would otherwise be within the sole jurisdiction of the central government. Under this approach specified central government powers are devolved to the autonomous unit. The powers and authority over which autonomous units exercise control varies with each country. Areas of devolved authority traditionally include linguistic matters, communications, fisheries, taxation, education, and primary legal codes.

Protective autonomy can be established by requiring the approval of an autonomous unit for the implementation within its territory of laws and regulations relating to specified areas of authority—in essence granting the unit a right of veto to protect its interests. Protective autonomy may also be established by allowing the autonomous entity the sole responsibility for administering the implementation of certain laws and regulations.

Autonomy is generally more effectively implemented in a federal structure as it causes less disruption in the functioning of the state because a federalist government by its nature aims to diffuse authority from a strong central body of leadership to diverse regions while simultaneously ensuring a unified state. In a federal structure, powers and authorities are already delegated to or shared with the constituent units to some extent, and the additional delegation of powers and authorities to some units does not tend to substantially unsettle the operation of the state. Moreover, the executive, legislative, and administrative institutions already exist at the constituent level to implement these additional responsibilities.

In a unitary state, the creation of an autonomous unit is a more drastic and potentially more destabilizing option. When one unit is granted special powers, it creates a sense of distinctiveness between that unit and the other administrative unit. The distinctiveness is highlighted by the reality that autonomous units must create executive, legislative, and administrative institutions that will be denied to the other units.

Designing a Parliament

One of the first questions that must be answered when designing a parliament is whether the system will be unicameral or bicameral.

While there is universal consensus that democratic states must have a legislative body, there is no widespread agreement as to whether that entity should be unicameral or bicameral. While unitary states generally are governed by a unicameral parliament and federal states by a bicameral parliament, there are exceptions to this generalization. There is also the additional question of whether the model of government should be parliamentary or presidential, which will be addressed in the next section.

The 1970 Iraq constitution provided for a unicameral parliament called the National Assembly consisting of 250 members, each representing an equal percentage of the population. This body, however, was not established until 1980, and then with added stipulations requiring that candidates must be approved by the government. The 1990 interim constitution did not provide for a National Assembly. Rather, legislative functions were delegated to a nonrepresentative National Council. As a result, there is no strong Iraqi precedent to serve as a model legislature.

Unicameral: Under the unicameral parliamentary system, a single legislative body is responsible for enacting all legislation. The interaction between the parliamentary system and the federal system is a key element. It is useful to note that only four federal states have unicameral parliaments. Under the unicameral system, representatives to the parliament are elected as representatives of the entire state, not as regional representatives. Disadvantages to this system include the absence of another legislative body to balance power within the parliament or with the executive.

Bicameral: Under the bicameral parliamentary system, two legislative bodies are elected. One chamber is typically chosen to be more directly representative of individuals living in a particular constituent unit, while the representative of the other chamber may be chosen to represent the interests of the region as a whole. Advantages of this system include the ability for representation of the interests of the regional units as well as representation of the citizens' interests. Additionally, because there are two chambers, there is more opportunity for the chambers to check and balance each other. Disadvantages to this system may include some inefficiency because one branch possesses the ability to check or block the actions of the other branch.

Building an Electoral System

A number of options are available in structuring an electoral system. The three primary models are a plurality-majority system, a proportional system, or a semi-proportional system.

Plurality-Majority System: Essentially, under the plurality-majority system, the candidate with the most votes wins the election. The primary advantage of this system is its relative simplicity. It also leads to contests between individual candidates, instead of between parties. The individual nature of the contest may be appealing to new democracies, which often lack fully established political parties. One major disadvantage to this system is the winner-take-all nature of the voting arrangement. All the votes cast for the losing candidate are "lost" because there is usually only one seat to fill, and voters typically cannot rank their preferred candidates.

Proportional System: Under the proportional system, seats available in the election are assigned in proportion to the number of votes received by the party. Under this system, more parties are able to participate in elections, which lead to more coalitions between parties as they attempt to maximize their potential to win seats and exert

influence in the lawmaking process. Additionally, these coalitions can provide systemic benefits by promoting stability and cooperation across party lines. Conversely, a drawback to coalitions is that gridlock may occur if coalitions between parties break down.

Semi-Proportional System: According to the semi-proportional system, some representatives are elected from single-member constituencies, which are typically divided into regional districts. The remaining representatives receive votes based on a party's share of the national vote. Advantages to this system include its encouragement of parties that appeal to a wide range of voters. This system also mitigates fragmentation of a multiparty system. However, under this system, there is no precise proportional representation. Also, a party need not be widely appealing if it can win control by only appealing to its core voters. This outcome may marginalize minority voters because there is no incentive for the dominant party to appeal to their interests.

Structuring an Executive

A number of options exist for the creation of an executive in the central government. As outlined below, some available structures include a parliamentary executive, a presidential executive, or a pluralistic executive.

Parliamentary Executive: The primary rationale behind parliamentary systems is to fuse executive and legislative power to ensure the efficient operation of government. While more efficient, parliamentary systems may be less stable than presidential systems and less subject to checks and balances. Nonetheless, most federations adopt the parliamentary model, while few adopt the separation of powers approach.

