

In June 2004, the U.S. and U.K. relinquished civil authority over post-conflict Iraq, ending thirteen months of occupation and marking the creation of an independent interim Iraqi government. *Iraq in Transition: Post-Conflict Challenges and Opportunities* examines the occupying coalition's record during occupation and also provides benchmarks on how best to approach the shared goal of a more stable and peaceful Iraq. The United Nations and its member states, including the U.S., have committed themselves to an ambitious plan to stabilize Iraq and support its political leaders and citizens as they move towards a more open and participatory society. In the year to come, this will require a strong partnership between the Iraqi people, the UN and the international community to ensure that: Iraqi citizens are protected, an Iraqi economy is renewed, a justice system is restored, key infrastructure is refurbished, and a national education system and health care are available to all Iraqis. These are daunting tasks, given the instability that persists in post-occupation Iraq. This report provides a roadmap for attempting to meet these crucial goals in the months and years ahead.



# IRAQ

## IN TRANSITION

Post-conflict challenges and opportunities



A joint publication of the  
Open Society Institute and the United Nations Foundation



**The Open Society Institute (OSI)**, a private operating and grantmaking foundation based in New York City, implements a range of initiatives to promote open society by advocating for changes in government policy and supporting education, media, public health, and human and women's rights, as well as social, legal, and economic reform. This publication is a co-product of OSI's Cooperative Global Engagement Project and its Iraq Revenue Watch.

**The Cooperative Global Engagement Project** is building a broad-based coalition of support for a U.S. foreign policy based on a collaborative approach to problem solving with the international community. The initiative aims to shift popular discourse in order to prompt U.S. policymakers and other Americans to make foreign policy decisions in the context of U.S. citizenship in a global community.

**Iraq Revenue Watch** monitors Iraq's oil industry to ensure that it is managed with the highest standards of transparency and that the benefits of national oil wealth flow to the people of Iraq. Iraq Revenue Watch complements existing Open Society Institute initiatives that monitor revenues produced by the extractive industries. Iraq Revenue Watch is a program of the Middle East and North Africa Initiatives of the Open Society Institute, which is a largely grantmaking program that develops OSI's activities in the MENA region. Its grantmaking program supports efforts on behalf of women's rights, human rights and freedom expression, arts and culture.



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# I. Introduction

In May 2003, following the Bush administration’s announcement of the end of major combat operations in Iraq, the Open Society Institute (OSI) and the United Nations Foundation (UNF) published *Reconstructing Iraq*, a guide to the actors and institutions traditionally involved in post-conflict reconstruction, as well as the wide range of issues and precedents that the international community would confront in the months ahead.<sup>1</sup> In this reconstruction follow-up report, OSI and UNF explore the road ahead and look back on the occupation of Iraq.

The U.S. and U.K.’s almost 13-month formal occupation of Iraq ended on June 28, 2004.<sup>2</sup> This report assesses the legacy of the occupation and illustrates the challenges and opportunities the Iraqi people and international community face in the months and years ahead. OSI and UNF review the obligations of the primary actors during occupation and present facts that allow the reader to assess whether actors lived up to their responsibilities. The report explores the needs, expectations and concerns of the Iraqi people about their country’s occupation and its future, and considers the enormous challenges involved in rebuilding a fractured society. Finally, the report provides benchmarks to measure Iraq’s progress in reconstruction, recognizing the tremendous hurdles that the nation now faces.

In May 2003, the U.S. and U.K. assumed the role of occupying powers in Iraq.<sup>3</sup> The obligations of occupying powers are significant under the Fourth Geneva Convention of 1949, the Hague Convention of October 18, 1907 and other international laws and treaties. They include restoring public order and safety, respecting the human rights of local citizens, and refraining from changing the institutions of government of the occupied territory.<sup>4</sup>

The responsibilities of the U.S. and the U.K. were further spelled out in a number of UN resolutions passed after the administration declared an end to major combat operations. United Nations Security Council (UNSC) Resolution 1483 called upon the occupying powers “to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability.”<sup>5</sup> UNSC Resolutions 1483 and 1511 also mandated that the U.S. and U.K. work to create “conditions in which the Iraqi people can freely determine their own political future.”<sup>6</sup>

While the performance of the U.S. and U.K. in meeting their legal obligations and commitments during occupation — as well as the role played by the UN and the international community — will be debated and assessed for decades, it is clear that the conditions in Iraq today reflect the successes and failures of that period. This is a critical

moment for the international community to unite and face the unprecedented challenge of reconstructing Iraq. Iraq is now preparing for its first democratic national elections in decades, an important precedent not only for the country but for the region as a whole. The international community's credibility rests, in large part, on its commitment to helping Iraq build a stable, peaceful and free society.

To achieve the basic conditions for democracy, stability and peace over the coming years, the U.S. and U.K., the UN, the international community, and the Iraqi people must collectively make progress on the following key benchmarks:

## Security

- **Independent Iraqi Security Force:** Sustaining the deployment of a properly trained and adequately financed Iraqi security force—including army, border, police, and national guard—which will ultimately assume full responsibility for the country's security and stability
- **Operational Clarity of Multinational Force:** Signing a status of forces agreement that allows for the deployment of an adequately staffed multinational force throughout Iraq with clear lines of operational command and control and direct coordination with the interim Iraqi government
- **Militias:** Providing the widest possible opportunities for job training and employment for members of militia who have laid down their arms under Iraqi law
- **UN Security:** Deploying adequate security to allow for an expanded UN presence in Iraq and the provision of UN expertise in all aspects of the rebuilding effort
- **Election Security:** Providing adequate security to ensure mass participation and minimal intimidation, fraud, or corruption in all forthcoming elections

## Political Process

- **Representative Interim Governance:** Ensuring that the recently chosen interim National Council be allowed to assist in the election process and oversee the interim Iraqi government until the January 2005 elections
- **Elections:** Holding free and fair elections with UN assistance, with adequate security to ensure minimal voter intimidation and maximum voter turnout, to select members of a Transitional National Assembly (scheduled for no later than January 2005)
- **Constitution:** Drafting a permanent constitution and submitting this constitution for a national referendum as soon as practicable
- **Self-Rule:** Resolving the complex issues surrounding the post-occupation legal status of the 100 Coalition Provisional Authority (CPA) orders issued by CPA Administrator Bremer during occupation, as well as the post-occupation legal status of the Transitional Administrative Law (TAL)

## Economic and Financial Reconstruction:

- **Aid:** Fully disbursing donor pledges made at the October 2003 Madrid Donors Conference, and accelerating disbursement of these funds to ensure a more timely reconstruction of Iraq
- **Debt:** Achieving substantial debt reduction and a sustainable payment schedule
- **Transparent Finances:** Creating mechanisms for transparent and open management of the Development Fund for Iraq and/or any account which is created as a repository for Iraq's revenues during the interim period until the formation of a fully independent Iraqi government in late 2005
- **Contracting:** Implementing competitive bidding and transparent awarding of all contracts related to Iraqi reconstruction paid for with U.S. and Iraqi funds
- **Self-sufficiency:** Overcoming the oil production and refinement limitations that have required Iraq to import fuel since March 2003, by regaining self-sufficiency in fuel products
- **Economic Development:** Providing targeted financial support for burgeoning Iraqi enterprises
- **International Accountability:** Submitting the conclusions of the Oil-for-Food Program investigation (Volcker Commission Report) in a timely manner

## Infrastructure and Social Services:

- **Employment:** Expanding job opportunities for the Iraqi people in both the public and private sectors, specifically through employment by private contractors and government agencies involved in the country's reconstruction process
- **Electricity:** Alleviating the acute and chronic electricity shortage
- **Oil:** Rehabilitating Iraq's oil infrastructure to pre-invasion levels of 2.8-3 million barrels per day
- **Health Care:** Improving health services, including the continued restoration of medical facilities and training programs for medical staff
- **Education:** Improving the education system, including the continued restoration of primary and secondary schools and universities, training programs for teaching staff, and increased primary and secondary school enrollment and attendance—especially among females

## Justice

- ▶ **Transitional Justice:** Prosecuting Saddam Hussein and his 11 associates in a fair and open manner before the Iraqi Special Tribunal, and establishing a timeline for the safe transfer of these individuals to the physical custody of Iraqi authorities
- ▶ **International Accountability:** Convening an independent commission or special investigation to probe the atrocities alleged at Abu Ghraib prison, encompassing both military and civilian involvement in potentially unlawful policies, and swift U.S. action to investigate and try those civilians and members of the military responsible for abuses of Iraqi detainees, as well as reform of policies and practices at U.S.-run detention facilities in Iraq that may have led to the abuse
- ▶ **Restitution:** Exploring opportunities for restitution for Iraqi victims of U.S. abuse
- ▶ **Civilian Protection:** Increasing compliance with international humanitarian law by all armed actors, including insurgents and militias
- ▶ **Judicial Reform:** Reforming the Iraqi judicial system, including national prisons, courts and laws to ensure fair, independent and prompt judicial proceedings and ending impunity

Moving forward from Iraq's occupation to its independence, only the challenges are certain. Creating the preconditions for democratic elections and reconstruction will continue to be a costly and slow-moving endeavor. History demonstrates that post-conflict stability and reconstruction can be achieved; but it cannot occur without the sustained commitment of the international community's forces and resources. The primary task at hand is to enable Iraq to build its own free and stable society.

## II. History of International Obligations

### Legacy of Saddam Hussein and the International Community in Iraq

When historians consider Iraq's modern past, they will recall how a country once self-sufficient in agriculture, with tremendous oil wealth, and an educated and skilled population, went from being one of the most advanced nations in the Arab world to an impoverished and corrupt center of authoritarian rule. Those who reflect on the last thirty years will undoubtedly point to the pivotal role that Saddam Hussein played in converting Iraq from a place of potential and progress to a chamber of horrors and killing fields, as he consolidated his stranglehold on government, the economy and military.

From the time he came to power in 1979, Saddam relied on a closely knit network of kinsmen and intelligence apparatuses to entrench his stranglehold over Iraq and its people.<sup>7</sup> His legacy encompasses some of the worst human rights abuses of modern times, including the genocidal Anfal Campaign which took the lives of at least 100,000 Kurds between 1987 and 1988; the gassing of Kurds in Halabja; the despotic tactics of his *mukhabarat* (police intelligence) used to create a climate of fear; and finally, a cult of personality supported by a praetorian guard that carried out his wars (the invasion of Iran in 1980 that led to an eight year war, and the invasion and annexation of Kuwait in 1990) and ultimately led to Iraq becoming a pariah state.<sup>8</sup>

Over the course of Saddam's reign, he attempted to defy the international community by supporting the production of chemical and biological weapons, and by initiating programs that could have led to the production of fissile material. Despite several UNSC resolutions demanding that Iraq disclose its past and present programs on developing weapons of mass destruction (WMD), Saddam's regime continued to create various obstacles for the UN Special Commission (UNSCOM), and later for the UN Monitoring, Inspection and Verification Commission (UNMOVIC) and International Atomic Energy Agency (IAEA) teams. With the world watching closely, Saddam attempted to fool UN inspectors on several occasions in the 1990s (see Appendix 2, page 97 for weapons inspections timeline). It was Saddam's persistent lack of cooperation that the U.S.-led coalition pointed to as evidence that Iraq was in material breach of its UNSC obligations, and subsequently invoked as justification for its March 2003 invasion.

If Saddam's regime poisoned the spirit of Iraqis, the sanctions imposed on Iraq over the last thirteen years provided the *coup de grace* for the country's beleaguered population. The official goals of sanctions were (1) to force Iraq's withdrawal from Kuwait; (2) to impose WMD compliance; and (3) to compel Saddam Hussein's removal. In prac-

tice, the sanctions only worsened daily life for the Iraqi people, and exacerbated conditions on the ground. They proved a limited and blunt tool in the international community's quest to change Saddam's behavior. The UN, seen as an instrument of the United States, bore the brunt of the Iraqi citizen's hatred. Many Iraqis came to disdain the UN for having imposed such deprivation and suffering upon so many men, women and children.

The sanctions regime was converted to the Oil-for-Food Program in 1995, but it was not until 1996 that Saddam finally accepted its terms and humanitarian supplies began to flow into Iraq. Until the UN-administered program was transferred to the Coalition Provisional Authority in November 2003, the Oil-for-Food Program was used by Saddam's regime to manipulate the system, to bully Western states, and to wage an all-out propaganda war against the West, which Saddam probably won.<sup>9</sup>

There is now clear and convincing evidence that the UN-imposed sanctions were effective in preventing Saddam from ultimately acquiring fissile material and the capacity to develop a nuclear weapon.<sup>10</sup> While the sanctions did cause tremendous suffering among the people of Iraq, these legal barriers can prevent the spread of weapons of mass destruction. For the purposes of this report, it is enough to note that following the 2003 invasion the sanctions were lifted, and Iraqis welcomed this shift in policy after more than a decade of isolation. Nonetheless, the deterioration of the Iraqi peoples' quality of life under sanctions—the devastated infrastructure and agriculture, the lack of adequate medical and educational supplies, and innumerable other challenges—makes the task of reconstructing Iraq that much more complex.

The economic recovery of Iraq is not a short-term project. The legacy of corruption, poor governance, the lack of investment by Saddam in his own country, and sanctions will take decades to repair. Yet the country's sense of urgency in moving forward with reconstruction and democratic elections underscores the desire of ordinary people in Iraq to recover from this grim period of national history.

## International Humanitarian Law and Occupation

In May 2003, when the UN Security Council recognized the U.S. and U.K. as the occupying powers of Iraq in UNSC Resolution 1483, these countries immediately assumed a set of extensive obligations under international humanitarian law, in addition to the requirements spelled out in the resolution. The specific legal commitments and duties which bound the U.S. and U.K. to provide for the general welfare and security of Iraq can be found in the Hague Regulations of 1907 and four Geneva Conventions (see box on p. 11.).

International Humanitarian Law (IHL) has been developed over centuries, and largely codified over the past century and a half to regulate and restrain the conduct of warfare to diminish its effects on the victims of hostilities, namely, civilians, prisoners

of war and wounded, sick and shipwrecked members of armed forces.<sup>11</sup> As reaffirmed in the UNSC resolutions outlined above, IHL set forth the scope of authority, the rights of, and the duties owed by the U.S. as an occupying power to the civilian population of Iraq.<sup>12</sup>

What follows is a list of some of the key IHL obligations which the U.S. and the U.K. assumed as occupying powers in Iraq.<sup>13</sup> IHL was applicable throughout the whole territory of occupied Iraq and was binding on the nationals, both civilian and military, of the various states involved in the occupation.<sup>14</sup> Additional and sometimes overlapping international obligations, such as customary law rules in the Universal Declaration of Human Rights and the non-derogable provisions of the International Covenant on Civil and Political Rights, as well as various U.S. laws, continue to bind the U.S. in its actions in Iraq post-occupation.<sup>15</sup>

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### A KEY OBLIGATIONS OF OCCUPYING POWERS UNDER THE GENEVA AND HAGUE CONVENTIONS

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#### 1. Protection of the civilian population in occupied Iraq<sup>16</sup>

Under the Fourth Geneva Convention, all Iraqi citizens in occupied Iraq are protected persons in as much as they are in the hands of an occupying power(s) of which they are not nationals

#### 2. Ensure public order and safety<sup>17</sup>

The occupying power "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety while respecting...the laws in force in the country"

#### 3. Protection and Treatment of Detainees<sup>18</sup>

Various protections apply to detainees depending on their status as POW, civilian, or unprivileged combatant. Regardless of classification, detainees must be afforded as a matter of customary law the minimum guarantees of humane treatment

#### 4. Ensure and maintain public health and hygiene<sup>19</sup>

"...the Occupying Power has the duty of ensuring and maintaining, with the cooperation of the national and local authorities the medical and hospital establishments and services, public health and hygiene in the occupied territory"

#### 5. Provide food and medical supplies<sup>20</sup>

"...the occupying power has the duty of ensuring the food and medical supplies of the population"

#### 6. Protect property and resources<sup>21</sup>

"The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests and agricultural estates belong to the hostile State and...it must safeguard the capital of these properties"



**7. Permit and facilitate humanitarian relief operations<sup>22</sup>**

“If...the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of said population, and shall facilitate them”

**8. Refrain from making changes to the institutions of the government of the occupied territory that deprive the population of their rights<sup>23</sup>**

“Protected persons...shall not be deprived...of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions of government of the said territory”

**9. In general, refrain from changing the penal laws<sup>24</sup>**

“The penal laws of the occupied territory will remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention”

**10. Refrain from selectively transferring and/or deporting persons<sup>25</sup>**

“Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country...are prohibited, regardless of their motive”

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## UN Resolutions and Occupation

In addition to the international laws of occupation, three UN resolutions passed by the Security Council following the March 2003 invasion of Iraq established specific rules and mandates for the U.S. and U.K. and detailed international commitments to the country’s security and reconstruction. UNSC Resolution 1483, adopted shortly after President Bush announced the end of major combat operations in Iraq in May 2003, recognized the U.S. and U.K. as occupying powers in Iraq. This same resolution lifted all UN sanctions (with the exception of those related to arms and related materiel) and provided an initial definition of the UN’s role in post-conflict Iraq (see box on p. 13 for highlights).<sup>26</sup>

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## B. HIGHLIGHTS OF UNSC RESOLUTION 1483 (MAY 22, 2003)<sup>27</sup>

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- **Obligations:** Calls upon the occupying powers to promote the welfare of the Iraqi people through “the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own political future”
- **Weapons of Mass Destruction:** Reaffirms Iraq’s obligation to disarm all weapons of mass destruction, terminates the UN’s weapons inspection mission in Iraq and affirms the Security Council’s intention to “revisit the mandates of the United Nations Monitoring, Verification, and Inspection Commission and the International Atomic Energy Agency”
- **UN Role:** Asks the Secretary-General to appoint a Special Representative to coordinate the UN’s post-conflict activities in Iraq, including coordinating UN humanitarian and reconstruction assistance; promoting the return of refugees and displaced persons; working to establish national and local institutions for representative governance; facilitating the reconstruction of key infrastructure; promoting the protection of human rights; encouraging international efforts to rebuild the Iraqi civilian police force; and helping to promote legal and judicial reform
- **Iraqi Political Process:** Supports the formation of an interim Iraqi-run administration by the Iraqi people “as a transitional administration run by Iraqis, until an internationally recognized, representative government is established by the people of Iraq” with the help of the occupying Coalition and the UN Special Representative, and assumes the responsibilities of the occupying Coalition
- **Development Fund for Iraq:** Creates a Development Fund for Iraq (DFI) to hold Iraq’s oil and other revenues during occupation, and notes that DFI revenues shall be disbursed by the Occupying Authority (the U.S./U.K.) “in consultation with the Iraqi administration... in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq’s infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq”
- **International Advisory and Monitoring Board:** Creates an international board comprised of the UN, World Bank, International Monetary Fund and Arab Fund for Social and Economic Development to monitor CPA management of the DFI
- **Legal Status of Iraq’s Assets:** Dictates that, during occupation, all revenues derived from petroleum products and natural gas originating in Iraq “shall be immune...from legal proceedings against them” until December 31, 2007 and that “all proceeds and obligations arising from oil/resource sales, as well as the Development Fund for Iraq..., shall enjoy privileges and immunities equivalent to those enjoyed by the United Nations” for the same time period. Furthermore, the Resolution requests that all member states immediately transfer all frozen/seized/held assets from the former Iraqi regime to the DFI



- **International Assistance:** Asks all UN member states to assist the Iraqi people in “their efforts to reform their institutions and rebuild their country,” and to help meet “the humanitarian and other needs of the Iraqi people”
- **Applicable International Law:** Calls upon all parties involved to “comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907”
- **International Financial Institutions (IFIs):** Calls upon IFIs to assist the people of Iraq in “the reconstruction and development of their economy and to facilitate assistance by the broader donor community,” and welcomes all efforts by Iraq’s creditors to alleviate the country’s debt problems
- **Oil-for-Food Program:** Requests that the UN Secretary-General terminate the UN Oil-for-Food Program within six months and transfer responsibility for the Program, and all remaining funds, to the Iraqi people under the occupying powers’ authority

By June 2003, the occupying powers had created the Coalition Provisional Authority (CPA) to serve as the temporary government of the occupied territory (for further discussion of the CPA see p. 45).<sup>28</sup> There was some controversy during the occupation as to whether UNSC Resolution 1483 removed some of the limitations imposed on the U.S. and U.K. by the Geneva Conventions (1949) and Hague Regulations (1907) as the occupying powers in Iraq. In the first months of the occupation, the CPA argued that 1483 allowed it greater control over Iraq’s economy and resources than granted by international law.<sup>29</sup> It promptly pressed ahead with a massive agenda of economic reform and liberalization, primarily spelled out within Order 39 (rescinded at occupation’s end), the CPA’s main foreign investment law for Iraq during occupation, which introduced dramatic changes to Iraq’s tax, trade and financial structures.<sup>30</sup> International law experts were quick to criticize what they viewed as the occupying powers’ overly broad interpretation of their legal authority under 1483.<sup>31</sup> The CPA ultimately backed off its claims that 1483 granted the U.S. and U.K. greater legal authority for restructuring Iraq’s economy, stating that it “recognize[d] that any process for privatizing state-owned enterprises in Iraq ultimately must be developed, adopted, supported and implemented by the Iraqi people.”<sup>32</sup> Additionally, the continued deterioration of internal security in Iraq rendered near-term prospects for privatization moot.

On August 14, 2003, the UN Security Council passed Resolution 1500, which created the United Nations Assistance Mission for Iraq (UNAMI), (see p. 46) with an initial mandate of twelve months.<sup>33</sup> Five days later, on August 19, the UN headquarters in Baghdad was bombed and UN Secretary-General Kofi Annan withdrew the UN’s international staff in Iraq (see p. 38). For the duration of occupation, UNAMI operated primarily out of Amman and Cyprus.

In October 2003, the occupying powers returned to the Security Council seeking a new resolution to increase international support for financing Iraq’s reconstruction, encourage other nations to contribute troops, affirm the Iraqi Governing Council’s legitimacy and the occupation’s provisional nature, and encourage greater UN involvement after the organization’s near complete withdrawal following the August 19 bombing.<sup>34</sup> The result was UNSC Resolution 1511, which attempted to address all of these concerns, including explicitly granting the UN a political role and establishing a timetable for the end of Iraq’s occupation.<sup>35</sup>

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### C. HIGHLIGHTS OF UNSC RESOLUTION 1511 (OCTOBER 16, 2003)<sup>36</sup>

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#### Iraq’s Independence

- “Reaffirms the sovereignty and territorial integrity of Iraq, and underscores...the temporary nature of...the Coalition Provisional Authority ...set forth in resolution 1483 (2003) which will cease when an internationally recognized representative government established by the people of Iraq is sworn in....”
- “Determines that the Governing Council and its ministers are the principal bodies of the Iraqi interim administration, which...embodies the sovereignty of the State of Iraq during the transitional period until an internationally recognized, representative government is established and assumes the responsibilities of the [occupying] Authority”

#### Iraq’s Security

- “Authorizes a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq, including for the purpose of ensuring necessary conditions for the implementation of the timetable and program as well as to contribute to the security of the United Nations Assistance Mission for Iraq, the Governing Council of Iraq and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure”
- “Urges member states to contribute assistance under this United Nations mandate, including military forces, to the multinational force...”
- “Calls upon member states and international and regional organizations to contribute to the training and equipping of Iraqi police and security forces”

#### Iraq’s Reconstruction

- “Resolves that the United Nations...should strengthen its vital role in Iraq, including by providing humanitarian relief, promoting the economic reconstruction of and conditions for sustainable development in Iraq, and advancing efforts to restore and establish national and local institutions for representative government”
- “Urges member states and international and regional organizations to support the Iraq reconstruction effort...including through substantial pledges at the 23-24 October 2003 International Donors Conference in Madrid”

- “Calls upon member states and concerned organizations to help meet the needs of the Iraqi people by providing resources necessary for the rehabilitation and reconstruction of Iraq’s economic infrastructure”

#### **Iraq’s Finances**

- “Emphasizes that the International Advisory and Monitoring Board (IAMB) referred to in... resolution 1483 (2003) should be established as a priority, and reiterates that the Development Fund for Iraq shall be used in a transparent manner as set out in...resolution 1483”
- “Reminds all member states of their obligations under...resolution 1483 (2003) in particular the obligation to immediately cause the transfer of funds, other financial assets and economic resources to the Development Fund for Iraq for the benefit of the Iraqi people.”

UNSC Resolution 1511 paved the way for a subsequent agreement signed on November 15, 2003, which was critical to Iraq’s path toward independence. According to this agreement between the Iraqi Governing Council and CPA, Iraq would regain political independence on June 30, 2004. The agreement also outlined the terms of a Transitional Administrative Law (TAL) to govern Iraq between June 30 and national elections. The TAL was drafted, and after much political wrangling, finally approved on March 5, 2004. (For further discussion of the TAL, see *Agreements during Occupation*, section V, p. 47.)

On June 8, 2004, the Security Council unanimously passed UNSC Resolution 1546.<sup>37</sup> The Resolution grants the interim Iraqi government—the Iraqi authority which replaced both the CPA and the Iraqi Governing Council—control over its own security forces and the authority to order the multinational force’s withdrawal from Iraq at any time.<sup>38</sup> UNSC Resolution 1546 gives international legitimacy to the new interim Iraqi government and transfers control of Iraq’s civil administration to the interim body.

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#### **D. HIGHLIGHTS OF UNSC RESOLUTION 1546 (JUNE 8, 2004)<sup>39</sup>**

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##### **Sovereignty:**

- Endorses the formation of a sovereign interim government of Iraq and recognizes that it will assume the “responsibility and authority” for governing Iraq by June 30, 2004
- Recognizes a formal end to occupation and the dissolution of the CPA by June 30

##### **Elections:**

- Endorses the timetable for Iraqi elections proposed in the Transitional Administrative Law, including the convening of a national conference and the holding of direct elections to a Transitional National Assembly by January 31, 2005. This Assembly will serve as the Transitional Government of Iraq, and will draft a permanent constitution under which democratic elections to a permanent national government will be held

##### **United Nations:**

- Establishes a broad mandate for the Special Representative of the UN Secretary-General and a United Nations Assistance Mission for Iraq (UNAMI), which includes assisting the Iraqi people in holding elections, drafting a national constitution, developing effective civil and social services, coordinating reconstruction assistance, promoting human rights and the rule of law, and conducting a “comprehensive national census”

##### **Multinational Force:**

- Reauthorizes the multinational force established under UNSC Resolution 1511 for a term of 12 months; notes the request for its presence by the interim government of Iraq; determines that this force will be under unified command and will have all necessary authority to provide security and stability in Iraq; and requests that member states and regional organizations contribute to this force
- Determines that the mandate for the multinational force can be reviewed at any time at the request of the interim government of Iraq and no later than 12 months from the date of the resolution
- Determines that the multinational force’s mandate will expire upon the completion of Iraq’s political process (no later than Dec. 31, 2005), and declares the U.S.-led multinational forces’ “readiness” to terminate the force’s mandate earlier if requested by the government of Iraq
- Creates a distinct entity within the multinational force explicitly charged with protecting the UN mission in Iraq
- Determines that the U.S.-led multinational force and the interim government of Iraq will negotiate a separate agreement on “the full range of fundamental security and policy issues, including policy on sensitive operations,” and emphasizes the close coordination, consultation and partnership of Iraqi security forces and the multinational force

### **Iraqi Security Forces**

- Determines that Iraqi security forces will be under the explicit authority of the interim Iraqi government
- Recognizes that the multinational force will assist Iraqi security forces with capacity-building and will work in partnership with Iraqi interim authorities to accomplish this goal

### **Iraqi Control Over Finances, Aid and Reconstruction**

- Transfers full control of the Development Fund for Iraq (DFI) to the interim Iraqi government; mandates that the International Advisory and Monitoring Board (IAMB) established under UNSC Resolution 1483 add a duly qualified Iraqi member and continue to monitor the DFI for a period of 12 months or until the completion of Iraq's political process; and allows the Transitional Government to revisit these provisions at any point before then
- Grants the interim Iraqi government the authority to negotiate and conclude agreements on Iraqi debt and other international loans
- Calls on member states and other creditors to support Iraq's reconstruction
- Recognizes that the interim Iraqi government will assume the primary role in coordinating international assistance to Iraq
- Requires all countries to abstain prosecution of any legal claims against the state of Iraq and all related agencies for a period of 12 months beginning June 30, 2004
- Transfers control of all remaining rights, duties and obligations relating to the Oil-for-Food Program from the CPA to the interim government, including the certification of goods delivered under remaining contracts

### **WMD**

- Reaffirms the Council's intention to revisit the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency's mandates in Iraq

### **Reporting:**

- Requests that the Secretary-General (on behalf of UNAMI) and the U.S. (on behalf of the multinational force) separately report back to the Security Council within three months on their efforts and progress to date

UNSC Resolution 1546 leaves several questions unanswered on issues of that have become critical following the transfer of authority. Formal resolution of these legal and political “grey areas” will provide the Iraqi people with a clear sense of their government's capacities and limitations during the interim period leading up to national elections. The key areas of ambiguity are:

- **The interim government's operational control over the multinational force:** UNSC Resolution 1546 did not explicitly address the highly contentious issue of a status of forces agreement between the interim Iraqi government and the U.S.-led multinational force. It sidestepped the question, determining that the parties would negotiate a separate agreement on “the full range of fundamental security and policy issues, including policy on sensitive operations.”<sup>40</sup> While the resolution gives the interim Iraqi government the right to order the multinational force's withdrawal, it does not clarify command and control relations on sensitive operations, leading some to question the true degree of Iraq's independence at present.<sup>41</sup>
- **The legal status of CPA orders passed during occupation:** CPA Administrator Bremer issued a total of 100 orders during the CPA's tenure — including several key directives in the occupation's final month, such as an election law (Order 96) and a non-proliferation law (Order 72), which have already proven controversial.<sup>42</sup> UNSC Resolution 1546 does not address the legal status of these orders after occupation. It appears possible, given the language of the TAL Annex unanimously approved by the Iraqi Governing Council before the body's dissolution on June 1 (see p. 47), that the interim government will have the ability to create new laws and thereby reverse old ones (during occupation, Bremer's orders held the force of law).<sup>43</sup> According to the TAL Annex, the interim Council of Ministers with the unanimous approval of the interim President, “may issue orders with the force of law that will remain in effect until rescinded or amended by future Iraqi governments.”<sup>44</sup>
- **The legal status of the TAL post-occupation:** UNSC Resolution 1546 does not mention the TAL anywhere in its text, drawing into question the TAL's authority in post-occupation Iraq. The omission was likely based on a need to gain consensus at the Security Council level.<sup>45</sup> This is a critical issue for the Kurds, who were guaranteed federal self-rule under the TAL.<sup>46</sup> The Resolution's failure to reference these critical issues led Kurdish leaders Jalal Talabani and Massoud Barzani to threaten a boycott of the new interim Iraqi government, for fear that their autonomy might be compromised.<sup>47</sup> In an effort to defuse Kurdish concerns, Iraq's interim Prime Minister, Iyad Allawi, quickly issued a statement promising that his government would adhere to the TAL until elections are held in 2005, but said nothing of the TAL's status after this date.(see p. 49 for box on Kurds).<sup>48</sup>



- ▶ **The legal status of detainees post-occupation:** UNSC Resolution 1546 is silent on how and when the estimated 4,000-5,000 detainees currently being held without charge in Iraq will be transferred to the physical custody of the new Iraqi government.<sup>49</sup> International humanitarian law requires that all detainees be released at the end of occupation.<sup>50</sup> Human rights organizations such as Amnesty International have raised concerns that the occupying powers' reluctance to meet international legal obligations may further confuse lines of authority that contributed to the initial abuse of Iraqi detainees by Coalition forces and contractors.<sup>51</sup>

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#### E. EDICTS ISSUED BY CPA ADMINISTRATOR BREMER IN MAY/JUNE 2004<sup>52</sup>

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- **Immunity:** Immunity from Iraqi legal processes, including arrest and detention, for all multinational forces, the CPA, diplomatic and consular missions, and all international consultants (Order 17)
  - **Detainees:** Establishment of a 21 member Joint Detainee Committee (Order 99)
  - **PMCs:** Registration requirements for private military contractors operating in Iraq (Memorandum 16)
  - **Militias:** Prohibition of all armed forces and militia not under the control of the Iraqi interim government and/or multinational forces or private security companies (Order 91)
  - **Political Parties:** Terms for recognition of political parties and candidates, including a rule that no organization or group of individuals may offer candidates for elections in Iraq unless certified as a political entity by the Electoral Commission, and no individual person may stand for election in Iraq unless certified as a political entity by the Commission (Order 97)
  - **Elections:** Establishment of an Independent Electoral Commission of Iraq to work in cooperation with the UN electoral assistance mission (Order 92)
  - **Contracting:**
    - Principles of Public Procurement (contracting) for all goods, services, and construction services by the State of Iraq (Order 87)
    - Authorization for the Iraqi Minister of Finance to turn over control of contract management, monitoring, and administration to the Director of the Pentagon's Program Management Office, the Chief of Mission of the United States Embassy, Baghdad and/or the Commander of the multinational force, with respect to any contracts utilizing funds from the Development Fund for Iraq that were signed before June 30, 2004 (Memorandum 15)
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## III. Security

### Benchmarks to Measure Progress Going Forward

- ▶ **Independent Iraqi Security Force:** Sustaining the deployment of a properly trained and adequately financed Iraqi security force—including army, border, police, and national guard—which will ultimately assume full responsibility for the country's security and stability
- ▶ **Operational Clarity of Multinational Force:** Signing a status of forces agreement that allows for the deployment of an adequately staffed multinational force throughout Iraq with clear lines of operational command and control and direct coordination with the interim Iraqi government
- ▶ **Militias:** Providing the widest possible opportunities for job training and employment for members of militia who have laid down their arms under Iraqi law
- ▶ **UN Security:** Deploying adequate security to allow for an expanded UN presence in Iraq and the provision of UN expertise in all aspects of the rebuilding effort
- ▶ **Election Security:** Providing adequate security to ensure mass participation and minimal intimidation, fraud, or corruption in all forthcoming elections

### International Commitments and Obligations

Security is the precondition for all other forms of progress in post-conflict Iraq. The provision of physical security is essential to: allowing citizens to confidently and fully participate in public life; operating public institutions; and ensuring a stable environment in which elections can be held. Providing law and order is also the legal obligation of the occupying powers according to international law. The U.S. and U.K. were obligated to “take all measures in [their] power to restore, and ensure, as far as possible, public order and safety while respecting...the laws in force in the country.”<sup>53</sup> UNSC Resolution 1483 further required the occupying powers to work towards the effective administration of Iraq's territory, including in particular “working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own political future.”<sup>54</sup> UNSC Resolution 1511 also called upon member states and international and regional organizations “to contribute to the training and equipping of Iraqi police and security forces.”<sup>55</sup>

Experts overwhelmingly agree that better planning could have improved stability in Iraq.<sup>56</sup> The planning team, led by the U.S. Department of Defense, ignored warnings and advice, most notably spelled out in the U.S. government's own Future of Iraq Project, which predicted wide-scale instability, looting and Iraqi resistance following Saddam

Hussein's removal.<sup>57</sup> Overly optimistic expectations, poor on-the-ground diplomacy, insufficient preparation for post-conflict policing and inadequate law enforcement immediately following the March 2003 conflict, combined with internal dissension, pushed Iraq towards widespread violence and disorder.<sup>58</sup>

Some experts blame Coalition forces' reported inaction during the widespread looting and destruction that followed Saddam Hussein's fall for creating a climate of violence and permissiveness in terms of criminal activity. Amnesty International reports that Coalition soldiers stood by and watched Iraqis storm and loot ministries and university campuses because they reportedly saw looting as "a venting of anti-Saddam anger."<sup>59</sup> This near total absence of rule of law during Coalition forces' early days in Iraq, including everything from petty theft and carjacking to armed robberies and revenge killings, appears to have been avoidable. The crime wave was also responsible for setting back reconstruction efforts early in the occupation. According to U.S. Colonel John Peabody, commander of the 3rd Infantry Division/ 11th Engineer Brigade during the March 2003 invasion, "the impact of the looting was greater than we probably realized at the time...everything of value to making things run was stolen."<sup>60</sup>

What began as sporadic attacks on Coalition soldiers, Iraqi forces and Iraqi civilians quickly turned into an insurgency, suspected to be fostered in part by militants such as Muqtada al-Sadr, Abu Musab al-Zarqawi and Baath party loyalists (see box on pgs. 34-35).<sup>61</sup> During the occupation, public safety went from bad to worse, and improvement since the formal end of occupation on June 28, 2004 to late-August has been mild, at best.<sup>62</sup> The Bush administration and U.S. military commanders warned that violence in Iraq would likely continue to escalate after the transfer of power.<sup>63</sup> There have been many assassination attempts – several successful – targeting members of the Iraqi Governing Council and, more recently, the interim Iraqi government (see box, p. 37).

Toward the end of occupation there was a rapid escalation of murders (by insurgents) of the CPA's Iraqi employees.<sup>64</sup> Many Iraqis who assisted Coalition forces were also kidnapped and their families warned to avoid contact with Westerners.<sup>65</sup> Little security existed for those traveling on the major roads from Baghdad to other parts of the country and many CPA personnel rarely emerged from the so-called "Green Zone," the heavily guarded area of cordoned-off streets (some of which have been opened since June 28) in central Baghdad where U.S. occupation authorities lived and worked during occupation.<sup>66</sup>

Even before the handover of powers, Prime Minister-designate Iyad Allawi announced that he had appointed a special committee of ministers to consider imposing a state of emergency in Iraq that would include curfews and a ban on public demonstrations.<sup>67</sup> Almost immediately, U.S. officials warned Iraq's interim government not to impose martial law, claiming that only the U.S.-led multinational force had the legal right to adopt emergency military powers, even after the transfer of power.<sup>68</sup> Nevertheless, in early July, the interim government, in one of its first major post-occupation assertions

of independence, approved a security law granting Prime Minister Allawi the authority to impose martial law in troublesome areas of Iraq.<sup>69</sup> The law's provisions include the right to declare a state of emergency, impose curfews, conduct searches and detain individuals with weapons, and assign governors, including military leaders, in these troublesome areas, as part of the interim government's "anti-terror" efforts.<sup>70</sup>

In most parts of Iraq, criminal activity has increased since the March 2003 invasion, with increases in drug-trafficking, murder, vehicle hijacking, kidnapping, rape, and robbery (the northern Kurdish territories have been an exception).<sup>71</sup> During occupation, there was little to no progress in reducing crime-related deaths.<sup>72</sup> Crimes such as murder are going uninvestigated, unpunished, and therefore undeterred and there are serious concerns about the impact of the instability on women and children.<sup>73</sup> Following the March 2003 invasion, many Iraqi women saw their security and legal rights shattered by fundamentalist Islamists, criminals, and insurgent forces.<sup>74</sup> Increases or perceived increases of kidnapping and rape — crimes that are followed in some cases by honor killings — are keeping some women and girls inside their homes and out of work and school.<sup>75</sup> Retribution for nonconformity to cultural dress codes and other Islamic customs has also been reported.<sup>76</sup>

In addition to escalating instability and the threat of violent crime, lack of security has also stalled economic reconstruction. Attacks on oil facilities by insurgents have interrupted production and exports. From June 2003 to June 2004, there were more than 130 attacks on Iraq's two export pipelines from Kirkuk to Basra (see discussion on oil, pgs. 72-73).<sup>77</sup> In addition, regular airline service and commerce were disrupted by the threat of rocket-propelled grenades.<sup>78</sup>

## International Contributors of Military Forces

As of September 2004, non-U.S. troops made up roughly 22,000 of the 162,000 Coalition military personnel stationed in Iraq (approximately 14 percent).<sup>79</sup> These troops were drawn from 30 nations, including the U.K. (8,300), Italy (2,800), Poland (2,350) and Ukraine (1,650).<sup>80</sup> In June 2004, South Korea agreed to provide 3,000 more troops (adding to its current 600 troops), which would make it the largest contributing nation after the U.S. and the U.K. to the multinational force in Iraq.<sup>81</sup> Additionally, private military contractors have at least 20,000 employees at work in Iraq (see box, p. 27).<sup>82</sup>

During occupation, Coalition troops and security forces were spread out across the country in three zones of control. U.S. forces controlled the central and northern sections of Iraq. A Polish-led multinational division covered the upper portion of Iraq's southern zone (between Baghdad and Hilla) and a British division, based in Basra, controlled the lower portion of southern Iraq.<sup>83</sup> Coalition troops performed a wide range of duties, including peacekeeping, providing security for infrastructure, and assisting in water purification and school rehabilitation.<sup>84</sup>

Towards the end of the occupation, a number of countries withdrew their forces from Iraq. Spain's new Prime Minister, Jose Luis Zapatero, completed the withdrawal of its 1,400 troops in May 2004.<sup>85</sup> Zapatero said that Spanish troops will only consider returning to Iraq if the UN assumes military and political control of the country.<sup>86</sup> Nicaragua brought its troops home in February 2004, the 370-strong Honduran contingent completed its withdrawal from Iraq in early May, and the Dominican Republic has also completely withdrawn its forces.<sup>87</sup> As of late-August, the Philippines (51 troops) and Norway (155 military engineers) had completed their withdrawal from Iraq, and Thailand (450 troops), and New Zealand (60 engineers) were expected to withdraw their personnel in September 2004.<sup>88</sup>

Throughout the occupation, NATO members were reluctant to permit the Alliance to join the military Coalition in Iraq. This reluctance was based on several factors, including its struggle to provide enough troops for its high-priority mission in Afghanistan; a perception that U.S. military policy and planning has endangered both troops and civilians; and more recently, Europe's reaction to the allegations of abuse of detainees at Abu Ghraib prison (see p. 88).<sup>89</sup> Iraqi troops, police and guards are beginning to supplement foreign forces, but a lack of adequate training and equipment and ongoing insurgent attacks on Iraqi recruits limited the Coalition forces' ability to establish an independent Iraqi-run security force during occupation.<sup>90</sup>

After the upsurge of violence in April 2004 and the simultaneous withdrawal of troops by Coalition partners, the U.S. redoubled its public efforts to court NATO for greater involvement.<sup>98</sup> Despite the reluctance of many European member nations, an agreement was concluded at the NATO summit on June 28 to endorse the new interim Iraqi government and to provide training for Iraqi security forces.<sup>99</sup> NATO's statement indicated that individual member countries will decide whether to provide instructors.<sup>100</sup> Although the agreement's full details – i.e., which forces will be trained, and when and where they will be trained — have yet to be hammered out, officials intimately involved in the negotiations indicated that Germany's and France's agreements hinged on the inclusion of a provision allowing nations to decide whether to provide training inside or outside of Iraq.<sup>101</sup>

As detailed in UNSC Resolution 1546, a U.S.-led multinational force will provide for Iraq's security going forward from June 28, 2004.<sup>102</sup> This multinational force is comprised of coalition forces operating in Iraq when occupation ended (see p. 23); they will continue to work towards establishing stability and rule of law throughout the country. There will also be a new, distinct force (likely culled from the existing multinational forces due to reluctance of new nations to contribute forces) to protect UN staff and facilities. Each force will have its own commander, and the two commanders will be part of a unified command structure led by an American general, that will report to the Security Council every three months.<sup>103</sup> Iraqi security forces will be under the new interim Iraqi government's control, and that government will choose whether or not these forces participate in the larger multinational force on an operation by operation basis.<sup>104</sup>

**F. TOTAL NUMBER OF FATALITIES AND WOUNDED (COALITION AND IRAQI SOLDIERS, IRAQI CIVILIANS)**

	Fatalities during major combat operations (March 19 – April 20, 2003) <sup>91</sup>	Fatalities between May 1, 2003 and September 8, 2004. <sup>92</sup>	Total fatalities as of September 8, 2004	Wounded between May 1, 2003 and September 8, 2004) <sup>93</sup>
United States	138	864	1002	6,484
United Kingdom	33	32	65	n/a
Other Coalition nations	0	59	59	n/a
Iraqi security forces	n/a <sup>94</sup>	4,895-6,370 <sup>95</sup>	4,895-6,370 <sup>96</sup>	182
Iraqi civilians	11,000-13,000	2,574 <sup>97</sup>	13,574-15,574	n/a

**U.S. Forces in Iraq**

As of August 2004, there are approximately 140,000 U.S. troops in Iraq. The Pentagon is struggling to maintain these levels by extending the stay of troops slated to go home and by deploying 3,000 troops from South Korea.<sup>105</sup> Almost 21,000 U.S. soldiers currently serving in Iraq will have to stay beyond their originally scheduled 12-month tour of duty.<sup>106</sup> According to social scientist David Segal, who directs the Center for Research on Military Organizations, "Our volunteer Army is closer to being broken today than ever before in its 30-year history."<sup>107</sup>

On June 1, 2004, the U.S. Army announced it would implement a "stop loss" policy for all units designated for deployment abroad. Under the stop-loss regulations, military personnel can be prevented from leaving the armed forces upon completing their enlistment terms. This means that thousands of soldiers who are nearing the end of their volunteer service commitments and scheduled to go home will have to remain for the duration of any new deployment rotation in those combat zones.<sup>108</sup> Since the terrorist attacks of September 11, 2001, the Army has invoked the stop-loss policy to extend the



tours of more than 45,000 soldiers.<sup>109</sup> In late May 2004, the Army said that it had also pulled the files of 17,000 people in the Individual Ready Reserve, America's pool of former soldiers.<sup>110</sup> In late June the Pentagon confirmed that it would call up 5,600 former soldiers to maintain adequate force levels in Iraq and Afghanistan.<sup>111</sup> These forces will primarily supplement military police and civil affairs personnel.<sup>112</sup>

Deployments to Iraq have strained U.S. military forces beyond their current capacity. In August 2003, a General Accounting Office report warned that the Pentagon's "current mission approach is significantly stressing U.S. forces."<sup>113</sup> Defense Secretary Rumsfeld has authorized the service to "temporarily exceed the limits by as much as 30,000."<sup>114</sup> In light of the strain caused by simultaneous operations in Iraq and Afghanistan, the U.S. Senate voted in mid-June 2004 to increase the strength of America's standing army by 20,000 soldiers, raising the authorized strength of the U.S. Army to 502,400 soldiers.<sup>115</sup>

The Reserves and National Guard have provided a significant and unprecedented amount of troops for service in Iraq. Approximately 40,000 of the 140,000 U.S. forces now in Iraq are Reservists.<sup>116</sup> The U.S. Army will send an estimated 37,000 National Guard and Reserve troops to Iraq in late 2004/early 2005, along with 10,000 active duty Army and Marine troops.<sup>117</sup> The U.S.-led Coalition also continues to rely heavily on the services of private security contractors to supplement existing forces in Iraq (see box on p. 27).