Under a parliamentary system, the legislature elects a prime minister who then appoints a cabinet. In some instances the cabinet is subject to parliamentary approval. The mandate of the government thus stems from the elected members of parliament. As such, parliamentary systems are often plagued by frequently collapsing coalitions and dissolutions of governments when the executive loses the legislature's support.

Parliamentary systems may also provide for a president or monarch to exercise functions as a head of state. In almost all cases, with the notable exception of France, the president has limited, ceremonial power. In a number of Middle Eastern parliamentary systems the monarch continues to exercise substantial power.

Presidential Executive: The primary rationale behind the creation of a presidential system is to ensure a separation of powers and thereby to limit the possible abuse of power by any one group or individual. A presidential system builds on the general theme of federal states that the diffusion of power among different political institutions better protects the constituent interests of a state and limits the possibility of a tyranny of the majority. Under a presidential system, power within a federation, thus, is divided not only between the central government and the constituent units but also among the central government institutions. Officials from one branch are prohibited from

simultaneously holding positions in the other branch.

Presidential systems tend to be more stable in that a presidential term is fulfilled regardless of whether or not a particular governing coalition in the legislature fails. Presidential systems may, however, be less efficient if power is too widely dispersed between the executive and the legislative branches, or if they are controlled by groups with deep political differences. Importantly, the direct election of a president may add legitimacy to the position in a nascent democracy.

Pluralistic Executive: It is common in post conflict states to provide for a pluralistic executive. Both parliamentary and presidential states may involve pluralistic executives. Examples of a pluralistic executive include Bosnia, where the presidency is made up of one Croat, one Bosniac, and one Serb, and the chairmanship of the presidency rotates among the three every six months. Switzerland has a similar rotating federal council. In Serbia/Montenegro, the president and prime minister must be from different member states, and the cabinet positions are allocated among the member states. In Lebanon, the positions of the president, prime minister, and foreign minister are divided among the three primary religious groups.

Pluralistic executives function only where substantial political power is allocated among the positions being filled by the various representatives. There must, however, be a clear chain of command for making immediate decisions, and the executive powers must be clearly allocated and vested within this hierarchical system.

The merits of a pluralistic executive are that it may reduce secessionist tendencies by providing all constituent interests with a stake in the central government. It also may alleviate instability by assuring significant minority populations that they will have sufficient political power to protect and promote their interests. Pluralistic executives also act as a check against the possibility of totalitarian regimes or tyrannies of the majority since it is not possible for one group or individual to monopolize control of the executive.

The disadvantage of a pluralistic executive is that it often lacks the power, legitimacy, and effectiveness of a centralized executive. In the case of rotating positions or ethnic/religious vetoes, political gridlock is a frequent consequence of a pluralistic executive.

Protecting Minority/Human Rights

In a nation in which the citizens have experienced gross violations of their individual rights by the preceding government and ethnic or religious minorities have borne the brunt of discrimination and violence, the protection of individual and minority rights is important for social stability. Individual rights may be established and set out in a Bill of Rights. As a starting point, these rights may reflect those articulated in the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights. The articulation of minority rights in Iraq is also important, especially because of the history of violence against minority groups. The agreement safeguarding

the individual, minority, and human rights may be modeled on recent international treaties such as the European Charter for Regional or Minority Languages and the Council of Europe's Framework Convention for the Protection of National Minorities.

Even if protections of individual and minority rights are established, these protections must be enforced. Enforcement could come through a number of avenues. A parliamentary ombudsman could be established. The ombudsman's role would be to review legislation to ensure laws are not created that infringe on individual or minority rights. Additionally, joint commissions could be established that report to the government on the progress of implementation of human rights laws and administrative procedures. Also, an administrative agency could be created, charged with the task of resolving claims and issues resulting from discrimination based on certain protected classes. Finally, the courts could have jurisdiction to adjudicate claims of discrimination.

NEGOTIATION INSTRUCTIONS IRAQI KURD DELEGATION

(Only for Iraqi Kurd Delegation)

The primary purpose of your delegation is to secure as much autonomy and authority in order to, at the minimum, retain the current system of semi-autonomy within Iraq. Over the past decade the Iraqi Kurds have established a near-independent level of autonomy and quasi-democratic state institutions, which your delegation is reluctant to surrender or dismantle. Your delegation's ultimate objective is to ensure within any proposed constitution a state structure that is secular, pluralistic, and federal.

While your delegation has repeatedly stated the Kurds' commitment to maintaining the territorial unity of Iraq, your delegation seeks some autonomous government structure within Iraq. As such, your delegation's approach to the negotiations is guided by the desire to maximize the devolution of authority on several key issues, such as language, education, natural resource control and allocation, and other civic institutions. Lastly, your delegation possesses a significant interest in retaining the *peshmerga*.

Choosing a State Structure

The two main state structures that will be debated are whether Iraq should be unitary or federal. The political reality is that Iraq will be some type of federal state and your delegation prefers a decentralized federal state, instead of a strong centralized state. One recommended option is asymmetrical federalism, which would allow certain enumerated powers be devolved to the region of Iraqi Kurdistan.