Until April 2004, the Pentagon publicly maintained that it would be able to "draw down" the number of troops in Iraq by May 2004; instead, it was forced to deploy 20,000 new soldiers after an upsurge in violence in April, and as of August 2004, the higher force levels will be maintained for the indefinite future.<sup>118</sup> Retired Marine General Anthony Zinni, former U.S. Commander in the Middle East, claims that the administration plan called for only half the number of troops needed in post-conflict Iraq, ignoring the recommendations put forth by key military commanders such as former Army Chief of Staff General Eric Shinseki for much larger forces.<sup>119</sup> According to Zinni, "The [former] Army Chief of Staff [Shinseki] testified that we would need 300,000 troops to pacify Iraq... Everybody in the military knew he was right, but the party line down from the Pentagon decreed that the number was half that, and he was pilloried."<sup>120</sup>

Since May 2003, when President Bush announced an end to major combat operations in Iraq, the U.S.-led Coalition has suffered more than five times the number of fatalities experienced during the initial conflict.<sup>121</sup> In total, from May 1, 2003-September 8, 2004, more than 1,000 Coalition soldiers had been killed and almost 7,000 wounded (see chart on p. 24).<sup>122</sup>

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## G. PRIVATE MILITARY CONTRACTORS

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Private military contractors (PMCs) constitute the second largest military presence in Iraq after U.S. forces.<sup>123</sup> During occupation, they made up as much as 20 percent of the Coalition's total forces, numbering 15,000-20,000.<sup>124</sup> According to Peter Singer of the Brookings Institution, at least 30-50 employees of these companies have been killed in Iraq since the invasion.<sup>125</sup> Singer estimates that in addition to these armed fighters, there are another 10,000-15,000 PMCs performing military logistical support roles. These companies' services include: guard training, personal protection services, logistics planning, convoy protection, driving, maintenance, communications and intelligence-gathering. David Claridge, director of a London-based private security firm, estimates that contracts for services in Iraq have boosted British-based PMCs' annual revenues from \$320 million before the occupation to more than \$1.8 billion.<sup>126</sup>

Employees of PMCs have participated in previous wars and post-conflict reconstruction efforts, but the scale of their involvement in Iraq marks a new and, for some, troubling precedent.<sup>127</sup> At least six employees of CACI International and Titan, Corp. have been accused in connection with reported abuses of detainees at Abu Ghraib prison.<sup>128</sup> Singer estimates that former soldiers, security officers and career mercenaries from the U.S., U.K., Australia, South Africa, Nepal, Russia and elsewhere are being paid as much as \$1,500 a day – as much as 3.5 times more than the average soldier's wage — to protect western officials and contractors. PMC wage scales are already negatively affecting U.S. military recruitment, particularly among Special Forces.<sup>129</sup>

Reasons for the increased use of PMCs, which the U.S. also uses for anti-narcotics operations in Colombia, include the overextension of U.S. military forces, as well as the flexibility and discretion provided by these firms. The U.S. government can deploy private military forces with less public scrutiny; and it has no legal responsibility to report their actions or casualties.<sup>130</sup>

The increased use of PMCs raises serious concerns about public oversight and the rules of engagement for military forces in both combat and post-conflict reconstruction. These contractors are operating in Iraq with effective immunity, despite both U.S. domestic and international laws governing their behavior.<sup>131</sup> This raises questions about the Pentagon's responsibility for the actions of these individuals under the laws of occupation.

### Major Private Military Contractors in Iraq during Occupation

During occupation, Vinnell, MPRI and Nour USA were all contractors currently training and equipping the new Iraqi army under a joint contract worth up to \$2 billion. DynCorp (U.S.) was training the new Iraqi police force.<sup>132</sup> Erinys (U.K.) won a \$39.2 million contract to set up a paramilitary guard force for Iraq's oil fields, importing former Apartheid-era South African soldiers and police to train and arm 9,000 Iraqis.<sup>133</sup> Custer Battles (U.S.) employees guarded Baghdad's international airport, and Global Risk Strategies (U.K.) provided protection to CPA employees. ArmorGroup (U.K.) was employed to protect Bechtel and Kellogg Brown & Root employees (see contracting discussion, p. 61).<sup>134</sup>

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### Cost of Continued U.S. Presence in Iraq

As of August 2004, military operations in Iraq had cost the U.S. at least \$130 billion.<sup>135</sup> Estimates of the cost of an ongoing military presence in Iraq vary. The Bush administration has thus far financed the war and occupation through a series of “supplementals,” which are additional funding requests sent to Congress outside of the normal budget cycle. In 2003, President Bush won approval from Congress for two supplementals of \$74.7 billion and \$87.5 billion for operations in both Iraq and Afghanistan; the military operations in Iraq accounted for approximately \$62.6 billion and \$51 billion, respectively.<sup>136</sup>

Bush administration officials have, in their public statements, underestimated the funds and troops necessary to achieve stability and security in post-conflict Iraq. In March 2003, former Office of Management and Budget Director Mitch Daniels told Congress that “The United States is committed to helping Iraq recover from the conflict, but Iraq will not require sustained aid.”<sup>137</sup> This was followed by the administration’s \$87.5 billion Iraq supplemental request for fiscal year 2004, which included \$18.4 billion in aid for Iraq’s reconstruction. When President Bush requested this supplemental, he declared that he would not appeal to Congress for further U.S. funds for Iraq operations in 2004.<sup>138</sup> In May 2004, however, under pressure from Pentagon commanders, President Bush reversed course and asked Congress for an additional \$25 billion for military operations in Iraq and Afghanistan, a request that was ultimately folded into the defense appropriation bill signed into law in August 2004.<sup>139</sup>

Members of Congress and outside observers expect that the President will need to return to Congress before January 2005 to seek additional funding for Iraq (i.e., beyond the \$25 billion appropriated by Congress in June).<sup>140</sup> Congress expects the final Bush administration request for Iraq operations in 2005 to range from \$50 to \$100 billion.<sup>141</sup> The Congressional Budget Office estimates that the continued presence of an average of 130,000 U.S. troops in Iraq will cost some \$4-\$5 billion per month.<sup>142</sup> The Washington-based Center for Strategic and Budgetary Assessments predicts that if substantial numbers of U.S. troops are required to remain in Iraq for many years beyond fiscal year 2005, total costs could approach, or possibly exceed, \$300 billion over the next decade.<sup>143</sup> For context, this amount is more than three times the U.S. education, homeland security and Social Security budgets combined (as requested by the Bush Administration) for fiscal year 2005.<sup>144</sup>

## Iraqi Security Forces

From the beginning of the occupation, the Bush administration has stressed that its goal is the “Iraqification” of Iraq’s security forces, a process that sought to gradually replace Coalition forces with Iraqis who have been fully trained and vetted for previous connections to Saddam Hussein’s regime.<sup>145</sup> In the year since the “Iraqification” goal was announced, Iraqi security forces recruited a total of about 200,000 personnel for the armed forces, civilian defense corps, border patrol, police force, and security guards (see chart on p. 29).<sup>146</sup> A Pentagon brief in March 2004 indicated that only about 115,000 Iraqi forces are fully trained and on duty, and 95 percent of these are facility protection personnel and members of the Iraqi Civil Defense Corps.<sup>147</sup> If training programs continue at the present pace, it will take three years to train 40,000 Iraqi soldiers, about half of what the nation will ultimately require.<sup>148</sup>

On June 30, U.K. Prime Minister Blair declared that the U.S.-led military Coalition and Iraqi government were drawing up a plan for the phased withdrawal of Coalition troops from Iraq and the assumption of these duties by Iraqi security forces.<sup>149</sup> Blair’s spokesman said the plan would set out a “rough timetable, not a precise one that will detail the security needs as the Iraqis see it,” including a general timeline for the eventual transfer of Iraq’s security to Iraqi authorities.<sup>150</sup> Although the Iraqi interim government has political control over Iraqi security forces now that power has been transferred, the multinational force, at present, bears primary responsibility for policing the country while it, along with NATO, trains and equips Iraqi police, civil defense and armed forces.<sup>151</sup>

### H. IRAQI SECURITY FORCES<sup>152</sup>

Force Type	Goal	Number of Forces <i>(as of September 2004)</i>	Percent of Forces Partially/ Fully Trained <i>(as of September 2004)</i>
Iraqi Police Force	89,369	83,798	37%
Iraqi Civil Defense Corps	41,088	36,229	100%
Iraqi Army	35,000	7,700	100%
Iraqi Border Patrol	21,420	19,859	100%
Facility Protection Services	73,992	73,992	100%
Total Forces:	259,869	206,000	53%

## Police

The Pentagon has estimated that although about 84,000 Iraqis were on the payroll as police officers by July 2004, only approximately 31,000, or 37 percent of these police were fully trained and qualified.<sup>153</sup> According to U.S. Senator Joseph Biden, ranking member of the Senate Foreign Relations Committee, Iraq needs a minimum of 79,000 police nationwide; it will take three to five years at minimum to fully train those officers.<sup>154</sup>

This time lag is a critical problem. Baghdad, a city of 5.5 million people, needs approximately 19,000 officers. As of March, it had 10,000 police—many only partially trained—on the streets.<sup>155</sup> According to Major General Jamal Abdullah al-Ma'athede, Baghdad chief of police, “In an emergency, I have 1,000 officers I can trust to control Baghdad.”<sup>156</sup> In spring 2004, a barrage of criticism erupted over numerous aspects of U.S. plans to train and transfer responsibility to Iraq’s burgeoning police force. These criticisms include:

- 1) **Inadequate police force training:** Many feared that the Coalition forces’ drive to accelerate police training in spring 2004 was primarily intended to reduce its own military presence in Iraq. Sameer Shaker Sumaidaie, Iraq’s outgoing Interior Minister, criticized the CPA’s rapid training program, remarking, “Police officers require long training ... an effective force cannot be produced by courses that take as long as boiling eggs.”<sup>157</sup>
- 2) **Lack of necessary equipment:** During occupation, the Coalition forces gradually turned over more security tasks to Iraqis despite complaints that the Coalition failed to provide adequate training and equipment.<sup>158</sup> According to Colonel Othman al-Alani, when Iraqi police officers asked U.S. officials for flak jackets and guns, they “got nothing.”<sup>159</sup> Colonel Tom Knight, deputy commander of Coalition forces in Mosul, blamed cumbersome Pentagon procurement regulations, saying “It’s a terrible thing that we can’t get these guys the equipment they need and deserve.”<sup>160</sup>
- 3) **Allegiance of trained forces:** The commitment, as well as the capacity, of new Iraqi police recruits has become a major problem. Iraqi security forces sympathizing, and at times even conspiring, with insurgents was a major obstacle for Coalition forces toward the end of occupation. According to Major General Martin Dempsey, commander of the 1st Armored Division, an estimated 10 percent of Iraqi security forces fought against Coalition forces during the escalated insurgent violence in April, and another 40 percent “walked off the job because they were intimidated.”<sup>161</sup> (see also *Armed Forces*, p. 31) In Shiite strongholds such as Baghdad, some uniformed police officers have openly joined ranks with Muqtada al-Sadr’s Mahdi Army, taping posters of Sadr to their vehicles and allegedly taking orders from Mahdi commanders (for more on Sadr, see p. 34).<sup>162</sup>

- 4) **Attacks on stations, officers and recruits:** Insurgent attacks on recruiting centers and police stations have continued to hamper the interim government and multinational force’s efforts to train and deploy an independent Iraqi security force. On July 28, in the deadliest attack since the transfer of power exactly one month earlier, a suicide bomber detonated an explosive-packed sedan on a busy street in Baquba in front of an Iraqi police station, killing an estimated 70 people and wounding at least 56 others.<sup>163</sup>
- 5) **Location and cost of training:** The location and cost of training Iraqi security forces has also proven a contentious issue. In January 2004, members of the Iraqi Governing Council criticized a U.S. decision to spend \$1.2 billion to train Iraqi police officers in Jordan.<sup>164</sup> They noted that training police in Iraq would cost substantially less, and that both Germany and France had offered to provide police training free of charge.<sup>165</sup> NATO’s agreement to train Iraqi security forces reportedly hinged, in part, on the ability of countries such as Germany and France to train these forces outside of Iraq.<sup>166</sup>

## *Iraqi Civil Defense Corps*

To bridge the gap between national defense and police work, the CPA created the Iraqi Civil Defense Corps (ICDC), which is modeled on the U.S. National Guard. The Corps is composed of former employees of the country’s security services, members of political party militia and members of a separate, smaller Iraqi paramilitary force that CPA Administrator L. Paul Bremer had earlier created in response to requests by the Iraqi Governing Council.<sup>167</sup>

Under occupation, the ICDC patrolled alongside Coalition forces. Its other responsibilities included providing fixed site and route security, natural disaster aid, and general security assistance, particularly to the Iraqi police force.<sup>168</sup> Coalition forces hoped to build up ICDC forces to 41,000 by the end of 2004 (see chart, p. 29). An estimated 36,000 ICDC personnel are currently assisting multinational troops in counterinsurgency operations.<sup>169</sup> As the paramilitary unit will be the most powerful domestic security unit in Iraq, the Civil Defense Corps initiative has raised serious concerns among some U.S. officials, academics and human rights groups that it might be used to counter democratic goals, including suppressing political dissent.<sup>170</sup> Numerous Corps units performed poorly during the April 2004 uprisings, and in several units—most notably in Baghdad, Karbala and Najaf—at least 50 percent deserted or refused to fight.<sup>171</sup>

## *Armed Forces*

The CPA fell short of its goal of creating a 35,000-soldier Iraqi army. According to Pentagon figures, there were 7,700 active duty soldiers serving in Iraqi Army units as of September 2004.<sup>172</sup> A lack of command and control has resulted in entire Iraqi army battalions



refusing to fight. For example, in April, during the upsurge of violence in Fallujah, more than a quarter of the newly trained Iraqi army, civil defense, police and other forces quit, refused to perform their duties, and/or joined with the insurgents.<sup>173</sup>

Former Coalition military officials believe that much of the trouble stems from the Pentagon's initial decision in May 2003 to disband the Iraqi Army completely, purging it of pro-Saddam Hussein elements and alienating former soldiers.<sup>174</sup> U.S. Army Major General Paul Eaton, the Commanding General of the Office of Security Transition who oversaw the development of the Iraqi security forces and most recently an elite unit to lead counterinsurgency efforts, attributed the problems to poor Coalition leadership and the training of Iraqi units by U.S. advisers who emphasized that the Iraqis' job was to defend Iraq against "outside" forces, rather than to fight hand to hand against fellow Iraqis.<sup>175</sup>

#### *Border Guards*

Gaining better control of Iraq's borders is critical to establishing security and stopping the inflow of forces and weaponry from neighboring nations.<sup>176</sup> As of June 28, more than 18,000 Iraqi soldiers were said to be serving as border guards; the CPA committed to train 21,000 before the occupation's end, up from an original estimate of 14,000.<sup>177</sup> The border patrol, which has its own distinct force, has been recruited primarily from Kurdish militia in the north that are friendly to the U.S. and its allies.<sup>178</sup>

## Armed Actors in Iraq

### **Militias**

Militias—military or paramilitary forces that are not part of Iraq's Armed Forces or security forces established or permitted by CPA orders, Iraqi federal law or the TAL—have been the foremost challenge to public security since the declared end of combat in Iraq.

Since the time of Saddam, armed militias have been operating in Iraq. The largest and most visible is the peshmerga, or Kurdish militia, which has been allied with the resistance forces against Saddam Hussein and fought with the U.S.-led Coalition for the duration of the war. The Kurdish militia's estimated 50,000 soldiers are split between the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK). Another prominent militia is the Badr Organization, a 10,000-strong armed wing of the Supreme Council for the Islamic Revolution in Iraq that has been active in the south central Shi'ite region of Iraq in support of the factions around Ayatollah Sistani.<sup>179</sup> Many other militias, including those of the nine major political parties, also existed throughout occupation.

The disbanding of the Iraqi Army and mass unemployment, estimated in July 2004 to be anywhere from 30-70 percent, greatly increased frustration among young, jobless

men and simplified the recruiting efforts of militias and insurgents.<sup>180</sup> Efforts to reintegrate and train former Iraqi Army soldiers and militia members were initially haphazard and unsuccessful.<sup>181</sup> However, in June the CPA completed negotiations on a nationwide reintegration program for militias and other nongovernmental armed groups.<sup>182</sup> This agreement, signed into law as CPA Order 91, is a major achievement because it includes all groups that have taken up arms on behalf of Iraq's nine major political parties, except the insurgent Mahdi Army of Muqtada al-Sadr (see p. 34).<sup>183</sup> All leaders of these parties have accepted detailed plans, timetables and terms for the formal and immediate dissolution of their respective armed groups.<sup>184</sup>

Under the plan, militia members can choose whether to join Iraq's new security services or return to civilian life and receive alternate job training.<sup>185</sup> All militia and armed force members, many of whom fought actively against Saddam Hussein's regime, who choose to demobilize and remain outside of the multinational force/interim Iraqi government's official security forces will be legally classified as veterans and provided with commensurate pensions and disability benefits.<sup>186</sup> A key element of Order 91 is that it prohibited and outlawed all armed forces and militias outside of government control.<sup>187</sup> This order legally formalizes the prohibitions first articulated in the TAL.<sup>188</sup>

### **Insurgents**

#### *A Murky Picture*

Militias or other armed forces, such as the Mahdi Army, and individuals who failed to endorse Order 91 and/or were engaged in violent attacks against the Iraqi authorities and Coalition forces, are referred to as insurgents throughout this publication. It must be emphasized that much remains unknown about the composition and size of the ongoing insurgency in Iraq. The following discussion is based on credible reports and administration pronouncements, which must be considered in the overall context of the uncertainty surrounding the insurgency movement.

The power behind Iraq's ongoing insurgency – estimated to be from 5,000 to 50,000 fighters — cannot be traced to any single factor.<sup>189</sup> Radical Shiites seeking political dominance and the departure of foreign troops, foreign fighters seeking to foment instability and nationalists seeking to defend Iraqi territory from foreigners are all believed to play a role in fueling the insurgency.<sup>190</sup> Other factors include the Pentagon's decision to disband Iraq's 500,000-strong army in May 2003, the immense difficulty of demobilizing Iraq's many militias and paramilitary groups, and vehement anti-Americanism throughout the country.<sup>191</sup> Anti-occupation rhetoric from militants such as Sadr and Jordanian militant Abu Musab al-Zarqawi inflamed the already heightened anti-occupation sentiment across an Iraqi population chafing from more than a year of occupation.

A lack of reliable human intelligence on the ground in Iraq has prevented Coalition forces from getting an accurate picture of the insurgency's true depth and breadth.<sup>192</sup>

According to one anonymous U.S. official, “We still don’t know who is behind the attacks, so we just go around kicking doors in — which is exactly what the enemy wants us to do.”<sup>193</sup>

Insurgent attacks on private contractors in Iraq have also increased, causing foreign casualties and the withdrawal of construction companies and aid agency personnel. On June 22, after South Korea refused demands to quit the U.S.-led Coalition and withdraw its forces from Iraq, a South Korean contractor was beheaded. Zarqawi’s insurgent group claimed responsibility for this act. The beheading followed the kidnapping and killing in April and May of three Russian contractors with the InterEnergoservis (IES) Company, two Japanese journalists and a private Italian security guard.<sup>194</sup>

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## I. SUSPECTED KEY RESISTANCE LEADERS DURING OCCUPATION

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### **Muqtada al-Sadr**

Sadr’s Mahdi Army, a Shiite force born in the slums of Baghdad and currently based in Najaf, is one of Iraq’s most threatening insurgent groups. Following an easing of tensions in June 2004 that ended Mahdi Army attacks in an uneasy truce, Sadr’s army resumed hostilities in early August in Sadr City and Najaf, and continues to pose a major threat to Iraq’s stability post-occupation.

Sadr’s ability to appeal to resentful, unemployed Iraqis has been at the root of his success, and his virulent opposition to the U.S. occupation remained strident up until and following the truce. His name recognition and appeal are in large part due to his family’s legacy; his father was a revered cleric murdered by Saddam Hussein’s regime, and Sadr has rallied forces based on this legacy rather than his own limited reputation as a political leader. Sadr managed to recruit followers rapidly, increasing his militia from only a few hundred people at the start of the occupation to a force currently estimated at 6,000-10,000 men.<sup>195</sup>

After the CPA closed Sadr’s stridently anti-occupation newspaper, *Al-Hawza*, on March 28, 2004, he instructed his militia to seize key areas in the southern cities of Najaf, Amara, Karbala and Kufa, prompting Coalition forces to enter these previously quiet Shiite areas. Under an agreement negotiated by local U.S. commanders, Iraqi security forces took over police duties in the Shiite holy city of Najaf to help quell the unrest created primarily by Sadr.

Although Sadr did not sign on to the militia reintegration agreement (CPA Order 91) negotiated by the CPA and Iraqi Governing Council, he did agree in May to withdraw his Mahdi Army from the holy cities of Kufa and Najaf. Sadr also agreed to send fighters from elsewhere home, on the condition that Coalition forces promise to end “offensive operations” in Kufa and Najaf.<sup>196</sup> In late June 2004 Sadr announced a unilateral ceasefire between his Mahdi Army and Coalition forces.<sup>197</sup> In mid-July 2004, Iraq’s interim Prime Minister issued a decree allowing Sadr to reopen his *al-Hawza* newspaper.<sup>198</sup>

The ceasefire was broken in August 2004 when fighting broke out in Najaf between multinational forces and the Mahdi Army in and around the Imam Ali shrine. Throughout the hostilities, the Iraqi government and members of the August National Conference offered Sadr amnesty and the option of participating in the political process if he disbanded the Mahdi Army.<sup>199</sup> Cease-fire negotiations were ongoing when this report went to press.

### **Abu Musab al-Zarqawi**

Abu Musab al-Zarqawi, a Jordanian-born Islamic militant and self-proclaimed leader of the militant group *Al Tawhid Wal Jihad*, is alleged to be a major force behind the insurgency and the terrorist attacks inside Iraq.<sup>200</sup> The CIA has labeled the 38-year-old “the most dangerous and effective Islamic terrorist at large” and National Security Adviser Condoleezza Rice has dubbed him “the face of terrorism in Iraq.” Zarqawi became more prominent in May 2004, following his alleged role in the beheading of American Nicholas Berg.<sup>201</sup>

The U.S. government claims that Zarqawi ran an al-Qaeda training camp for Osama Bin Laden in Afghanistan and still maintains close ties with the terrorist network. U.S. forces have offered a \$25 million bounty for the capture or killing of Zarqawi.<sup>202</sup>

In February 2004, authorities claimed to have intercepted a 17-page memorandum written by Zarqawi stating that he had completed 25 operations, “some of them against the Shia and their leaders, the Americans and their military, the police, the military, and the Coalition forces.”<sup>203</sup> Zarqawi ranked targets for killing and kidnapping, starting with Americans and moving on to Iraqi police, troops, and agents, Shiite religious, political, and military figures, and Kurdish leaders.<sup>204</sup> In late June, Zarqawi and his Islamist extremist followers allegedly threatened to assassinate Iraqi interim Prime Minister Iyad Allawi, one day after the same group took credit for the beheading of South Korean translator Kim Sun Il.<sup>205</sup>

Zarqawi’s group has taken credit for numerous kidnappings of foreign troops and workers; these incidents have often involved demands that foreign soldiers and/or workers withdraw from Iraq in return for a hostage’s release. A key precedent with regard to countries’ response to these demands was set in July 2004, when insurgents identifying themselves with Zarqawi’s group kidnapped a Filipino truck driver and demanded that the Philippine government withdraw all forces from Iraq or face this man’s beheading. The Philippine government acceded, pulling its remaining troops out of Iraq on July 19, despite international outcry that the country was caving in to terrorists. The hostage was released on July 20, 2004.<sup>206</sup>

### *Suspected Makeup of Insurgency*

Insurgent groups appear to fall into three main groups: (1) former Baath party members and Sunni militants, including Saddam Hussein's Republican Guard and members of his numerous internal security organizations (former regime loyalists); (2) Shiite militants, such as those belonging to the Mahdi Army of radical Shiite Cleric Muqtada al-Sadr (see box on p. 34); (3) foreign fighters, including unaffiliated foreigners loyal to the former regime, individuals associated with the Abu Musab al-Zarqawi-led terrorist group, Ansar al-Islam (see box on p. 35), reportedly tied to al-Qaeda, and other terrorist groups.<sup>207</sup> There are also reports of common criminals participating ad hoc in organized assaults, or in some cases, reportedly being paid by other insurgents to attack/kill Coalition soldiers and/or other targets.<sup>208</sup>

The first group of suspected insurgents, former regime loyalists, is believed to include diehard Saddam Hussein loyalists, former government and army officials, and Islamic militants. These insurgents derive their power to recruit and sustain fighters from established networks, knowledge of Iraqi terrain, and large sums of disposable cash obtained before the Baath Party's fall from power.<sup>209</sup>

The second group of insurgents consists mainly of radical Shiites such as Sadr and others who have carried out attacks against Coalition forces and fomented anti-American sentiment. These fighters have launched coordinated attacks against police stations and civil defense agencies and have intimidated Iraqi security forces.<sup>210</sup> During occupation, relations between Sadr's Mahdi Army and Coalition forces fluctuated between periods of overt hostility and uneasy truce. In the occupation's final days there were signs of improvement in relations between Sadr and U.S. forces, when Sadr issued a statement, due in large part to pressure from Ayatollah Ali al-Sistani, one of the most influential Shiite spiritual leaders, calling on all militiamen from other cities to leave Najaf and go home. CPA officials and coalition forces hoped Sadr's call would mark the beginnings of a truce to end the cleric's 10-week insurgency; however, hostilities resumed in August 2004 with a call to arms against U.S. forces.<sup>211</sup> Prime Minister Allawi responded to the Shiite uprising by offering Sadr amnesty and an invitation to run in the 2005 national elections if his Mahdi Army ceased hostilities.<sup>212</sup>

There is strong disagreement over the makeup of the third insurgent group (foreign fighters), although it is thought to include unaffiliated insurgents sympathetic to the former regime, al-Qaeda sympathizers and other terrorist groups. According to the CPA, foreign Islamist fighters were responsible for one of the most brazen and sophisticated assaults to date, when insurgents conducted a daylight raid on a police station and security compound in Fallujah, freeing about 75 prisoners; 25 people were killed, including four attackers.<sup>213</sup> The attack was allegedly coordinated with another one carried out at the same time a mile away, targeting the Iraqi Civil Defense Corps headquarters.<sup>214</sup> According to Ahmed Hashim, a professor at the Naval War College who spent several months

in Iraq studying the insurgency, "There is no doubt that the insurgents have local support...they melt into neighborhoods...people do not inform on them...these are all tell-tale signs of local support...even the foreigners have some tacit support from people."<sup>215</sup>

Some experts, including Colonel Raad al-Yass, head of Baghdad's serious crimes unit, support the theory that there are many foreign insurgents affiliated with al-Qaeda. Iraq's neighbors appear to be contributing to the current unrest. Syrians, Iranians, Saudis, Jordanians, and Turks are reportedly crossing into Iraq by the hundreds.<sup>216</sup> It is widely known that at some point before hostilities in Fallujah flared up in late March, a well-armed group of foreign fighters led by Abu Abdullah, a young Saudi, penetrated the city. This force continued to mount attacks against U.S.-led multinational forces and other Westerners in Iraq towards the end of occupation, despite the opposition of local religious leaders, the Iraqi army and the Iraqi police force.<sup>217</sup> Overall, reports issued throughout the U.S. and U.K. occupation show little evidence that detainees ever included more than a small group of fighters with ties to al-Qaeda.<sup>218</sup>

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### **J. MAJOR INSURGENT ATTACKS DURING OCCUPATION (MAY 2003-JUNE 2004)**

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- August 7, 2003 - A truck bomb explodes outside the Jordanian embassy compound in Baghdad, killing at least 17 people, wounding more than 60
- August 19, 2003 - A truck bomb devastates the UN headquarters in Baghdad. The worst attack on a UN civilian complex killed 22, including Sergio Vieira de Mello, the top UN envoy to Iraq (see August 19 and Beyond, p. 38)
- August 29, 2003 - A car bomb at the Imam Ali mosque in Najaf kills at least 83 people, including top Shiite Muslim leader Ayat Allah Mohammed Baqer al-Hakim, and wounds about 175
- September 9, 2003 - A car bomb in Arbil, northern Iraq kills one Iraqi and wounds 53, including six American military personnel
- October 26, 2003 - Guerrillas fire rockets into Baghdad's Rashid Hotel, where U.S. Deputy Defense Secretary Paul Wolfowitz was staying, killing a U.S. soldier and wounding 17 people
- October 27, 2003 - Bombers strike simultaneously at four locations in Baghdad, including the headquarters of the International Committee of the Red Cross and three police stations, killing at least 35 people and wounding 230
- November 12, 2003 - A car bomb kills at least 28 in Nassiriya, including 19 Italians, mostly Carabinieri paramilitary police, and nine Iraqis
- January 18, 2004 - A suicide car bomber kills at least 25, mostly Iraqi civilians, at entrance to the [former] "Green Zone," the main U.S. Baghdad headquarters



- February 1, 2004 - Two suicide bombers at the headquarters of the two main Kurdish political parties in Erbil kill at least 56 people and wound more than 200
- April 21, 2004 - Suicide bombers kill 73 people — including 17 children — and wound 94 in coordinated blasts at three police stations in Basra and at the police academy in nearby Zubeir
- May 17, 2004 - A suicide car bomb in Baghdad kills the head of Iraq's Governing Council, Abdul Zahra Othman Mohammad, a Shiite Muslim also known as Izzedin Salim
- June 12, 2004 - Interim Deputy Foreign Minister Bassam Qubba is killed in Baghdad
- June 24, 2004 - Iraqi militants attack five major Iraqi cities targeting police and U.S. forces, killing more than 100 people and wounding at least 270. Jordanian militant Abu Musab al-Zarqawi claims credit for the widespread attacks
- July 28, 2004 - A suicide car bomb kills an estimated 70 people and wounds at least 56 outside a police station in Baquba

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#### K. THE AUGUST 19, 2003 BOMBING OF UN HEADQUARTERS IN BAGHDAD

On August 19, 2003, a suicide truck bomb exploded outside the Baghdad headquarters of the UN claiming at least 23 lives, including the chief of the Iraqi mission, Sergio Vieira de Mello. The attack on the UN mission in Baghdad had a profound impact on the UN's leadership and member states.

Shortly afterwards, UN Secretary-General Kofi Annan ordered all 600 international UN personnel to evacuate to Jordan.<sup>219</sup> A skeleton crew of Iraqi nationals working for the UN remained, mainly to work on the transfer of the Oil-for-Food Program to the CPA.<sup>220</sup>

The bombing occurred prior to the UN General Assembly's annual meeting and initiated a reexamination of not only security protocols for UN operations in the field but the very purpose and principles of the 59-year-old institution.<sup>221</sup> In his address to the opening of the General Assembly in September, Annan noted that the world body had reached a "fork in the road" that would lead to a redefining of the institution.<sup>222</sup> That process began with the November 2003 appointment of a High Level Panel on Threats, Challenges and Change, which will periodically report back to the Secretary-General on how threats such as terrorism affect the response capacity of the UN.

On July 12, 2004, Iraq's interim government offered a limited amnesty to anyone who had participated in the insurgency—except for rapists, hostage-takers or murderers.<sup>223</sup> The amnesty's relatively circumscribed scope was due to U.S. objections to pardoning anyone guilty of killing an American, and Iraqi leaders' subsequent sense that the same should then hold true for all nationalities.<sup>224</sup> This limitation effectively means that only criminals and looters are covered by the amnesty, and not the bulk of active insurgents currently destabilizing Iraq. Interim Iraqi President Ghazi al-Yawar said that this amnesty will be followed by an intensive counterinsurgency program, as well as the reinstatement of the death penalty. The death penalty, suspended during occupation, was reinstated by the interim Iraqi government in August 2004, to the chagrin of the European Union, among others.<sup>225</sup>

Given that the interim Iraqi government and multinational forces do not currently know the identity of most Iraqi insurgents, these individuals could easily lay down their arms in private, without making themselves or their decision known to authorities.<sup>226</sup> The interim Iraqi government reportedly acknowledged that the amnesty was largely symbolic, but hoped the measure would nonetheless encourage insurgents to stop violent attacks without fear of being incarcerated.<sup>227</sup>

## Weapons of Mass Destruction

In April 1991, UNSC Resolution 687 established a formal ceasefire ending the first Gulf war and calling for the elimination, under international supervision, of Iraq's weapons of mass destruction and ballistic missiles with a range greater than 150 kilometers, together with related items and production facilities.<sup>229</sup> In a series of 16 UN Security Council resolutions over 12 years, the international community demanded that Iraq allow weapons inspectors to verify destruction of its arsenal of chemical weapons and dismantlement of biological and nuclear weapons programs.<sup>229</sup>

A UN Special Commission (UNSCOM) was created to implement the non-nuclear provisions of this resolution and to aid the International Atomic Energy Agency (IAEA) in the nuclear aspects of disarmament.<sup>230</sup> In a series of subsequent letters between the UN Secretary-General, the Executive Chairman of UNSCOM and the Minister for Foreign Affairs of Iraq, Iraq formally agreed to grant UN and IAEA officials full and unrestricted access to all sites or facilities inside Iraq for the purposes of on-site inspection.<sup>231</sup> Over the next seven years, Iraqi noncompliance resulted in a long series of failed attempts by UNSCOM and the IAEA to gain unimpeded access to suspected Iraqi weapons-related sites. In December 1999, due in large part to UNSCOM's lack of success, this mission was finally replaced by a new UN Monitoring and Inspection Commission (UNMOVIC) in UNSC Resolution 1284, which returned with the IAEA to Iraq once again to verify the country's disarmament.<sup>232</sup>

In August 2002, in the face of only partial Iraqi cooperation with UNMOVIC and the IAEA's mission, the Bush administration began publicly to insist that Iraq posed an imminent threat to the world community because it was not in full compliance with the UN Security Council's numerous resolutions demanding full and unimpeded weapons inspections and verification.<sup>233</sup> Other permanent Security Council member states such as France, Germany, Russia and China argued up until the eve of war that the teams should be granted more time to work, given that Saddam was beginning to concede to international pressure and allow inspectors relatively unimpeded access.<sup>234</sup> On March 19, 2003, a U.S.-led Coalition of American, British and Australian forces invaded Iraq. According to President Bush, the invasion was intended to "disarm Iraq, to free its people and to defend the world from grave danger."<sup>235</sup>

The administration based its decision to invade Iraq largely on the alleged existence of weapons of mass destruction (WMD). In February 2003, Secretary of State Colin Powell went to the UN to make the administration's case that Saddam Hussein represented an imminent threat to global security and was actively seeking to reconstitute nuclear capabilities.<sup>236</sup> Many nations and experts disputed the U.S. claim that Saddam Hussein presented an imminent threat to global stability, even as the U.S.-led Coalition invaded Iraq.<sup>237</sup>

Following the March 2003 invasion, the U.S. decided not to allow UN weapons inspectors back into Iraq, and convinced the UN Security Council to endorse a U.S. search and disarmament effort described in UNSC Resolution 1483.<sup>238</sup> The U.S. military assumed responsibility for weapons searches until June 2003, when the Bush administration created the Iraq Survey Group, a U.S.-led team of 1,400 scientists and weapons and intelligence experts.<sup>239</sup>

#### *Inspections during Occupation*

In January 2004, Iraq Survey Group chief David Kay resigned from his position, saying in dramatic congressional testimony that he did not believe that WMD would ultimately be found in Iraq. A report prepared by Kay, and presented to Congress, suggested that although Iraq was clearly in material breach of UNSC Resolutions 687 and 1441 prior to March 2003, Saddam Hussein was not likely to have been developing a WMD capacity that could pose an imminent threat within the next five years.<sup>240</sup> "I don't think they [weapons of mass destruction] existed....What everyone was talking about is stockpiles produced after the end of the last Gulf War and I don't think there was a large-scale production program in the '90s," Kay said.<sup>241</sup>

In his now famous report, David Kay concluded that "Iraq did not have a large, ongoing, centrally controlled chemical weapons program after 1991. We have not found evidence to confirm pre-war reporting that Iraqi military units were prepared to use chemical weapons against Coalition forces."<sup>242</sup> Kay's conclusions were echoed by a report from

the Carnegie Endowment for International Peace and welcomed by UN chief inspector Hans Blix, who maintained that the U.S. had relied on flawed intelligence from the beginning.<sup>243</sup> The Survey Group had, in effect, validated the effectiveness of years of UN inspections and sanctions.

The only post-invasion evidence of chemical weapons stockpiling are two shells, found in May 2004, aimed at U.S. forces, and detonated with improvised explosive devices.<sup>244</sup> The first shell contained mustard gas and is thought to be leftover ordnance from Iraq's war with Iran in the 1980s.<sup>245</sup> The other shell, detonated before U.S. forces could disarm it, possessed trace amounts of the deadly nerve agent sarin also used in the Iraq-Iran war.<sup>246</sup>

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## L. CONVENTIONAL WEAPONS

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While the threat of weapons of mass destruction in Iraq appears to have been exaggerated (see pgs. 39-42), the Bush administration seems to have underestimated the post-invasion toll that conventional weapons would take on Coalition forces. In October 2003, Pentagon analysts concluded that "Iraqi guerrillas have an abundant supply of small arms and explosives that could allow them to maintain their pace of attacks indefinitely."<sup>247</sup> Weapons arsenals being stockpiled include mortars, shoulder-fired missiles, rocket-propelled grenades, improvised explosive devices, hand grenades, and small arms. Experts estimate that one million tons of ammunition are scattered around Iraq.<sup>248</sup> U.S. Brigadier General Robert Davis, commanding general and division engineer of the Pacific Ocean division with the U.S. Army Corps of Engineers, said that private civilian contractors destroyed more than 1.1 million kilograms (2.4 million pounds) of ammunition within a span of three weeks, and U.S. soldiers destroyed 1 million kilograms in six months.<sup>249</sup> During occupation, 169 civilian contractors from four separate companies were working to destroy ammunition.<sup>250</sup> The Coalition also launched weapons buyback programs in an attempt to lower the level of violence and attacks on troops.<sup>251</sup>

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Despite statements by the new head of the Iraq Survey Group that "the prospect of finding chemical weapons, biological weapons is close to nil at this point," the Pentagon and the White House have refused to back away from claims made before the invasion about the imminent danger posed by Iraq's alleged WMD program.<sup>252</sup> Secretary of State Powell, in contrast, has publicly admitted that some of the evidence about WMD programs in Iraq that he presented before the Security Council was inaccurate.<sup>253</sup>

Estimates suggest that the total cost for the Iraq Survey Group's work will reach \$1 billion by the end of the group's work, expected to be completed some time in 2004.<sup>254</sup> To put this cost in context, the UN's Special Commission on weapons inspection for

Iraq (UNSCOM) cost a total of \$25-30 million per year.<sup>255</sup> Kay's successor, former UN weapons inspector for Iraq Charles A. Duelfer, has said he is unsure how much longer the hunt for Iraqi WMD will take. On February 1, 2004, the Bush administration announced the formation of a bipartisan independent inquiry into potentially faulty intelligence used to justify the Iraq war and the failure to find weapons of mass destruction.<sup>256</sup>

Many nations, public officials, and experts have urged the U.S. to turn over the search for WMD in Iraq to the UN and International Atomic Energy Agency (IAEA).<sup>257</sup> The Bush administration has declined, despite testimony by Duelfer that his Survey Group members "do not have extensive experience in the kinds of investigative operations and analysis they are asked to undertake."<sup>258</sup> UNSC Resolution 1483 required the Security Council to revisit the issue of the UN's suspended weapons inspections in Iraq within a year of its enactment. UNSC Resolution 1546 does not directly address this issue, but does reaffirm the Security Council's intention to revisit the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and the IAEA's mandate in Iraq.<sup>259</sup>

## IV. Political Process

### Benchmarks to Measure Progress Going Forward

- ▶ **Representative Interim Governance:** Ensuring that the recently chosen interim National Council be allowed to assist in the election process and oversee the interim Iraqi government until the January 2005 elections
- ▶ **Elections:** Holding free and fair elections with UN assistance, with adequate security to ensure minimal voter intimidation and maximum voter turnout, to select members of a Transitional National Assembly (scheduled for no later than January 2005)
- ▶ **Constitution:** Drafting a permanent constitution and submitting this constitution for a national referendum as soon as practicable
- ▶ **Self-Rule:** Resolving the complex issues surrounding the post-occupation legal status of the 100 Coalition Provisional Authority (CPA) orders issued by CPA Administrator Bremer during occupation, as well as the post-occupation legal status of the Transitional Administrative Law (TAL)

### International Commitments and Obligations

Under UN Security Council Resolution 1483, the occupying powers and the UN Special Representative were required to work with the Iraqi people to form an interim Iraqi administration to serve "as a transitional administration ... until an internationally recognized, representative government" was established by the people of Iraq and assumed the responsibilities of the CPA.<sup>260</sup> UNSC Resolution 1511 further affirmed the "sovereignty and territorial integrity of Iraq," recognizing that the Iraqi Governing Council "embodies the sovereignty of the State of Iraq during the transitional period until an internationally recognized, representative government is established and assumes the responsibilities of the Authority [U.S. and U.K.]."<sup>261</sup> Finally, as occupying powers the U.S. and U.K. were obligated to abstain from changing Iraq's domestic laws wherever possible. According to the Hague Regulations of 1907, "the occupying authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."<sup>262</sup>

On June 28, 2004, the U.S.-led Coalition Provisional Authority officially handed over political power to the interim Iraqi government. The relatively unceremonious turnover to the Iraqi government took less than 20 minutes and came two days ahead of schedule; under UNSC Resolution 1546, June 30 had been the anticipated date of transfer.<sup>263</sup>

In the month prior to the transfer of power, U.S. and U.K. plans for post-occupation Iraq began to take shape. In a timely and orderly transition, the Iraqi Governing Council was dissolved and a new interim Iraqi government assumed power. The Security Council unanimously passed a new resolution (1546) that has reduced, if not eliminated, the ambiguity surrounding the interim Iraqi government's political and military authority.

Moving forward, Iraq's new government and the international community have numerous issues to overcome. First, Iraq's new government was effectively selected by the Governing Council, and is led by the well-known and relatively controversial politician, Iyad Allawi. This is contrary to the widely endorsed plan of UN Special Envoy Lakhdar Brahimi. UN Secretary General Annan sent Brahimi to Iraq at the Iraqi Governing Council's explicit request, to play a leading role in the appointment of non-partisan Iraqi professionals to the interim government. Once Brahimi arrived, however, he did not retain the "full control" over the selection process promised to him by U.S. officials, and was reportedly forced to accept the appointment of Iraqi politicians such as Allawi and Ghazi al-Yawar over lesser-known and more politically independent candidates.<sup>264</sup> Nonetheless, Brahimi did offer a mild endorsement of the final Iraqi interim government.<sup>265</sup> Ultimately, the effectiveness of the body, which includes prominent members of the CPA-appointed and widely distrusted Governing Council, will rest primarily upon its ability to make itself both palatable and authoritative in the eyes of the Iraqi people.<sup>266</sup>

Second, the new UN resolution failed to hammer out a formal accord, known as a status of forces agreement, on the degree of operational authority the interim Iraqi government will hold over the U.S.-led multinational security force remaining in Iraq. Although UNSC Resolution 1546 and its annexed letters affirm the U.S.-led multinational force and the interim Iraqi government's commitment to work in partnership and coordination on all security-related matters, a more concrete understanding would ensure clarity of command and harmonization.<sup>267</sup>

Leading Iraqi politicians and religious figures firmly believe that only an elected Iraqi government has the authority to sign a status of forces agreement, so the U.S.-led multinational force will likely wait until January 2005 to negotiate such an accord.<sup>268</sup> But in late June 2004, the Bush administration obtained post-occupation immunity from prosecution by Iraqi courts for all troops and U.S. government personnel stationed in Iraq. This includes immunity for killing Iraqis or destroying local property.<sup>269</sup> The administration did this by extending CPA Order 17, issued by Bremer at the beginning of occupation.<sup>270</sup> Order 17 grants all foreign personnel of the CPA immunity from "local criminal, civil and administrative jurisdiction and from any form of arrest or detention other than by persons acting on behalf of their parent states."<sup>271</sup> Before his departure on June 28, Bremer extended CPA Order 17 until Iraqi national elections are held.<sup>272</sup> However, this order, along with other CPA orders and the status of the TAL, lacks legal clarity following the end of occupation.