Another option proposed by your delegation is a two-region federal Iraq (a bimodal confederation), with an Arab and Kurdish region based on ethnicity (similar to the UN proposed plan for Cyprus). Your delegation seeks two provinces to consolidate regional power, instead of numerous smaller provinces. Lastly, under state structure some members may try to make Iraq an Islamic state. Your delegation opposes any formation of an Islamic state, and prefers Iraq to be secular state.

Designing a Parliament and Electoral System

The two main options for a parliament are either unicameral or bicameral. Under the Kurdish draft constitution, a bicameral parliament is envisioned with one chamber directly elected by the general population, and the other chamber elected by the population with the two regions (Arab and Kurdish). This model could be expanded to allow the other chamber elected by populations within a small number of provinces and still address Kurdish concerns of adequate regional representation. According to the Kurdish draft constitution, the chamber elected by the provinces would be chosen in a mechanism determined by each regional government.

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Regarding the electoral system, the Kurdish draft constitution envisions that the president of Iraq be elected via direct elections. No further details are enumerated in the Kurdish draft constitution. The main component is that whatever electoral system is agreed upon, it must not be created in such a way that weakens the regional impact or vote of the Iraqi Kurds.

Structuring an Executive

The Kurdish draft constitution proposes both a president and prime minister within the executive branch, each with a high degree of separation of powers. The prime minister would lead a Council of Ministers (Council). This Council of Ministers would in essence have the highest degree of authority, but would carry out its rights and responsibilities under the auspices of the president. The Council's members would be representative of the regions and proportional to the regions' populations. Both the president and parliament would approve the Council members.

Your delegation supports the direct election of the president by the Iraqi people and the presidential nomination of the vice president. The main duties of the president would be protecting the territorial security and integrity of Iraq, and overseeing internal and external security forces, the diplomatic cadre, declaring states of emergency, and judicial appointments. The Council would be primarily responsible for drafting and submitting legislation, the implementation of adopted legislation, the federal budget, supervising federal ministries, and international transactions.

Safeguarding Natural Resources

One of your delegation's biggest concerns regarding natural resources is to ensure that the Iraqi Kurds are guaranteed a proportional share of the oil and gas revenues. Under the Oil-for-Food program, the money apportioned Iraqi Kurdistan from oil revenue was never allocated to the region. This money is needed to help fund infrastructure in Iraqi Kurdistan. There are several options of natural resources ownership, one of which is regional control of natural resources. This model of regional control would ensure local control of resources and allocation of revenue. Your delegation would be open to negotiations allowing a certain percentage of revenue to go back to the central government for statewide programs.

Protecting Minority/Human Rights

The Kurdish draft constitution articulates that all citizens shall be equal under the law without discrimination and includes a number of fundamental rights, which are taken from the Universal Declaration of Human Rights. Your delegation wants to ensure, in particular, that language rights and local control of education are protected. Additionally, your delegation seeks the protection of religious freedom, primarily opposing any language that makes Iraq an Islamic state. Considering the long history of oppression and attempts at ethnic cleansing of Kurds by Saddam, your delegation favors strong protection of minority/human rights that are clearly enumerated in the federal constitution

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and are adequately protected by the judiciary. Your delegation is very concerned, however, that certain minority groups such as the Turkmen will use minority rights protections to diminish the ability of Kurds to pursue their legitimate interest in returning to their homes in Kirkuk and other cities from which they were expelled.

ANNEX I AGENDA

- 9:00–9:30 AM** Coffee and doughnuts available for participants
- 9:30–9:45 AM** Introduction and review of simulation schedule and procedures
- 9:45–10:15 AM** Individual delegation meetings to review positions
- 10:15–10:35 AM** Separate Informal CPA/UN consultations with Iraqi delegations
- 10:35–10:45 AM** Coffee break/Shuttle Diplomacy
- 10:45–11:15 AM** Small Group Meetings
- State Structure / Parliament / Executive
 - Role of Islam / Natural Resources / Minority and Human Rights
- 11:15–11:30 AM** Informal CPA/UN consultations with Iraqi delegations
- 11:30–12:00 PM** Small Group Meetings (Continued)
- 12:00–12:30 PM** Individual delegation meetings to focus on substantive negotiating issues
- (Lunch will be served during this meeting)
- 12:30–1:00 PM** Plenary Session
- 1:00–1:20 PM** Resume Small Group Meetings as necessary
- 1:20–1:45 PM** Final Plenary Session
- 1:45–2:20 PM** Review and Lessons Learned

ANNEX II MAPS OF IRAQ



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

For Additional Maps:

Political Map:

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

Shaded Relief Map:

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

Administrative Division Map:

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

Distribution of Ethnoreligious Groups and Major Tribes Map:

http://www.lib.utexas.edu/maps/middle_east_and_asia/iraq_ethno_2003.pdf

Population Density Map:

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

Land Use Map:

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

Oil Infrastructure Map:

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