## Political Authorities during Occupation:

### *The Coalition Provisional Authority (CPA)*

The Coalition Provisional Authority (CPA) legally dissolved on June 28, 2004 when an internationally recognized interim government assumed political control of Iraq.<sup>273</sup> The CPA, created on June 15, 2003 by the U.S. government within the U.S. Department of Defense, served as Iraq's temporary government under Administrator Bremer. Under its founding order, the CPA was charged with keeping the mandate of UNSC Resolution 1483: restoring security and stability, establishing an environment for free elections, and facilitating reconstruction and economic recovery in Iraq.

Most post-conflict reconstruction in recent history has taken place under the auspices of the UN, with the U.S. Department of State managing all U.S. involvement. In Iraq, there was a dramatic departure from this precedent when the U.S. created the CPA to oversee the administration of Iraq; the CPA was managed and authorized by the U.S. Department of Defense.<sup>274</sup> The CPA employed a staff of 6,000 at its peak, including officials from the U.S. Department of Defense, U.S. Department of State, U.S. Agency for International Development and the U.S. Department of Treasury, as well as private contractors.<sup>275</sup> The CPA's center of operations was located in a barricaded section of Baghdad known as the Green Zone, and throughout its duration the authority had trouble winning over Iraqi public support. An opinion poll conducted for the CPA in late April 2004 (before the first reports of abuse of Iraqi detainees at the Abu Ghraib prison) reported that 80 percent of Iraqis lacked confidence in the Coalition Provisional Authority, and 82 percent disapproved of the CPA's performance in Iraq.<sup>276</sup>

### *The Iraqi Governing Council*

In July 2003 the CPA appointed the Iraqi Governing Council to serve as a transitional government body.<sup>277</sup> Given that more than half of these appointed members were Iraqi exiles and their decisions were subject to the guiding hand and veto of the CPA, the Iraqi Governing Council had to fight for legitimacy from the beginning.<sup>278</sup> The Council's authority included appointing and dismissing ministers, controlling the national budget, and participating in the planning and implementation of reconstruction projects; however, Administrator Bremer had final veto power over all of the Council's decisions.<sup>279</sup> The Council was also responsible for drafting Iraq's interim constitution (the Transitional Administrative Law, see p. 47). In late May 2004 the Council appointed member Iyad Allawi as the interim Prime Minister of Iraq. On June 1, the Governing Council voted to dissolve itself, after appointing its then-President, Sheik Ghazi al-Yawar, to serve as the President of Iraq's new interim government.



### *The United Nations (UN)*

Prior to March 2003, numerous United Nations (UN) agencies such as the World Food Program, the United Nations Development Program, the United Nations Office for Project Services, the United Nations High Commissioner for Refugees, and the United Nations Children's Fund were actively engaged in humanitarian efforts in Iraq. Much of the work of these and other UN agencies was focused on the Oil-for-Food Program (OFF Program).<sup>280</sup> Also, prior to the March 2003 invasion, the United Nations Monitoring, Inspection and Verification Commission (UNMOVIC) was engaged in weapons inspections to determine Saddam Hussein's compliance with disarmament obligations.<sup>281</sup>

Upon the commencement of Iraq's occupation in May 2003, UNSC Resolution 1483 "[r]esolved that the United Nations should play a vital role in humanitarian relief, the reconstruction of Iraq, and the restoration and establishment of national and local institutions for representative governance."<sup>282</sup> This resolution mandated the appointment of a Special Representative to the Secretary-General, and Kofi Annan subsequently asked Sergio Vieira de Mello to take a four-month leave of absence from his position as United Nations High Commissioner for Human Rights to serve as the Special Representative.<sup>283</sup> In August 2003, UNSC Resolution 1500 also created the United Nations Assistance Mission for Iraq (UNAMI), which commenced its operations on September 1, 2003.<sup>284</sup> Finally, UNSC Resolution 1511, passed in October 2003, specifically asked the UN to lend its expertise in the political transition and establishment of the electoral process.<sup>285</sup>

In March 2004, at the request of the Iraqi Governing Council (see Appendix I, p. 91 for more on the Governing Council) and the Bush administration, Lakhdar Brahimi, the special envoy of the Secretary-General, began a diplomatic mission to negotiate the means of returning political authority to the Iraqi people (for more information on Brahimi, see Appendix I, on p. 91).<sup>286</sup> On his fact-finding mission, Brahimi concluded that the earliest any credible, direct elections could be held was late 2004 or early 2005. On June 8, 2004, UNSC Resolution 1546 endorsed Iraq's political transition and a general outline for future electoral processes. In July 2004, Secretary-General Kofi Annan appointed Ashraf Jehangir Qazi as his Special Representative for Iraq.<sup>287</sup> Qazi, who served as Pakistan's Ambassador to the U.S. at the time of his appointment, arrived in Iraq with a small UN team in mid-August.<sup>288</sup>

The unanimous passage of UNSC Resolution 1546 gave the UN a significant mandate to help rebuild Iraq and prepare for the election of an Iraqi National Assembly.<sup>289</sup> Post-occupation, the UN Assistance Mission for Iraq (UNAMI) and the Special Representative of the Secretary-General will continue to advise the interim government, as well as the Iraqi Independent Electoral Commission (in charge of overseeing Iraq's electoral processes, see p. 53) and Transitional National Assembly, on the election process; encourage national dialogue on the drafting of a constitution; and promote human rights, national reconciliation, and judicial and legal reform.<sup>290</sup> UNAMI's mission was extended for an additional year on August 8, 2004.<sup>291</sup>

## Political Agreements During Occupation

The terms for transition to an interim Iraqi government were set out on November 15, 2003, when the Iraqi Governing Council and the CPA signed an agreement declaring that Iraq would regain independence on June 30, 2004.<sup>292</sup> This agreement also set out the terms for drafting a Transitional Administrative Law (TAL) to govern Iraq between June 30 and national elections.<sup>293</sup>

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### **M. ELEMENTS OF THE NOVEMBER 15, 2003 AGREEMENT<sup>294</sup>**

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- The system of government will be republican, federal, democratic and pluralistic
  - The Iraqi armed forces will fall under the civilian political leadership
  - Islam will be the official religion and will be considered a source of legislation; the law will guarantee the freedom of religious belief and practice
  - A National Assembly will be freely elected under a system in which all communities must be fairly represented, and women must hold a minimum of 25 percent of seats
  - The permanent constitution will be drafted by the National Assembly and put before the public in a referendum
  - The Kurdistan Regional Government will be recognized as an official regional government within a unified Iraq
- 

On March 5, 2004, after intense negotiations between rival Iraqi political and religious factions, the TAL was approved by the Iraqi Governing Council and the CPA as an interim constitution officially taking effect on June 30 and remaining in place until the Iraqi people vote to adopt a permanent constitution.<sup>295</sup> The TAL, based on U.S., international and Iraqi law, is intended to guarantee the rights of Iraqis and to delineate the interim government's duties and authorities. The TAL provides equal rights for all Iraqis, without regard to gender, sect, opinion, belief, nationality, religion or origin. It determines that Iraq is a single state with federal structures, establishes civilian control of Iraq's military and security services and creates an independent judiciary.

The TAL authorizes the multinational force in Iraq to continue to operate pursuant to the provisions of UNSC Resolution 1511, and any subsequent relevant United Nations Security Council resolutions (such as UNSC Resolution 1546), until an elected government concludes appropriate security agreements.<sup>296</sup> The TAL also calls for an Annex to describe the interim government in more detail, including its structure and authorities. The last act of the Governing Council before it dissolved itself on June 1 was to approve this Annex, which affirms that the interim Iraqi government will consist of a president, two deputy

presidents and a prime minister leading a Council of Ministers, an interim National Council (composed of Iraqis “who reflect Iraq’s diversity”), and a Judicial Authority.<sup>297</sup>

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## **N. HIGHLIGHTS: THE TAL’S BILL OF RIGHTS<sup>298</sup>**

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- Life, liberty and security of person
  - Equality before the law without regard to gender, sect, opinion, belief, nationality, religion, or origin
  - Freedom of expression
  - Freedom of thought, conscience, and religious belief and practice without coercion
  - Freedom from torture in all its forms, physical or mental
  - Freedom to peaceful assembly
  - Right of universal suffrage in free, open, fair, competitive, and periodic elections
  - Right to claim Iraqi nationality for those whose citizenship was withdrawn for political, religious, racial, or sectarian reasons
  - Right to fair, speedy and open trial
  - Presumption of innocence until proven guilty
  - Right to be notified of rights upon arrest and right to counsel
  - Right to privacy
  - No unlawful arrest or detention, and no detention by reason of political or religious beliefs
  - Security, education, healthcare and social security
  - No taxation without representation
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The TAL creates a general framework for nation-wide elections of a National Assembly by January 31, 2005, and for the National Assembly’s drafting of a permanent constitution no later than August 15, 2005. It further determines that after the permanent constitution has been drafted, put to a national referendum, and approved by a majority of Iraqis, it will replace the TAL as the law of the land. Direct national elections for a new permanent government will take place under the terms of this constitution no later than December 31, 2005.<sup>299</sup>

Under Article 61 of the TAL, two-thirds of eligible voters in three or more Iraq governorates can veto the Iraqi constitution during the national referendum.<sup>300</sup> This minor-

ity veto clause was intended, in part, to guarantee the Kurds an ability to retain their independence from central control in the new constitution.<sup>301</sup> The majority of Shiite Iraqi clerics, most notably Ayatollah Sistani, dispute the legitimacy of the TAL and refuse to recognize its legality in post-occupation Iraq. Sistani commented, “This law, which has been written by an unelected council under the occupation and its direct influence, restricts the national [body] due to be elected at the beginning of the new year to draft Iraq’s permanent constitution.”<sup>302</sup> Because of Shiite sensitivity about the TAL, UNSC resolution 1546 deliberately excludes any mention of it.<sup>303</sup> It is unclear whether the TAL will apply in Iraq after the January 2005 National Assembly elections, and therefore equally uncertain whether this minority veto will ultimately apply.<sup>304</sup> The two main Kurdish leaders, Massoud Barzani and Jalal Talabani, have said that the Kurds would “refrain from participating in the central government” if any attempt was made by the interim government to nullify all or part of the TAL.<sup>305</sup>

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## **O. IRAQ’S KURDISH NORTH**

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Following the 1991 Gulf War and prior to the March 2003 U.S. invasion of Iraq, Iraqi Kurds lived in a safe haven roughly the size of Switzerland in the country’s north. In 1991 the UN Security Council adopted Resolution 688, which determined that the human rights of Iraq’s Kurds must be protected. UNSC Resolution 688 also established a safe haven and “no-fly zone” above the 36th parallel.<sup>306</sup> This area of northern Iraq is commonly referred to as Kurdistan.

Kurdistan’s economy was sustained by 13 percent of Iraq’s oil revenues generated under the Oil-for-Food Program, which was set aside by the UN for the Kurds.<sup>307</sup> During occupation, Kurdistan received budgetary allocations from the Coalition Provisional Authority, and will continue to receive funds from the interim Iraqi government under the fiscal year 2004 budget.<sup>308</sup> Iraqi Kurds represent approximately 20 percent of the country’s population. Under the TAL, the Kurdistan Regional Government is recognized as the official government of the territories which were previously administered by this body before March 2003 (in the governorates of Dohuk, Arbil and Sulaimaniya).<sup>309</sup> This region is nonetheless part of Iraq, and subject to certain aspects of federal law, including the sharing of its natural resources (in Kirkuk and elsewhere) with the central government.<sup>310</sup>

Iraq’s Kurds are represented by two main political parties, the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK). These parties are led by Massoud Barzani and Jalal Talabani, respectively, who were both members of the Iraqi Governing Council. Both Kurdish groups are seeking to preserve, and where possible strengthen, the level of autonomy they have enjoyed since the 1991 Gulf War. Barzani and Talabani have so far been willing to work within the existing interim government structures to promote Kurdish aspirations for independence. Both parties have militias

whose troops number in the tens of thousands, and have agreed to the CPA-brokered militia demobilization and reintegration plan (see pgs. 32-33 for more on demobilization).

The Kurds were initially fearful that they might be excluded from UN Special Envoy Lakhdar Brahimi's planned caretaker government of apolitical professionals. However, the final interim Iraqi government appointed by the Governing Council, UN and CPA reflects broad Kurdish participation (see Appendix I, p. 91).

After the TAL was signed, UN Secretary-General Kofi Annan called for "inclusive national dialogue and genuine consensus-building" among the Iraqi people to achieve stability as Iraq works to regain its independence.<sup>311</sup> UN Security Council Resolution 1546, which transfers authority from the occupying powers to the interim Iraqi government, does not spell out the status of the TAL, nor does it address the legal status of all other occupation laws passed by the CPA now that the new Iraqi interim government has assumed political authority.<sup>312</sup>

## Selection of Interim Iraqi Government

In April 2004, Brahimi put forward a plan for the transition of power in Iraq, which called for the creation of an impartial, "caretaker" government to assume authority in the period between the end of occupation (June 28, 2004) and the election of an independent government (January 2005).<sup>313</sup> Brahimi's plan, widely supported by UNSC members, proposed that Iraq's interim government be chosen by the UN, in consultation with the U.S. occupation authority, the Iraqi Governing Council and other institutions. The U.S. allegedly played a large behind-the-scenes role in the selection process under the direction of Robert Blackwill, coordinator for strategic planning for the U.S. National Security Advisor and President Bush's unofficial envoy to Iraq since late 2003. Blackwill met with Iraqi Governing Council members as well as Brahimi to consult on the selection of candidates for Iraq's transitional government.<sup>314</sup>

According to Brahimi's initial strategy, this functional interim government would have been designed solely to keep the ministries running, without the authority to make any long-term political decisions. The interim government would be staffed by professionals selected by Brahimi, other UN officials, the CPA, the Iraqi Governing Council and a panel of Iraqi judges.<sup>315</sup> Its primary role: to organize elections and prepare for a National Conference of more than 1,000 members who would meet to discuss important political and reconstruction issues and elect an interim assembly, similar to the calling of an emergency *loya jirga* in Afghanistan.<sup>316</sup>

In May, Brahimi's original strategy for selecting an apolitical interim government

was altered when the UN and U.S. accepted the Iraqi Governing Council's appointments of Council member Dr. Iyad Allawi to serve as Iraq's interim prime minister and Council member Sheik Ghazi Ajil al-Yawar, a Sunni tribal leader, to the largely symbolic post of Iraq's interim president.<sup>317</sup>

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## P. KEY ASPECTS OF THE INTERIM IRAQI GOVERNMENT<sup>318</sup>

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- The Iraqi interim government consists of a President (ceremonial head of state), two Deputy Presidents and a Prime Minister
- The Prime Minister oversees the day-to-day administration of government and leads a Council of Ministers
- The Council of Ministers has the capacity, with the unanimous consent of the President, to issue orders or to decree with the force of law
- The chief duty of the new government is to "administer Iraq's affairs," a task which entails providing for the welfare and security of the Iraqi people, promoting economic development and preparing Iraq for the democratic election of a Transitional National Assembly to be held no later than January 31, 2005
- The convening of a national conference of at least 1,000 people in July 2004, to choose an interim National Council of 100 members (this took place in August due to security concerns)
- The interim National Council, as discussed in the TAL, will help oversee the government, hear public grievances and serve as an ombudsman. The interim National Council will also have the ability to veto orders or decrees from the Council of Ministers by a two-thirds majority vote
- The judicial branch includes an independent Federal Supreme Court, as set out in the TAL

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On June 1, 2004, Brahimi announced that Ibrahim Jaafari al-Eshaiker, a Shiite from the Dawa Party, and Rowsch Shaways, of the Kurdish Democratic Party, would be Iraq's two interim vice presidents, and interim Prime Minister Allawi announced the new members of Iraq's interim cabinet (see Appendix I on p. 91).<sup>319</sup> The interim Iraqi government, appointed by the Iraqi Governing Council and approved by the UN and U.S., has 33 cabinet members that include Sunnis, Shiites, Kurds, and Christians. The interim government is comprised of professionals, former militants, and former members of the Iraqi Governing Council. It includes six female ministers. Also on June 1, 2004, the Iraqi Governing Council voted to dissolve itself, and the new interim Iraqi government was sworn in, although this administration did not officially assume authority over the country until June 28.<sup>320</sup>

Ayatollah Ali al-Sistani, one of the most influential Shiite clerics in Iraq, expressed conditional support for the new arrangements, calling them a positive step forward despite the lack of “electoral legitimacy.”<sup>321</sup> Brahimi defended the process by which the interim government was ultimately selected, arguing that the body was a reflection of extremely difficult negotiations, with “hard but realistic compromises.”<sup>322</sup> Although Brahimi refused to discuss in detail the nature of these negotiations, he qualified his endorsement of the interim government by declaring that “it is only an elected government that can legitimately claim to represent the people of Iraq.”<sup>323</sup> He went on to warn, “There should be no illusion....The days and weeks ahead will severely test this new government and the solutions to Iraq’s current challenges will take years, not months to overcome.”<sup>324</sup>

## National Elections

The TAL, Iraq’s interim constitution, provides for a Transitional National Assembly to be elected no later than January 31, 2005. The Assembly will be a single legislative body with 275 elected members. The Assembly will establish a Transitional Government by electing a president who, along with two deputies, will form a “Presidency Council.”<sup>325</sup> This Council will appoint a prime minister and cabinet with approval from the Assembly. This Transitional Government has the responsibility for drafting a permanent constitution for Iraq that will lead to a constitutionally elected government by December 31, 2005.

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### Q. TIMELINE FOR IRAQI TRANSITION TO PERMANENT CONSTITUTION AND GOVERNMENT<sup>326</sup>

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<b>2004</b>	<b>March 8</b>	Transitional Administrative Law signed
	<b>June 1</b>	Election Commission established
	<b>June 28</b>	Transfer of power from CPA to Iraqi interim government
	<b>August</b>	National Conference selected interim National Council
<b>2005</b>	<b>January 31</b>	Elections for National Assembly must be held, and interim Iraqi government must dissolve
	<b>Early 2005</b>	Iraqi transitional government/National Assembly assume power
	<b>August 15</b>	National Assembly completes draft of permanent constitution
	<b>October 15</b>	National referendum for permanent constitution
	<b>December 15</b>	National elections for permanent Iraqi government completed
	<b>December 31</b>	Elected permanent government assumes power under new constitution

The director of the UN’s electoral assistance unit, Carina Perelli, has been in Baghdad since April 2004 managing a UN electoral team to help Iraq prepare for the January 2005 election.<sup>327</sup> In June 2004, Perelli announced the formation of Iraq’s Independent Electoral Commission, the autonomous body that will steer Iraq specifically towards the January election.<sup>328</sup> The Commission, made up of seven Iraqi citizens who will oversee the elections process, has ruled that political parties be required to disclose their financial support and that any party associated with a militia or in possession of its own armed force will be disqualified. Perelli stressed that a successful election process hinges on assuring the Iraqi people that the balloting process will be secret and that they will be safe from retribution or retaliation.<sup>329</sup>

The Commission’s seven members and its director general were chosen through an open process in which any Iraqi citizen could nominate a candidate for the UN team to consider.<sup>330</sup> This Commission will run the election process and certify each list of candidates, which could include at least 12, and not more than 275 candidates, for the 275-seat assembly.<sup>331</sup> Each candidate must collect signatures from a minimum of 500 eligible voters.<sup>332</sup>

Current instability has raised significant concerns about Iraq’s ability to prepare for and hold free and fair elections by January 2005.<sup>333</sup> In addition to ongoing violence, opportunities for voter intimidation and fraud are rife. Geographic boundaries reinforce ethnic divisions and give Shiite Arabs dominance in the South and the minority Sunni Arabs power in much of the country’s midsection, while Kurdish areas in the North are divided into zones under the control of the KDP and PUK.

Failure to provide effective security across the nation could also threaten election outcomes. Iraqi militias could play an important role in providing security, but their loyalty to various religious leaders and political parties could also make them a force for intimidation.<sup>334</sup> According to Joost R. Hiltermann, a Middle East expert at the International Crisis Group, voter intimidation and lack of adequate oversight could cause results to be “seriously skewed, even dangerously skewed... Cities like Baghdad, Karbala, and Mosul are prime cases where balloting may evidence gross disparities... render[ing] the election unfair.”<sup>335</sup>

Significant resources are being spent to encourage widespread participation in direct elections, and to limit fraud. Towards the end of occupation, the CPA paid \$6 million to Bell Pottinger, a British public relations firm, to launch a television campaign to persuade Iraqis that participating in democratic elections is in their best interest.<sup>336</sup> Additionally, the UN announced in June that it would likely use food ration cards issued under the now defunct Oil-for-Food Program (OFF Program) to compile voter rolls for January’s elections.<sup>337</sup> Under Saddam’s regime, all families were required to have a ration card to receive UN assistance. The UN electoral assistance team has been verifying the ration card system to ensure that all holders are alive and currently living in Iraq, and Perelli



reports that to date OFF Program databases have proven at least 95 percent accurate.<sup>338</sup> Other nongovernmental organizations such as the International Foundation for Election Systems (IFES), the National Democratic Institute for International Affairs and the International Republican Institute are working with local political parties in Iraq to prepare them to submit candidate lists and participate in the elections.<sup>339</sup>

## V. Reconstruction

### A. *Economic and Financial*

#### Benchmarks to Measure Progress Going Forward

- ▶ **Aid:** Fully disbursing donor pledges made at the October 2003 Madrid Donors Conference, and accelerated disbursement of these funds to ensure a more timely reconstruction of Iraq
- ▶ **Debt:** Achieving substantial debt reduction and a sustainable payment level
- ▶ **Transparent Finances:** Creating mechanisms for transparent and open management of the Development Fund for Iraq and/or any account which is created as a repository for Iraq's revenues during the interim period until the formation of a fully independent Iraqi government in late 2005
- ▶ **Contracting:** Implementing competitive bidding and transparent awarding of all contracts related to Iraqi reconstruction paid for with U.S. and Iraqi funds
- ▶ **Self-sufficiency:** Overcoming the oil production and refinement limitations that have required Iraq to import fuel since March 2003, by regaining self-sufficiency in fuel products
- ▶ **Economic Development:** Providing targeted financial support for burgeoning Iraqi enterprises
- ▶ **International Accountability:** Submitting the conclusions of the Oil-for-Food Program investigation (Volcker Commission Report) in a timely manner

#### International Commitments and Obligations

UNSC Resolutions 1483 and 1511 include specific mandates about handling Iraqi oil revenues, transferring Iraqi assets held outside the country, and meeting Iraq's humanitarian and economic needs. UNSC Resolution 1483 mandated that Iraqi oil revenues, held by the Development Fund for Iraq (DFI), be disbursed by the occupying powers "in consultation with the Iraqi interim administration ... in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq."<sup>340</sup> UNSC Resolution 1483 also declared that Iraq's oil and resource revenues would be immune from legal proceedings during occupation, and requested that member states immediately transfer all assets from the Saddam Hussein regime to the DFI.<sup>341</sup> Finally, UNSC Res-

olution 1483 requested that all member states assist the Iraqi people “in their efforts to reform their institutions and rebuild their country,” and to help meet “the humanitarian and other needs of the Iraqi people.”<sup>342</sup>

UNSC Resolution 1511 urged member states and international and regional organizations to “support the Iraq reconstruction effort...including through substantial pledges at the October 23-24, 2003 International Donors Conference in Madrid,” and called upon member states and concerned organizations to “help meet the needs of the Iraqi people by providing resources necessary for the rehabilitation and reconstruction of Iraq’s economic infrastructure.”<sup>343</sup>

## International Assistance

In October 2003, representatives from 73 countries and 20 international organizations gathered in Madrid to pledge funds for Iraq’s reconstruction.<sup>344</sup> The combined estimates of Iraq’s needs through 2007 (compiled by the World Bank, UN and CPA) total more than \$55 billion. These figures stand in stark contrast to the U.S. administration’s initial assessment of Iraq’s post-conflict reconstruction needs.<sup>345</sup> In Madrid, donors ultimately pledged a total of \$33 billion in loans and grants, the bulk of which was made up by the U.S.’s contribution.<sup>346</sup> However, these international pledges have been slow to materialize.

### R. ESTIMATED COST THROUGH 2007 OF RECONSTRUCTING IRAQ TO PRE-WAR STANDARDS

#### UN/World Bank Joint Needs Assessment for Iraq—until 2007 (in billions)

Local Administration and Civil Society	\$ .313 billion
Health, Education and Employment	\$7.19 billion
Infrastructure	\$24.2 billion
Agriculture, Water Resources	\$3.03 billion
Other	\$ .855 billion
Total	\$35.59 billion

### Coalition Provisional Authority estimates for areas not covered by UN/World Bank Assessment —until 2007

Security and police	\$5 billion
Oil	\$8 billion
Culture, Religious Affairs	\$1.54 billion
Other	\$4.9 billion
Total	\$19.44 billion
TOTAL Estimated Funding needed through 2007	\$55.02 billion

SOURCES: United Nations and World Bank<sup>347</sup>

The U.S. pledged \$20.3 billion in grants, which Congress later reduced to \$18.4 billion. The balance is made up of more than \$13 billion in aid and loans from other countries and international organizations.<sup>348</sup> The IMF has said it will provide about \$4.25 billion in loans over the next few years, while the World Bank estimates it will contribute \$3-\$5 billion in assistance.<sup>349</sup> Only since the June 28, 2004 transfer of power has Iraq become eligible to receive funds from the IMF or World Bank.<sup>350</sup>

### S. MAJOR DONOR AID PLEDGES TO IRAQ (Amounts in billions of U.S. dollars)\*

Country	Pledged at Madrid (October 2003)
United States:	\$20.3 billion
Japan:	\$5 billion
United Kingdom:	\$ .452 billion
European Commission	\$ .243 billion
Italy:	\$ .235 billion
Canada:	\$ .229 billion
Spain:	\$ .220 billion
Republic of Korea:	\$ .200 billion
Australia:	\$ .020 billion
World Bank:**	\$3 billion - \$5 billion in loans
IMF:**	\$2.5 billion - \$4.25 billion in loans

SOURCE: World Bank<sup>351</sup>

\*This Chart represents only major commitments; total pledges at Madrid exceeded \$33 billion.

\*\*The World Bank and IMF are forbidden by their own regulations to make loans to a country unless/until it has an internationally recognized government. Both institutions have indicated that Iraq meets this standard after June 28, 2004.

Donors have the option of either channeling their financial assistance to Iraq bilaterally or through the International Reconstruction Fund Facility for Iraq, which was created at the Madrid Conference. The Reconstruction Fund Facility, managed by the World Bank and the UN, was established to provide an alternative repository for aid for those donors who had concerns about giving to the U.S.-controlled Development Fund for Iraq (see p. 61 for more on the DFI).<sup>352</sup>

## T. INTERNATIONAL RECONSTRUCTION FUND FACILITY FOR IRAQ

*Amounts in Millions of U.S. Dollars (as of May 25, 2004)*

Country	Pledged Donation	Deposited Donation
Japan	\$490	\$351.80
European Community	\$209.63	\$9.19
United Kingdom	\$127.35	\$127.35
Canada	\$74.69	\$44.73
Spain	\$20	-
Australia	\$15.20	\$14.60
Italy	\$12.20	-
Norway	\$10.32	-
India	\$10	\$5
Korea	\$10	-
Kuwait	\$10	-
Qatar	\$10	\$2.50
Sweden	\$10	-
United States	\$10	\$10
Greece	\$7.20	-
Finland	\$6.20	-
Netherlands	\$6	-
Ireland	\$1.22	-
Iceland	\$1	\$1
TOTAL	\$1,041.01	\$566.17

SOURCE: CPA Inspector General, June 2004<sup>353</sup>

As of May 2004, the U.K., Japan, Canada and the EU had released only a small portion of the funds they pledged to the Reconstruction Fund Facility.<sup>354</sup> It is unclear whether sluggishness in releasing promised aid is a result of the security environment or the generally low rate of absorptive capacity in Iraq. Nations may also be hesitant to send money directly to Iraq with no significant on-the-ground presence of international organizations to monitor spending.<sup>355</sup>

### U.S. Funds

In October 2003, Congress passed an \$87.5 billion fiscal year 2004 emergency supplemental appropriation for ongoing military operations and reconstruction in Iraq and Afghanistan.<sup>356</sup> This funding came in addition to the \$74.7 billion fiscal year 2003 Iraq and Afghanistan emergency supplemental passed by Congress in March 2003.<sup>357</sup> Of the \$87.5 billion, \$18.4 billion was ultimately allocated for Iraq's reconstruction in numerous sectors, covering everything from infrastructure reconstruction to democracy promotion and private sector development (see chart, p. 59).

In May 2004, the Bush administration asked Congress for an additional \$25 billion for U.S. military and reconstruction operations in Iraq and Afghanistan.<sup>358</sup> The funds are intended for the first months of the federal budget year that begins October 1, 2004, but the request is only half of the \$50 billion that the administration has said it will need for 2005.<sup>359</sup> This request marks a reversal in policy for the administration, which had previously declared that it would not seek additional funds for Iraq and Afghanistan until 2005.<sup>360</sup>

## U. SPENDING OF \$18.4 BILLION U.S. APPROPRIATIONS FOR IRAQ'S RECONSTRUCTION

*(Amounts in Billions of U.S. Dollars)*

Sector:	Planned Spending	Actual Spending
	<i>(as of July 30, 2004)</i>	
Electricity	\$5.46 billion	\$1.11 billion
Water and Sanitation	\$4.24 billion	\$0
Security and Law Enforcement	\$3.2 billion	\$2.13 billion
Oil Infrastructure	\$1.7 billion	\$0.16 billion
Justice, public safety and civil society	\$1.48 billion	\$0.14 billion
Health Care	\$786 million	\$0
Transportation and telecommunications	\$500 million	\$0.04 billion

Democracy	\$.451 billion	\$.008 billion
Roads, bridges and construction	\$.368 billion	\$0
Education, refugees, human rights, and governance	\$.259 billion	\$.008 billion
Administrative Expenses	\$.213 billion	\$.010 billion
Private Sector Development	\$.183 billion	\$.016 billion
Total	\$18.4 billion	\$.4 billion

SOURCE: U.S. Department of Defense Working Papers, July 2004<sup>361</sup>

As of July 30, 2004, only \$400 million of the \$18.4 billion in reconstruction funds for Iraq allocated by Congress in 2003 had actually been spent (see chart, p. 59).<sup>362</sup> On June 28, the General Accounting Office published a report disclosing that as of April 2004, the U.S. government had signed contracts obligating \$8.2 billion in Iraqi reconstruction aid.<sup>363</sup> This money, assigned to projects but not yet spent, will eventually be disbursed towards rebuilding Iraq's electricity grid, restoring the flow of oil, and fixing Iraqi schools and hospitals.<sup>364</sup>

Towards the end of the CPA's tenure, controversy developed around its decision to redirect funds originally earmarked for programs meant to provide basic services for the Iraqi people.<sup>365</sup> By occupation's end, \$200 million were shifted in order to pay for CPA overhead from "democracy building, electricity, water, education, facilities protection, border enforcement and the Iraqi Armed Forces."<sup>366</sup> The State Department is anticipating a \$40-\$60 million shortfall in embassy operating funds this year, and is currently relying on the 2004 aid law which allows it to divert into overhead as much as \$1.84 billion (10 percent of the \$18.4 billion) in Iraqi reconstruction funds.<sup>367</sup>

In the 2004 Iraq supplemental bill, Congress created a CPA Inspector General (CPA-IG), charged with monitoring the allocation and disbursement of U.S. funds through the Program Management Office (the Pentagon agency created to disburse the fiscal year 2004 \$18.4 billion appropriation) and other U.S. agencies working in Iraq (for more on the PMO, see p. 67).<sup>368</sup> In January 2004, after several months of delay, U.S. Secretary of Defense Donald Rumsfeld appointed attorney Stuart Bowen to the new position. The office submitted the first of its quarterly reports to Congress on March 30, 2004.<sup>369</sup> While heavily focused on the office's start-up capacity, overall mission and agency goals, the report did provide some of the most detailed and rigorous accounting of the Development Fund for Iraq since the CPA's inception.<sup>370</sup>

The CPA-IG submitted its second quarterly report to Congress on July 30th, summarizing the results of 11 audit reports, 69 criminal investigations, and numerous other initiatives.<sup>371</sup> Together, the audits point to systemic problems of record-keeping and weak contract monitoring during the CPA's tenure. The worst breaches tended to be in the management of Iraqi funds. The CPA-IG found that "the CPA created policies and regulations which, although well-intended, did not establish effective control and accountability over \$600 million in DFI funds held as cash available for disbursement."<sup>372</sup> Overall, the CPA-IG found that with regard to DFI cash assets, proper cash accountability by the CPA was not maintained, physical security was inadequate, fund agent records were incomplete, and fund managers' responsibilities were not properly assigned.<sup>373</sup> The report also noted the lack of a mechanism under the CPA to track international assistance to Iraq, and ensure that projects were not overlapping with reconstruction work funded by U.S. aid and/or Iraqi money.<sup>374</sup>

## Contracting

While private businesses and workers from many Coalition-member countries have participated in Iraq's reconstruction, the majority of reconstruction business has gone to U.S. firms. By far the most active and well-known company is Halliburton Co., which has received more than \$4 billion so far for reconstruction projects in Iraq.<sup>375</sup> Halliburton, a Texas-based firm once led by Vice President Dick Cheney, has been the focus of controversy since the company received a no-bid contract, potentially worth up to \$7 billion, five days after the end of major combat operations.<sup>376</sup> Other U.S. companies with significant reconstruction contracts in Iraq include Bechtel, Parsons Corp and Stanley, Baker, Hill L.L.C.(see box, pgs. 62-63).

Under a December 2003 directive by U.S. Deputy Defense Secretary Paul Wolfowitz, competition for prime contracts in the reconstruction of Iraq was limited to companies from "the United States, Iraq, Coalition partners and force contributing nations."<sup>377</sup> This stance was slightly softened in January when a White House spokesman, noting that "circumstances can change," suggested that other countries could be added to the list of eligible contractors if they found ways to assist reconstruction efforts.<sup>378</sup> Officials in numerous non-Coalition countries rejected these conditions for participation. Despite this tension, several non-force contributing nations, specifically France and Germany, have succeeded in winning some large reconstruction sub-contracts.<sup>379</sup> Of the 260 companies that have signed contracts funded by U.S. reconstruction aid, more than half (140) are identified as Iraqi-owned firms.<sup>380</sup> However, all 140 firms are sub-contractors, rather than primary contractors, and the total value of contracts awarded to Iraqi firms is uncertain.<sup>381</sup>

Some members of Congress have accused the Bush administration of rewarding its friends and major contributors with lucrative contracts. Administration officials deny any favoritism.<sup>382</sup> Bipartisan congressional concerns about U.S. contracting policies



resulted in limitations on sole-source contracting in the 2004 Iraq supplemental appropriation.<sup>383</sup> According to a June 2004 General Accounting Office (GAO) report, the U.S. is spending 15 times more money in Iraq on private contractors than was spent in post-conflict Bosnia, but only twice as many contracting and acquisition experts are overseeing Iraq contracts.<sup>384</sup>

In a June 2004 report reviewing 25 reconstruction contracts, the GAO found that while Pentagon and USAID officials met legal guidelines in awarding multibillion dollar no-bid contracts for Iraq's reconstruction, the government often appeared to violate the law when it ordered new work under existing contracts relating to Iraq.<sup>385</sup>

## V. SUMMARY OF MAIN U.S. PRIME CONTRACTS (\$US)

Company	Amount of Contract <i>(All numbers as of August 2004)</i>	Contract Purpose and Awarding Department
<b>Bechtel Group Inc.</b>	\$2,829,833,859	Engineering procurement and construction service contract supporting the Iraq Infrastructure Reconstruction Program and a Capital Construction contract (USAID, April 2003/January 2004, respectively)
<b>Fluor Corp.</b>	Contract worth up to \$500 million Contract worth up to \$600 million \$98.6 million \$56 million	Two contracts for the rehabilitation and construction of water treatment plans and sewage facilities (Department of Defense (DoD), March 2003), and two contracts to repair electrical infrastructure and operations in central and southern Iraq (DoD, February 2004)
<b>International American Products Inc.</b>	\$508 million	Rebuild Iraq's electrical system, including equipment, operations, maintenance, and training Iraqi Ministry of Electricity personnel (United States Army Corps of Engineers or "USACE," September 2003)
<b>Kellogg, Brown &amp; Root (a subsidiary of Halliburton)</b>	\$4.35 billion	First and second phase of repair and reconstruction of Iraq's southern oil fields (USACE, March 2003/January 2004), and a LOGCAP (Logistics Civil Augmentation Program) contract to provide supplies and services to the military, such as meals and laundry

**Parsons Corp.** \$2.3 billion

A field support contract for the U.S. military's Central Command (2003) and a contract to rehabilitate and repair Iraq's oil infrastructure system, including: repair of power generation facilities, electrical grids, municipal water systems and sewage systems, rebuilding public buildings, hospitals and housing, and renovating the Taj military base (DoD, August 2003/January 2004/ March 2004, respectively)

**Perini Corporation**

Contract worth up to \$500 million  
Contract worth up to \$500 million

A design and build construction contract for electrical transmission, distribution, communications, and a controls work contract associated with the Iraq Infrastructure Reconstruction Program in central and southern Iraq (DoD, March 2004)

**Research Triangle Institute**

Contract worth up to \$466 million

Strengthening management skills and capacity of local administrations and civic institutions to improve delivery of essential municipal services such as water, health, public sanitation and economic governance (USAID, March 2003)

**Stanley Baker Hill, L.L.C.**

\$1.2 billion

Construction management, oversight and engineering services to the U.S. Army Corps of Engineers (DoD, March 2004)

**Washington Group International**

Contract worth up to \$500 million  
Contract worth up to \$600 million (joint venture with Black & Veatch)

A field support contract for the U.S. military's Central Command (2003) and a contract for electrical transmission and operations work in northern Iraq; water resources infrastructure improvements; and rebuilding a hospital and administrative facilities in Baghdad, as well as a joint venture with Black & Veatch for work on Iraq's public works sector (DoD, March 2004)

SOURCE: "Windfalls of War," Center for Public Integrity<sup>386</sup>

### *Investigations*

Most of the contracting controversy during occupation, specifically in terms of legal action, relates to Pentagon contracts awarded to Halliburton and its subsidiary, Kellogg, Brown & Root (KBR). Currently, investigations are under way with respect to allegations in three areas: meal overcharging, fuel overcharging and kickbacks.

Halliburton is accused of overcharging the Pentagon millions of dollars for approximately 42,000 meals when only 14,000 were served. In a routine audit, Pentagon auditors found \$27.4 million in overcharges at five dining facilities. Halliburton has agreed to repay these charges, but has admitted no wrongdoing. These overcharges have prompted the Pentagon to review Halliburton's operations at 53 other dining facilities in Kuwait and Iraq.<sup>387</sup> In March 2004, the Defense Contracting Accounting Agency found that Halliburton subsidiary KBR had "significantly and systematically" violated US federal contracting rules by providing faulty information about its own costs.<sup>388</sup> In June 2004, the General Accounting Office accused KBR of charging the U.S. military 40 percent more for meals served to troops in Kuwait than the contract should have cost.<sup>389</sup>

In December 2003, the Defense Contracting Accounting Agency found that Halliburton and a Kuwait sub-contractor, Altanmia, had overcharged the U.S. government by at least \$61 million for fuel purchased through September 2003.<sup>390</sup> Documents from the U.S. Army Corps of Engineers (USACE) show that Halliburton was charging \$2.64 per gallon to transport gasoline into Iraq, while Iraq's state oil company and the Pentagon's Defense Energy Support Center were transporting gasoline from Kuwait to Iraq for less than half of Halliburton's price. The case has been transferred to the Pentagon Inspector General's office for further investigation.<sup>391</sup>

In January 2004, Halliburton admitted that two of its KBR employees accepted \$6.3 million in kickbacks from a Kuwaiti company in return for providing army supply sub-contracts to the unnamed firm. Halliburton repaid the \$6.3 million to the Army Materiel Command in January 2004 and fired the employees involved.<sup>392</sup>

Numerous other contractors hired during occupation have been investigated by U.S. government agencies, the International Advisory and Monitoring Board (the international body tasked with overseeing Iraq's finances, known as the "IAMB," see p. 67) and/or foreign governments.<sup>393</sup> In November 2003, the Pentagon launched an investigation into two CPA officials and the then Iraqi minister of communications, who were accused of taking bribes during the awarding of lucrative licenses to build and operate mobile phone networks in Iraq.<sup>394</sup> This investigation led to further allegations that John A. Shaw, the deputy undersecretary for international technology security at the U.S. Department of Defense, sought to influence contract language and award a noncompetitive bid potentially worth hundreds of millions of dollars to benefit a mobile phone consortium that included friends and colleagues.<sup>395</sup>

In May 2004, the U.S. Army began investigating whether a contract renewed with Titan Corporation to provide Arabic linguists to units in Iraq was properly awarded, given numerous competing bids submitted by Northrop Grumman, L3 Communications and Computer Sciences Corp.<sup>396</sup> The IAMB is considering conducting special audits of several contracts awarded under the CPA, and the GAO continues to investigate all aspects of U.S. procurement practices related to Iraq's reconstruction in regular reports to Congress.<sup>397</sup>

### *Audits*

During occupation, the U.S. Department of Defense and the UN Security Council established two main mechanisms to oversee expenditure of Iraq's revenues: the CPA Program Review Board and the IAMB. The Program Review Board, a U.S.-dominated body, managed all of Iraq's revenues during occupation, which were held by the Development Fund for Iraq (DFI).<sup>398</sup> Of the billions of dollars appropriated for Iraq by the world community, those expenditures managed by the Program Review Board were the least scrutinized during occupation.<sup>399</sup> The IAMB is in the process of producing a series of retrospective audits on the Program Review Board's management of the DFI, and CPA financial practices more generally, during the occupation.

The first official IAMB audit report was published in July 2004.<sup>400</sup> This report, based on work done by the U.S. auditing firm KPMG, covers oil export sales and the DFI operations through December 31, 2003.<sup>401</sup> KPMG, and later the IAMB, expressed several concerns over the control and use of Iraqi oil assets during this period.<sup>402</sup> These concerns, which KPMG repeatedly raised with the CPA according to the Board, include the absence of oil metering, the use of barter transactions for certain oil sales, the use of noncompetitive bidding procedures for some contracts and the CPA's refusal to transmit the results of an internal review of controls within the Iraqi Ministry of Oil.<sup>403</sup>

While acknowledging the difficult post-conflict environment in which all parties were working, the KPMG report notes weaknesses in controls over oil extraction that allowed smuggling to take place in the months following the March 2003 conflict. The CPA believes that unknown quantities of petroleum and petroleum products were illegally exported from Iraq during occupation as well, bypassing the legal mechanisms for marketing these exports.<sup>404</sup> The KPMG audit also identified management and control weaknesses at the CPA, which included a lack of clearly defined roles and responsibilities, high turnover of CPA personnel, inadequate accounting systems, the inconsistent application of agreed-upon contracting procedures, and in certain instances, non-adherence to the Program Review Board's controls over spending allocations.<sup>405</sup>

The IAMB is considering whether further special audits or investigations are necessary, in addition to the special audit already underway on sole-sourced contracts awarded by the CPA which utilized Iraqi funds.<sup>406</sup>

## Iraq's Economic Conditions

### *Gross Domestic Product (GDP)*

In 2004, Iraq's GDP is expected to grow by about 30 percent to \$40 billion, primarily due to the influx of international reconstruction aid.<sup>407</sup> If current trends in oil pricing and production continue, Iraq's oil sector will drive the economy, with exports – expected to generate \$15-\$20 billion in 2004 – accounting for more than 98 percent of the projected gross revenues.<sup>408</sup> According to the Congressional Budget Office, Iraq's GDP will total between \$44 billion and \$89 billion for 2005-2007, although the most likely scenario is a GDP of \$69 billion, or \$2,650 per capita.<sup>409</sup> These numbers vary due to fluctuations in world oil prices. According to the 2004 budget drafted by the Governing Council and the CPA, however, Iraq's GDP per capita currently hovers at \$1,000 per person, about the same as in North Korea and Mozambique.<sup>410</sup>

### *Inflation*

According to Iraq's interim Minister of Planning, Mehdi Hafez, Iraq's inflation rate dropped by about one-half mid-way through occupation, from 50 percent in December 2003 to approximately 28 percent in March 2004.<sup>411</sup> As of May 2004, consumer prices were also down by approximately 1.2 percent from the previous month, according to the U.S. Department of Defense (DoD). The DoD also contends that as of June 2004, the new Iraqi dinar had been stable for over four months at approximately 1,460 dinars per dollar.<sup>412</sup>

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## W. MANAGEMENT OF IRAQ'S FINANCES DURING OCCUPATION

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### **The Development Fund for Iraq**

The Development Fund for Iraq (DFI) was created by UNSC Resolution 1483 as the temporary repository for all Iraqi revenue during the period of U.S./U.K. occupation. Over its one-year lifespan, the DFI's main sources were oil sale proceeds, repatriated Iraqi assets and leftover UN Oil-for-Food Program funds.<sup>413</sup> The DFI received 95 percent of the proceeds from the sale of Iraqi oil and natural gas, with 5 percent going to the UN's Gulf War Compensation Fund.<sup>414</sup> The Fund also received transferred financial assets from overseas that were removed from Iraq by Saddam Hussein, his family members and other officials during his regime (approximately \$927 million had been transferred to the Fund as of June 30, 2004).<sup>415</sup> Despite more than \$23 billion in Iraqi funds appropriated by the Program Review Board (the spending board in charge of disbursing Iraqi funds), the agency generally operated free from independent oversight until the International Advisory and Monitoring Board (IAMB) produced its first report in July, 2004.<sup>416</sup> In a few notable cases Pentagon officials have reviewed appropriations.<sup>417</sup> In December 2003, for example, the Pentagon investigated charges that Halliburton was overcharging for fuel bought from a Kuwaiti company (see p. 64). Under occupation, more than \$725 million was obligated from the DFI to pay for Halliburton's fuel imports at allegedly inflated prices.<sup>418</sup>

**Program Review Board:** The Program Review Board was established by the CPA to recommend expenditures directly to Administrator Bremer. After Bremer approved the Board's decisions, funds were disbursed to the Ministry of Finance, which was then responsible for distributing money to all other ministries.<sup>419</sup> The DFI was turned over to the interim Iraqi government (per UNSC Resolution 1546) with the transfer of power on June 28. All Iraqi revenues are now under Iraqi control; however, the International Advisory and Monitoring Board (IAMB) will continue to monitor Iraqi management of DFI revenues until national elections are held in January 2005. A new Iraqi voting member has been designated by the current interim Iraqi government to serve on the IAMB until then.<sup>420</sup>

**International Advisory and Monitoring Board:** The IAMB was established in May 2003 by UNSC Resolution 1483, when the U.S. and U.K. were recognized as the occupying powers of Iraq.<sup>421</sup> The Advisory Board has a mandate to audit and monitor the management of Iraq's revenues held by the DFI. The Board only began operations in December 2003, creating frustration among the UN officials and Security Council member states who did not join the Coalition. The IAMB published its first audit report in July 2004 (see p. 65 for details of IAMB audit).

### **Program Management Office**

The Coalition Provisional Authority Program Management Office, a division of the Department of Defense, was established in December 2003 to coordinate the spending of the \$18.4 billion in reconstruction funding appropriated by Congress for Iraq in 2003. During occupation, this office, led by retired U.S. Navy Rear Admiral David J. Nash, was charged with distributing the \$18.4 billion Iraq reconstruction appropriation; \$12.6 billion of this money has been designated for construction-based projects

in a vast range of sectors, and the remaining \$5.8 billion has been designated for providing equipment, materials and supplies in support of infrastructure reconstruction. Post-occupation, the Program Management Office has been renamed the Project and Contracting Office, and will coordinate spending with the U.S. embassy in Baghdad.

### **International Reconstruction Fund Facility For Iraq**

The International Reconstruction Fund Facility for Iraq (IRFFI) was established at the October 2003 Madrid Donors Conference. It is a multilateral mechanism for international donors to contribute to Iraq's reconstruction and a byproduct of dissatisfaction among many nations about the U.S. system of handing out private contracts and its management of DFI revenues. The facility includes two funds, one managed by the World Bank that focuses on technical assistance, infrastructure support and feasibility studies, and another managed by the United Nations Development Program to focus on quick impact projects and transition activities.<sup>422</sup>

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### *Iraq's Debt*

In a May 2004 report prepared for Paris Club creditors, the IMF estimated that Iraq owes Paris Club member countries \$42 billion.<sup>423</sup> Iraq's major Paris Club creditors include Japan (\$4.1 billion), France (\$2.9 billion), Germany (\$2.4 billion), the U.S. (\$2.2 billion) and the U.K. (\$900 million).<sup>424</sup> Iraq also owes Russia approximately \$9 billion.<sup>425</sup>

The IMF's *Iraq Debt Sustainability Analysis* estimates Iraq's total foreign debt at around \$121 billion, excluding an estimated \$30 billion in unpaid Gulf War reparations and \$84 billion in unresolved claims from more than a dozen nations that Iraq may ultimately be forced to pay.<sup>426</sup> Non-Paris Club debt to official bilateral creditors is said to total around \$64 billion, and private debt, approximately \$15 billion.<sup>427</sup> An IMF spokesman said the Fund was not making the Iraq debt report public because it contained confidential information supplied by creditor nations.<sup>428</sup>

According to the Middle East Economic Survey, the IMF's debt analysis calls for forgiveness of at least 80 percent of Iraq's overall external foreign debt, if the country is to be able to sustain debt payments going forward.<sup>429</sup>

In December 2003, President Bush named James Baker as his personal envoy to reduce Iraq's foreign debt. Baker's subsequent tour of European and Asian capitals won individual concessions from numerous Paris Club creditors to reduce Iraq's debt by an average of about one-half.<sup>430</sup> At the G-8 Sea Island summit in June 2004, France publicly stated that it would consider up to a 50 percent reduction of Iraq's debt to the country.<sup>431</sup> World Bank President James Wolfensohn has stated that for Iraq to have a good chance of economic revival, the U.S. and other Paris Club nations must forgive at least two-thirds of Iraq's debt.<sup>432</sup> U.S. Treasury officials have agreed that "substantial debt reduction is needed...well over half," but have publicly declined to say how much of Iraq's

debt the U.S. intends to forgive.<sup>433</sup> A U.S. State Department letter to Congress does declare, however, that the U.S. intends to deduct the budget cost of canceling any debt from the \$18.4 billion appropriation for Iraq's reconstruction.<sup>434</sup>

UN Special Representative Lakhdar Brahimi and Former Administrator of the Office of Reconstruction and Humanitarian Assistance Lieutenant Jay Garner are among numerous high profile officials calling for 100 percent of Saddam's debts to be forgiven.<sup>435</sup> Member states of the Organization of the Islamic Conference also called for full cancellation of Iraq's debt at a June 2004 meeting in Istanbul.<sup>436</sup> In a July 2004 speech, Iraq's Ambassador to the U.S., Rend al-Rahim, remarked, "So far, we do not have any serious pledges for the reduction or extinction of Iraqi debt... There are some countries who really want their pound of flesh."<sup>437</sup>

Exotix Ltd., a London-based brokerage for emerging-country debt, estimates that Iraq will begin debt service by paying off only interest for the first four or five years at \$2.25 billion annually and then adding payments on the principal, potentially bringing Iraq's annual debt service to \$5 billion dollars by 2010.<sup>438</sup> In mid-July 2004, Iraq sold its first bonds since Saddam Hussein's removal, raising approximately \$103 million from domestic banks.<sup>439</sup> The government, which plans to hold bi-monthly auctions to raise as much as \$1.2 billion by year-end, is selling bonds to help pay local banks an estimated \$3 billion of debt dating back to Saddam's rule, and to reduce dependence on international loans and oil revenues.<sup>440</sup>

### *Repatriating Iraq's Assets*

In March 2003, U.S. Treasury Secretary John Snow declared, "We are directing a worldwide hunt for the blood money that Hussein and his cronies have stolen from the Iraqi people."<sup>441</sup> UNSC Resolution 1483 directed that all UN member states transfer the frozen assets of the former Iraqi regime to the Development Fund for Iraq. The General Accounting Office estimates that from 1997-2002, Saddam Hussein's regime acquired \$10.1 billion in illegal revenues related to the Oil-for-Food Program—\$5.7 billion in oil smuggled out of Iraq, and \$4.4 billion in illicit surcharges on oil sales and after-sales charges on suppliers.<sup>442</sup> John Fawcett, a financial investigator who co-wrote a study last year on sources of Saddam Hussein's revenue, puts Saddam's missing fortune at somewhere between \$10 and \$20 billion.<sup>443</sup>

Also in March 2003, the U.S. Secretary of Treasury asked the international community to identify and freeze all assets of the former Iraqi regime. Inside Iraq, U.S.-led Coalition forces seized approximately \$926 million of the regime's assets.<sup>444</sup> The GAO reports that the international community has frozen a total of approximately \$3.7 billion of Iraqi regime assets in compliance with U.N. Security Council resolutions.<sup>445</sup> Of this \$3.7 billion in Saddam's assets, approximately \$2.3 billion was frozen in 1991. The remaining \$1.4 billion has been frozen since UNSC Resolution 1483 was adopted in 2003.<sup>446</sup>



As of June 2004, according to the CPA Inspector General, more than 10 countries and the Bank for International Settlements had actually transferred approximately \$927 million to the DFI.<sup>447</sup> The GAO reports that otherwise, “little progress has been made in identifying and freezing additional Iraqi assets that remain hidden.” The U.S. Departments of Treasury and State have also engaged in diplomatic efforts to recover these assets for Iraq.<sup>448</sup> For example, as of May 2004, the State Department has sent more than 400 cables to other countries requesting that they transfer funds to the DFI in Iraq.<sup>449</sup> Treasury and State officials have stated that the bulk of remaining frozen Iraqi assets are being held by financial institutions in Iraq’s neighboring countries and in Europe.<sup>450</sup>

There are three main barriers to Iraq’s attempts to reclaim assets from abroad. Firstly, no central bank wants to hand over millions or even billions of dollars in hard cash in one lump sum. Second, the UN and the U.S. Treasury encountered great difficulty monitoring and tracing the location of Saddam Hussein’s assets during his rule. Third, the former regime was deeply in debt to many countries, and those countries dispute the obligation to return assets which they feel are their due. The situation was further complicated during occupation by the lack of an internationally recognized, autonomous Iraqi government to legally and formally negotiate these issues.

#### *Expenditures of Iraqi Funds*

Total cash inflow to the DFI during occupation, including transferred Oil-for-Food money and frozen assets, was more than \$23 billion.<sup>451</sup> More than \$11 billion of this money was Iraqi oil revenue from export sales during occupation.<sup>452</sup> The DFI account at the New York Federal Reserve Bank has also earned \$24 million in interest.<sup>453</sup>

By June, 2004, the CPA had appropriated approximately \$20 billion in DFI funds, and actually spent just under \$12 billion.<sup>454</sup> During occupation, DFI revenues were used to pay for a wide range of expenses, including Iraqi ministry budgets, fuel, police training, youth centers and civilian compensation for victims of U.S.-led Coalition military operations.<sup>455</sup> The CPA has projected that the Fund will receive \$14.5 billion in additional Iraqi oil export revenues by the end of fiscal year 2004.<sup>456</sup>

Post-occupation, the DFI has been turned over to the interim Iraqi government, and will remain under the oversight of the International Advisory and Monitoring Board until January 2005.<sup>457</sup>

#### *Iraqi Budget*

For the years 2004 and beyond, proposed expenditures of DFI funds—including payment of some prior government obligations—essentially match the anticipated revenues generated by oil and some other minor income sources (such as Iraq’s nascent tax system).<sup>458</sup> The Iraqi budget for fiscal year 2004 is just under \$30 billion, while the budget projects that the country will earn only \$19.9 billion in revenues from oil, taxes and other sources,

meaning a deficit of approximately \$10 billion.<sup>459</sup> But the volatility of oil prices and Iraq’s fiscal dependency on the sale of oil (oil revenues account for 98 percent of Iraq’s 2004 budget) could quickly change earnings and investments (see p. 73 for more on Iraq’s oil sector allocation).<sup>460</sup>

### **X. TOTAL PROJECTED EXPENDITURES IN IRAQ’S FISCAL YEAR 2004 BUDGET**

<b>Total Expenditures</b>	<b>\$ billions (U.S. Dollars)</b>
Total Staff Expenditures	3,879
Total Operating Expenditures	2,961
Total Ministry Capital Projects	3,797
Total Transferred Expenditures	15,882
Total Foreign Obligations	2,172
Total Salaries and Retirement Rewards	1,195
<b>TOTAL EXPENDITURES</b>	<b>29,889 billion</b>

SOURCE: White House Office of Management and Budget, July 2004<sup>461</sup>

In May 2004, the CPA Program Review Board approved the expenditure of nearly \$2 billion dollars in Iraqi funds for reconstruction projects in 2004. This money, which will come out of the DFI, will in many instances go toward sectors for which Congress has already allocated U.S. tax dollars. This includes \$500 million earmarked for Iraqi security forces, although Congress allocated \$3.2 billion for the same purpose, \$315 million for the electricity sector despite a \$5.5 billion U.S. appropriation for the same sector, and \$460 million, on top of the \$1.7 billion allocated by Congress, to Iraq’s oil industry.<sup>462</sup>

It is unclear why these allocations were not made when the 2004 Iraqi budget was originally adopted, or when it was subsequently revised in March 2004. It is also unclear why the CPA appeared to be rushing to commit Iraqi oil funds instead of waiting for the interim government to make these decisions when it assumed power.<sup>463</sup> UNSC Resolution 1546 grants the interim Iraqi government control over the DFI, but requires it to satisfy all outstanding obligations made against the DFI prior to the transfer of power, leaving the new government with no choice but to honor the Program Review Board’s questionable expenditures.<sup>464</sup> One reason for the rush of CPA allocations may be that post-occupation, the U.S. Government has the option to retain management control over all contracts that were funded by the DFI prior to June 28, 2004.<sup>465</sup>

## Iraq's Oil Industry

### *Oil Production during Occupation*

Iraq's oil industry is the key to the country's economic growth and output. Most export oil comes from the country's two largest active fields: Rumaila in the South and Kirkuk in the North.<sup>466</sup> At its height in 1979, Iraq's oil industry was producing 3.7 million barrels per day (bpd), and was producing 3.5 million bpd in July 1990, just prior to the first Gulf War.<sup>467</sup> In the months immediately following the end of major combat operations in March 2003, oil production hovered around 500,000 bpd, moving sharply up to a peak in April 2004 of 2.56 million bpd before tumbling backwards during the final months of occupation to a weekly average of 1.815 million bpd.<sup>468</sup> The U.S. administration had hoped that Iraq's post-conflict oil production would generate significant revenues capable of financing a large chunk of the country's reconstruction.<sup>469</sup> Iraq's oil production was slow to pick up during occupation, and earned only a fraction of the revenues that U.S. authorities had anticipated.<sup>470</sup>

### Y. CRUDE OIL PRODUCTION DURING OCCUPATION [IN MILLIONS OF BARRELS PER DAY (BPD)]

<b>Pre-Invasion capacity</b>	2.8-3.0 million bpd <sup>471</sup>
<b>Eve of invasion (March 2003)</b>	2.50 million bpd <sup>472</sup>
<b>Peak during occupation (April 2004)</b>	2.56 million bpd <sup>473</sup>
<b>Output at end of June 2004</b>	1.8 million bpd <sup>474</sup>
<b>Goal by End of 2004</b>	3 million bpd <sup>475</sup>

SOURCES: U.S. Energy Information Administration, Brookings Institution: Iraq Index and U.S. Defense Department Working Papers

Production to date has been hampered by repeated bombings and sabotage of Iraq's pipelines and facilities, mostly along the vital Kirkuk-Ceyhan pipeline in the country's northern region. For example, on June 15, two separate attacks of sabotage on the main pipelines from the northern Kirkuk and southern Basra fields cut nearly all of Iraq's oil exports and cost the country an estimated \$60 million a day in lost revenues.<sup>476</sup>

The Oil Ministry's stated goal—highly optimistic given Iraq's current capacities, security crisis and the massive investment required—is to reach 3 million bpd by the end of 2004, and 5 million bpd by 2005.<sup>477</sup> The Middle East Economic Survey estimates that Iraq could reach production capacity of 4.2 million bpd within three years at a cost of \$3.5

billion.<sup>478</sup> Alternately, Cambridge Energy Research Associates (CERA) estimates that it costs \$3.5 billion to add just 1 million bpd to the country's capacity.<sup>479</sup>

The International Energy Agency estimates it will cost \$5 billion to raise Iraqi output capacity to only 3.7 million bpd by 2010, and \$42 billion to raise Iraqi crude production capacity to 8 million bpd by 2030.<sup>480</sup>

The main purchasers of Iraqi oil during occupation were Exxon Mobil (US), Chevron-Texaco (US), Tupras (Turkey), Repsol YPF (Spain), Cepsa (Spain), Royal-Dutch/Shell (Dutch/Anglo-American), Total (France), Eni (Italy) and Hellenic Petroleum (Greece).<sup>481</sup>

Iraq's Oil Ministry has not received a capital allocation in the country's 2004 budget, although the U.S. has set aside \$1.7 billion for Iraqi oil sector reconstruction, of which \$809 million is slated for construction, \$501 million for import of refined oil products, \$323 million for equipment and raw materials, and \$68 million for infrastructure security.<sup>482</sup> The status of the Kirkuk oil fields has yet to be resolved; both the Kurdistan Regional Government and the Central Government of Iraq are seeking ultimate authority over these resources and their attending revenues.<sup>483</sup>

### *Going Forward*

The new interim Iraqi government or its successor will have to decide whether to maintain a state-owned oil enterprise, regionalize management of the oil sector among local governments, or privatize part or all of the petroleum industry. Iraqi opposition to privatization and the Iraqi Oil Ministry's relative success in ramping up output of crude oil slowed the CPA's original plans for privatization. There was no clear consensus about the role that foreign investment should play in the oil industry during occupation, and the interim government's plans and authority during the transitional period are uncertain. UNSC Resolution 1546 gives little guidance about the new government's authority to sign contracts and privatize state-owned industries, addressing only its authority to negotiate loans and debt reduction agreements. Alternatively, Article 25 of the TAL (which Resolution 1546 does not acknowledge) declares that "the Iraqi Transitional Government shall have exclusive competence in managing the natural resources of Iraq...in consultation with the governments of the regions and the administrations of the governorates."<sup>484</sup> U.S. advisers to the Oil Ministry have suggested that any restructuring of the Iraqi oil industry will take place gradually.<sup>485</sup>

Iraq's new Oil Minister appointed June 1, 2004, is Thamir Ghadhban. Ghadhban managed Iraq's oil industry from June 2003-September 2003, until he was replaced by the Governing Council.<sup>486</sup> According to Ghadhban, under the interim Iraqi government, the country will continue to have a state-owned oil company, "We want to go back to the old healthy management of the 1970s when the Iraqi National Oil Company used to be financed from its own production, and the remainder of the oil revenues went to the government."<sup>487</sup>

## The Oil-for-Food Program Investigation

Established in April 1995 under UNSC Resolution 986, the Oil-for-Food Program (OFF Program) – which generated \$65 billion in exports for Iraq over its seven-year history – allowed Iraq to export oil to select traders in return for imports of food and other necessities. The Program sought to relieve the suffering of Iraqis resulting from economic sanctions.<sup>488</sup> UNSC Resolution 1546 granted the CPA a 120-day transition period to transfer the Program’s remaining responsibilities, which primarily entail ensuring the delivery and verification of goods contracted during the OFF Program’s existence, to the interim Iraqi government.<sup>489</sup>

In April 2004, UN Secretary-General Kofi Annan appointed an Independent Inquiry Commission to investigate allegations of mismanagement and corruption surrounding the OFF Program. The panel is headed by former U.S. Federal Reserve Chairman Paul Volcker, South African prosecutor Richard Goldstone and Swiss law professor Mark Pieth. The Secretary-General has pledged to release all information and allow questioning of UN officials, and UN member states pledged full cooperation in UNSC Resolution 1538. In addition to the UN Commission, CPA Administrator Paul Bremer allocated \$5 million from the Development Fund for Iraq to support an Iraqi Board of Supreme Audit to investigate the conduct and management of the OFF Program and the disposition of assets associated with this program under Saddam Hussein’s regime.<sup>490</sup>

The corruption allegations, which had surfaced earlier, intensified in January 2004 when the Iraqi newspaper *Al Mada* printed a list of names allegedly found in the files of the former Iraqi Oil Ministry. The list, still unverified, links OFF Program Executive Director Benon Sevan and approximately 270 other international officials to a payoff scheme in which they allegedly received the right to trade in Iraqi oil at cut-rate prices.<sup>491</sup> Saddam Hussein, allegedly taking advantage of the UN’s inability to monitor oil profit flows within Iraq, is suspected to have encouraged companies from which he bought humanitarian goods to overprice their items, and then required them to pay back the difference, reportedly depositing funds into secret personal accounts of his own.<sup>492</sup> A March 2004 General Accounting Office report estimates that Saddam Hussein’s government “pocketed \$5.7 billion by smuggling oil to its neighbors” and “\$4.4 billion [by] extracting kickbacks on otherwise legitimate contracts.”<sup>493</sup>

Several U.S. Congressional committees have held hearings on the allegations, and in May 2004, legislation was introduced in both houses of Congress calling for the U.S. to withhold 10 percent of its fiscal year 2005 UN dues and 20 percent of its fiscal year 2006 dues unless the President certifies that the UN has met specific conditions related to the Oil-for-Food investigation.<sup>494</sup> The CPA Inspector General also plans to release its own report on the OFF Program

## B. Rebuilding Iraq’s Infrastructure and Social Services

### Benchmarks for Measuring Progress Going Forward

- **Employment:** Expanding job opportunities for the Iraqi people in both the public and private sectors, specifically through employment by private contractors and government agencies involved in the country’s reconstruction process
- **Electricity:** Alleviating the acute and chronic electricity shortage
- **Oil:** Rehabilitating Iraq’s oil infrastructure to pre-invasion levels of 2.8-3 million barrels per day
- **Health Care:** Improving health services, including the continued restoration of medical facilities and training programs for medical staff
- **Education:** Improving the education system, including the continued restoration of primary and secondary schools and universities, training programs for teaching staff, and increased primary and secondary school enrollment and attendance—especially among females

### International Commitments and Obligations

The ongoing lack of public security in Iraq has made rebuilding its infrastructure and social services difficult, if not impossible. Yet under the laws applicable to occupying powers, the U.S. and U.K. had a duty to “restore and ensure, as far as possible, public order and safety,” and to ensure “with the cooperation of national and local authorities...the public health and hygiene in the occupied territory.”<sup>495</sup> The occupying powers also had an obligation to “ensure the food and medical supplies of the local population” and where necessary, to agree to “relief schemes” on behalf of the occupied population.<sup>496</sup> UNSC Resolution 1483 requested that all member states aid Iraqis “in their efforts to reform their institutions and rebuild their country,” and to help meet “the humanitarian and other needs of the Iraqi people.”<sup>497</sup> UNSC Resolution 1511 reiterates this call for all member states and concerned organizations to “help meet the needs of the Iraqi people by providing resources necessary for the rehabilitation and reconstruction of Iraq’s economic infrastructure.”<sup>498</sup>

In May 2003, Iraq’s infrastructure and social services were in dire straits.<sup>499</sup> According to the United Nations Office of the Humanitarian Coordinator for Iraq, almost thirteen years of sanctions—compounded by two Gulf wars and the devastating eight-year conflict with Iran—have left Iraq’s infrastructure in poor condition. Even before the March 2003 invasion, “Educational and health facilities were dilapidated; potable water and sewage treatment plants covered only part of the populace; the transportation network

required repair... [and] before the recent military intervention, the electricity generation deficit was estimated to be more than 2400 [megawatts].”<sup>500</sup>

Despite these enormous challenges and ongoing sabotage, the CPA made some progress across a wide range of activities, notably in the restoration of education services and the construction of hospitals and housing.<sup>501</sup> The provision of basic humanitarian supplies is also a notable CPA achievement, particularly given Iraq’s persistent instability. The U.S. military-operated Civilian Emergency Response Program (CERP) has partially filled funding lags by allocating money for short-term local projects. CERP has been proposed as a model of how to win “hearts and minds;” the program focuses on critical tasks, such as refurbishing schools and unclogging sewage systems, with the most potential short-term political and military impact, providing money to Iraqis and then monitoring results in the field.<sup>502</sup>

During the March 2003 invasion, the U.S.-led Coalition sought to avoid damaging critical infrastructure during air campaigns. Nearly two-thirds of the bombs dropped during hostilities were precision-guided missiles, compared to only 8 percent dropped during the first Gulf War.<sup>503</sup> In addition, U.S. forces made efforts to target power distribution but not generation facilities (which are much more costly and time-consuming to repair or replace).<sup>504</sup> Moreover, Coalition forces used carbon fire bombs designed to “temporarily incapacitate but not destroy” electrical infrastructure.<sup>505</sup> Nonetheless, post-conflict looting and the ongoing sabotage of oil, power and water facilities have effectively negated any benefits derived from Coalition efforts to avoid damaging this infrastructure during the actual invasion.

Iraq’s ongoing security crisis has prevented significant international funds for reconstruction from being spent. According to World Bank President James Wolfensohn, with respect to the billions of dollars required to reconstruct Iraq, “The main problem is not the resource constraint; it is the physical constraint, the inability of (contractors) to actually go into the country.”<sup>506</sup>

## Employment

Unemployment has been one of the key factors driving insurgency.<sup>507</sup> A February 2004 poll by Oxford Research International found that 96 percent of Iraqis believed that more employment opportunities would be effective in reducing violence.<sup>508</sup> Experts agree that directives by the Pentagon were primary causes of unemployment. First, in May 2003, the CPA issued a sweeping de-Baathification order, which forbade thousands of mid-level party civil servants, including doctors and teachers, from participating in public life.<sup>509</sup>

The purging of former regime officials, particularly those suspected of committing human rights violations—a process known as lustration—is a common method used to build trusted leadership and institutions in post-conflict societies.<sup>510</sup> Yet lustration has typ-

ically been applied in post-conflict environments in tandem with other mechanisms of transitional justice such as truth and reconciliation commissions, reparations and/or civil suits. Given the numerous recent experiences with lustration in El Salvador, as well as Bosnia and Herzegovina, Eastern Europe and elsewhere, in retrospect, Iraq’s lustration policy could have been more thoughtful, gradual and discriminate, to avoid triggering mass unemployment and resentment. Given the lack of a more reflective lustration policy, it is not surprising that Iraq experienced immediate instability after formal hostilities ceased.<sup>511</sup> One of Bremer’s last acts as Administrator was to rescind this policy and dissolve Iraq’s de-Baathification commission. The Commission, under the direction of former Governing Council member Ahmed Chalabi, had purged some 30,000 civil servants from government and was intending to exclude 30,000 more by June when the CPA abandoned its de-Baathification policy.<sup>512</sup>

The May 2003 directive was immediately followed by another that ordered the disbanding of the Iraqi Army, releasing an estimated 500,000 newly unemployed men — many armed — onto the streets.<sup>513</sup> In May 2003, when the administration declared an end to major combat operations, the Iraqi Army totaled 7 percent of Iraq’s work force.<sup>514</sup> Because each soldier, on average, supports a family of five, about 2.5 million people (10 percent of Iraq’s total population) were affected.<sup>515</sup> According to UN Special Envoy Lakhdar Brahimi, “It is difficult to understand that thousands upon thousands of teachers, university professors, medical doctors and hospital staff, engineers and other professionals who are sorely needed, have been dismissed within the ‘de-Baathification process,’ and far too many of those cases have yet to be reviewed.”<sup>516</sup>

In the aftermath of these dramatic policy decisions and the intense criticism that followed, the CPA softened its stance on “de-Baathification” in hopes of putting more Iraqis to work and stemming the persistent violence.<sup>517</sup> Towards the end of the occupation, the CPA changed course and decided to rehire teachers and professors who were purged in the initial drive.<sup>518</sup> As of June 29, the Education Ministry had already rehired 4,000 of the 11,000 purged employees.<sup>519</sup> Similarly, the CPA attempted to decrease unemployment and improve security by recruiting former Iraqi military troops to serve in the police and army.<sup>520</sup>

The CPA decision to keep the 500,000 employees of Iraq’s numerous state-owned enterprises on the public payroll throughout the last year helped maintain government employment levels.<sup>521</sup> As of March 2004, the CPA claimed to have created a total of 380,000 jobs — 220,000 of which were in security or defense.<sup>522</sup> According to former CPA spokesman Major Joe Yoswa, other reconstruction projects paid for by Iraqi revenues and overseen by the U.S. military or State Department had created an estimated 400,000 jobs by occupation’s end.<sup>523</sup> Iraq’s official unemployment rate fell to between 28-45 percent in June 2004 from 60 percent in May 2003.<sup>524</sup>

In May 2004 the Pentagon reported that the U.S. was currently employing approx-



imately 25,000 Iraqis, less than 1 percent of the country's workforce, on projects funded by the \$18.4 billion 2004 congressional appropriation for Iraq's reconstruction (see p. 59).<sup>525</sup> According to economist Dr. Muhammad-Ali Zainy, "Shorter and less productive working days, rising insurance rates and skyrocketing security costs are consuming up to 20 percent, or even more of the donated U.S. aid for reconstruction."<sup>526</sup> Towards the end of occupation, continuing violence in Iraq had reportedly cut attendance at work sites by Iraqi employees by about 25 percent.<sup>527</sup>

## Electricity

The importance of electricity production to Iraqis' quality of life and economic reconstruction cannot be underestimated. In addition to powering air conditioners and lights, power generation is critical to the operation of both water and oil facilities. Estimates vary about how much electric power Iraqi plants are currently capable of producing. At the time of the occupation's end in June 2004, Iraq's electricity output was, on average, less than under Saddam Hussein, and far below the production-capacity U.S. officials promised to deliver.<sup>528</sup> The UN estimates that before the March 2003 invasion, Iraq could produce 4,500 megawatts of electricity on demand.<sup>529</sup> At the end of occupation, Iraq's electricity generation hovered at around 4,000 megawatts, which equals less than nine hours of power a day for most Baghdad homes.<sup>530</sup>

The \$18.4 billion in U.S. funding for Iraq disbursed through the CPA Program Management Office includes \$5.56 billion to rebuild the electricity sector.<sup>531</sup> The CPA had hoped to use this money to increase Iraq's production capacity to approximately 6,000 megawatts by June 2004, but progress is stalled indefinitely by the ongoing insurgent attacks on Iraqi power installations and on private contractors doing repair work.<sup>532</sup> In addition to sabotage, some Iraqis attribute the production shortfall to Western engineers' fondness for new and expensive replacement parts that take months or years to order, send and install.<sup>533</sup>

As of late-August 2004, Baghdad as a whole was averaging 11 hours of electricity per day, and national production levels hovered around 5,300 megawatts per day, well below the 6,000 megawatt goal set by U.S. authorities for June 2004.<sup>534</sup> Optimistic officials predict that Iraq's electricity grid will approach "power on demand" by the end of 2004, despite a rapidly growing need and the present instability.<sup>535</sup> Estimates of the ultimate cost of rebuilding Iraq's power grid vary significantly; the UN/World Bank estimated in 2003 that it would require approximately \$12 billion through 2007, and the Iraqi Ministry of Electricity claimed that restoration costs may climb to \$35 billion, without supplying specific dates.<sup>536</sup>

In March 2004, a year after the invasion of Iraq, the CPA announced that a joint venture between Fluor Corp (U.S.) and AMEC PLC (U.K.) had been awarded a contract

worth up to \$500 million to design and build electricity facilities throughout Iraq.<sup>537</sup> Likewise, Iraq Power Alliance Joint Venture, a joint initiative of Parsons Energy and Chemicals Group (U.S.) and Parsons-Brinkerhoff (U.K.) was awarded a \$43.4 million deal to oversee and manage electrical reconstruction at the same time.<sup>538</sup> Despite this flurry of contracting for work on Iraq's electrical sector, the ongoing security crisis has kept foreign companies away from work sites, and sabotage has further damaged Iraqi facilities. In April, Siemens and General Electric, both major contractors involved in the Iraqi power sector, had either reduced or restricted their staff in Iraq "significantly" due to security concerns.<sup>539</sup>

## Water

Water is arguably the most important post-conflict priority for Iraq for two reasons. First, clean water is vital to public health and safety. Second, water production and pumping is an essential part of the oil production process. Urgent action is required to ensure that water flows throughout Iraq, to sustain human life and the economy. According to the CPA, under Saddam Hussein, misuse and mismanagement of Iraq's water resources left large sections of the water supply polluted; croplands were saline-saturated and many Iraqis had little or no access to water resources.<sup>540</sup> Moreover, Saddam's deliberate draining of the country's vast southeastern marsh areas—which used to be the largest wetlands in west Asia and are quickly vanishing—displaced over 400,000 people.<sup>541</sup> Finally, antiquated water supply and irrigation systems were sorely lacking in vital components and in desperate need of repair.<sup>542</sup>

According to USAID, Iraq's operating capacity for its 140 major water treatment facilities prior to the March 2003 conflict was three million cubic meters a day. As of June 2004, USAID reports that Iraq's water facilities are operating at about 65 percent of that level, "primarily due to years of neglect, electricity shortages and post-war looting of plant and emergency generators."<sup>543</sup> USAID did complete the rehabilitation of the Sweet Water Canal reservoir in Basra, which is the primary source of potable water for residents of Iraq's largest southern city.<sup>544</sup>

Iraq's Water Resources Minister Abdul Latif Rashid said that his ministry's 2004 budget is \$150 million, compared to \$1 million under Saddam.<sup>545</sup> Yet Iraq's water distribution system is in poor condition, according to former employees of the state-owned General Company for Water Projects. Both the Tigris and Euphrates rivers are dangerously polluted by years of war and neglect.<sup>546</sup> Clean water flows into Iraq from the north but according to Bechtel's manager for water and irrigations systems in Iraq, approximately "75 percent of the sewage in the country is going into the rivers."<sup>547</sup> By the time it reaches southern Iraq, the water supply is heavily contaminated from raw sewage dumping.<sup>548</sup>

During occupation, Iraq's former Minister of Health Khudair Fadhil Abbas, said that contaminated water was to blame for many children's health problems, including an outbreak of typhoid fever that affected more than 1,000 Iraqis living around Baghdad.<sup>549</sup> Some 40 percent of hospital visits by children are due to gastrointestinal problems from the water.<sup>550</sup> As an advisor to the CPA observed simply, "These people are drinking polluted water and they're dying."<sup>551</sup> Water engineers predict that, barring quick action, central Iraq and other parts of the country are vulnerable to crisis-level shortages in potable water.<sup>552</sup>

Bechtel won a USAID contract worth up to \$680 million for infrastructure reconstruction in Iraq, including repairing Iraq's water and sewage systems to surpass Iraq's pre-conflict capacity. Bechtel was also tasked with repairing Rustamiya, Baghdad's main sewage treatment plant, which dumps an average of one-and-a-half tons of sewage into the Tigris River every day.<sup>553</sup> According to Omar Mekki, a medical officer of the World Health Organization in Iraq, "You can see it's pure sewage — the water is black."<sup>554</sup> In mid-June, USAID and Bechtel reportedly completed the restoration of a Baghdad-based sewage treatment plant, but asked the *New York Times* not to mention the plant by name, for fear that insurgents would attack the site.<sup>555</sup> The need to keep this progress under wraps is all the more lamentable given that this marks the first sewage treatment to occur in Baghdad in more than 15 years, according to Bechtel engineers.<sup>556</sup>

As of June 2004, none of the \$279 million in U.S. reconstruction funds earmarked for irrigation projects nor the \$152 million allocated for dam repair and construction had been spent.<sup>557</sup>

## Health

Iraq's 2004 budget includes \$950 million in Iraqi revenues (from the Development Fund for Iraq) for health care.<sup>558</sup> This is more than double the amount spent on healthcare in the last years of Saddam Hussein's regime (\$16 million per year supplemented by an average of \$329 million annually by the Oil-for-Food Program).<sup>559</sup> Additionally, U.S. officials will continue to manage and oversee \$793 million in U.S. health care funding provided to Iraq as part of the \$18.4 billion Iraq reconstruction appropriation.<sup>560</sup>

There has been significant progress on increasing health care supplies and facilities in the period following the U.S.-led invasion. Since May 2003, the USAID has financed vaccines for 4.2 million children, approximately 75 percent of Iraq's youth, and launched a program to distribute medical supply kits to 600 clinics.<sup>561</sup> The Iraqi government and the U.S. military have financed reconstruction of nearly 40 hospitals, and improvements to 130 more are ongoing.<sup>562</sup> According to the White House, there are currently 240 hospitals and 1,200 primary health care clinics in Iraq that employ more than 100,000 health care professionals.<sup>563</sup>

Shortages of nurses, equipment, drugs and beds persist, however, much of it due to post-conflict looting which left already undersupplied hospitals and clinics stripped bare in the early months of occupation.<sup>564</sup> Iraqi doctors and nurses at numerous facilities report shortages of critical items such as diabetes medications, anti-cancer drugs, intravenous lines, tuberculosis test kits and ventilators, as well as basic items such as cough syrup.<sup>565</sup> Doctors say an immediate emergency increase in spending would tremendously ease current shortages. Reported corruption within the former Iraqi Ministry of Health during occupation appears to have exacerbated the problem. In early June Iraqi police arrested several Ministry of Health employees on suspicion of stealing \$10 million worth of medicine and selling it on the black market.<sup>566</sup>

In May 2004, the U.K.'s Ministry of International Development said that the distribution of urgently needed drugs to areas affected by recent fighting, including Fallujah and Najaf, is improving.<sup>567</sup> The World Health Organization and the Iraqi Ministry of Health estimate that 23 of the 32 commonly used drugs for chronic diseases are adequately stocked to meet present demand in Iraq, and sufficient drugs to treat tuberculosis nationwide for a year have been procured and delivered to Baghdad.<sup>568</sup> USAID is currently working with the Iraqi Ministry of Health to develop a five-year strategic plan on a broad range of issues.<sup>569</sup>

## Education

Considered one of the best systems in the region in the 1980s, education in Iraq declined dramatically over the last 20 years of Saddam's rule. According to the World Bank, an estimated 60 percent of Iraq's population is illiterate, and at least 25 percent of primary school-age children do not go to school.<sup>570</sup> UNICEF estimates that only 55 percent of men and 23 percent of women can read.<sup>571</sup>

The CPA claimed enormous progress in education during the occupation. Under USAID's direction, the CPA rehabilitated 2,358 schools countrywide for the first term of the 2003/04 school year, provided technical assistance and salaries to the Ministry of Education, and turned the ministry over from CPA to Iraqi control prior to the June 28 transfer of power.<sup>572</sup> The CPA has trained more than 32,000 secondary school teachers and administration staff, funded 5.5 million examinations for transitional grades to allow for smooth continuation of schooling, and distributed nearly 1.5 million "supply kits" for secondary schools. USAID also printed and distributed almost nine million textbooks.<sup>573</sup>

By contrast, USAID contractor Bechtel has reportedly received 52 formal complaints on work in progress or supposedly completed at schools throughout the country, and 27 of these schools have required additional work.<sup>574</sup> U.S. spending for this sector has been slow, and some Iraqis have criticized what they view as poorly planned projects.<sup>575</sup> According to the Iraqi Ministry of Education's Chief Engineer Nazar Mikhael, "We're grateful that the U.S. and Bechtel tried to help us, but they didn't coordinate with us."<sup>576</sup>

In April 2004, USAID made a \$12.6 million year-long grant to UNICEF, which will focus on providing 1,150 schools with access to potable water and sanitation facilities, ensuring that all latrines in those schools are fully operational, and developing and distributing materials and software for the promotion of school health, sanitation, and personal hygiene.<sup>577</sup> In addition to other aid, the World Bank has agreed to give the Iraqi Ministry of Education a \$100 million grant for infrastructure projects and new books in 2004.<sup>578</sup>

The Ministry of Education is planning to build 4,500 schools in the next four years, and the 2004 Iraqi budget projects spending approximately \$1.7 billion on this and other education-related projects.<sup>579</sup> Yet the UN/World Bank needs assessment presented to the Madrid Donor's Conference estimated that the overall short-to-medium term needs of Iraq's education sector (2003-2007) total \$4.8 billion (see pgs. 56-57).<sup>580</sup>

At the level of higher education, Iraq has an estimated 13 major universities and more than 40 technical institutes, research centers and colleges. Nearly all of these institutions were looted and damaged during and immediately after the March 2003 invasion.<sup>581</sup> During occupation, the Iraqi Ministry of Higher Education and Scientific Research declared that its immediate priority was restoring the infrastructure of these institutions, including the renovation of academic buildings, classrooms, libraries and laboratories.<sup>582</sup> USAID's Higher Education and Development Program has awarded five grants worth an estimated \$20.7 million for U.S.-Iraqi university partnerships. An estimated 2,000 professors fled Iraq's 20 major universities between 1995 and 2000. The Ministry of Higher Education has said that some expatriate professors are returning, and many who have decided to stay abroad have expressed a desire to form partnerships with, and organize donations to, Iraqi universities.<sup>583</sup> One of the greatest obstacles to developing the higher-education system in post-conflict Iraq is the harassment, kidnapping and in some cases murder of Iraqi intellectuals by insurgents.<sup>584</sup>

## VI. Justice

### Benchmarks for Measuring Progress Going Forward

- ▶ **Transitional Justice:** Prosecuting Saddam Hussein and his 11 associates in a fair and open manner before the Iraqi Special Tribunal, and establishing a timeline for the safe transfer of these individuals to the physical custody of Iraqi authorities
- ▶ **International Accountability:** Convening an independent commission or special investigation to probe the atrocities alleged at Abu Ghraib prison, encompassing both military and civilian involvement in potentially unlawful policies, and swift U.S. action to investigate and try those civilians and members of the military responsible for abuses of Iraqi detainees, as well as reform of policies and practices at U.S.-run detention facilities in Iraq that may have led to the abuse
- ▶ **Restitution:** Exploring opportunities for restitution for Iraqi victims of U.S. abuse
- ▶ **Civilian Protections:** Increasing compliance with international humanitarian law by all armed actors, including insurgents and militias
- ▶ **Judicial Reform:** Reforming the Iraqi judicial system, including national prisons, courts and laws to ensure fair, independent and prompt judicial proceedings and ending impunity

### Overview

The U.S.-led multinational forces, interim Iraqi government and international community face multiple challenges in achieving justice and accountability for past abuses in Iraq. In addition to decades of human rights violations under Saddam Hussein, Iraq must also deal with the abuses perpetrated throughout and following the occupation due to the security crisis. Iraq's justice system is severely hampered by years of resource deprivation, isolation from evolving international norms and obligations, and exploitation from officials who used police and courts as a tool of repression under Saddam Hussein's reign, as well as extensive looting following major combat operations in 2003.<sup>585</sup> In addition, abuses that occurred in Coalition-run detention centers must also be redressed. To fully address the range of past violations and to deter future ones, domestic and international forums and resources may be employed.<sup>586</sup>

A functioning Iraqi judiciary is of particular importance given the passage of a bill by Iraq's interim government allowing Prime Minister Allawi to impose martial law (see pgs. 22-23).<sup>587</sup> An independent judicial system is needed to resolve contradictions that may arise between martial law and the rights included in the TAL's Bill of Rights (see p. 48). Further, if the Iraqi government is ultimately going to assume responsibility for the

4,000-5,000 detainees currently being held without charge in Iraq, the detention centers and judicial proceedings will require serious reform and international oversight.<sup>588</sup>

## Iraq's Judicial System

Under Saddam Hussein's regime, Iraq's judicial system included courts of first instance, courts of sessions and a court of cassation to try civilians.<sup>589</sup> A separate military justice system also tried members of Iraq's armed forces accused of committing criminal and political offenses and revolutionary and other special courts were established to try civilians and others accused of committing crimes against the government.<sup>590</sup> Many elements of the justice system — in particular the military, special security and revolutionary courts — were used as tools of political repression, resulting in summary and closed proceedings, overpopulated prisons, high rates of execution, torture, and other cruel, inhuman and degrading punishment contrary to international norms and obligations.<sup>591</sup>

If Iraq's domestic courts are to be used to redress past human rights abuses, including crimes committed during occupation (see security section, p. 23), and deter future ones, it will be crucial that judicial proceedings are viewed as independent, open and fair.<sup>592</sup> During occupation, the CPA undertook a review of Iraqi penal and criminal procedure to evaluate compliance with international human rights standards; the CPA also outlawed cruel, inhuman and degrading punishment and abolished revolutionary and other courts most notoriously employed for political repression.<sup>593</sup> The CPA also established an Iraqi national court, the Central Criminal Court, to try cases of national importance as they arise.<sup>594</sup>

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## K. THE CAPTURE OF SADDAM HUSSEIN

On December 14, 2003, CPA Administrator L. Paul Bremer announced the long hoped for capture of Saddam Hussein.<sup>595</sup> An operation involving more than 600 U.S. troops from the 1st Brigade, 4th Infantry Division found Saddam in a six-by-eight foot hole covered by dirt and a rug about 10 miles south of his hometown of Tikrit.<sup>596</sup> One pistol, two AK-47 automatic weapons and more than \$750,000 cash were also found with Saddam and confiscated.<sup>597</sup> Iraqi Governing Council President Abdel-Aziz al-Hakim announced shortly afterwards that a DNA test confirmed that the man in Coalition custody was indeed Saddam Hussein.<sup>598</sup>

Capturing the former dictator was a major victory for the U.S.-led Coalition and the Iraqi people. There had been great uncertainty about whether Saddam was still alive following the Coalition invasion of Iraq, and if so, whether he would play a major role in the ongoing insurgency. More generally, Saddam's disappearance led many Iraqis to fear his potential return, and his capture could allow the Iraqi people to hold their

former oppressor accountable in a court of law for his many alleged crimes against humanity.<sup>599</sup>

On June 30, the interim Iraqi government assumed legal custody of Saddam Hussein and 11 top Baath party officials from Coalition forces. All remain in the physical custody of U.S. forces until a sufficiently secure Iraqi holding facility can be created. On July 1, in a proceeding similar to an arraignment, Saddam and the 11 aids were brought before an Iraqi Special Tribunal judge and read preliminary charges.

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## Iraqi Special Tribunal

On December 10, 2003, the Iraqi Governing Council announced the creation of an Iraqi Special Tribunal, with a mandate including genocide, war crimes and crimes against humanity committed from July 17, 1968 — when Saddam Hussein's Baath Party came to power — until May 1, 2003, the official end of major Coalition combat operations.<sup>600</sup> Similar to other war crimes tribunals, the court's legal framework draws on domestic Iraqi and international law.<sup>601</sup>

Over its 35-year existence, Saddam Hussein's regime compiled one of the worst human rights records in modern history. Alleged atrocities under the Hussein regime range from war crimes and crimes against humanity — including genocide, massacres, and mass rape — to ongoing violations of civil and political rights, including summary executions and torture. Saddam has also been implicated in the use of weapons of mass destruction (WMD) against Iraq's own people and against Iran (see box, pgs. 86-87).<sup>602</sup> Human Rights Watch estimates that more than 290,000 people were "disappeared" over the last two decades under Saddam's government.<sup>603</sup> In November 2003, U.K. Prime Minister Tony Blair reported the discovery of mass graves containing the remains of 400,000 people.<sup>604</sup> The bodies, many with arms tied together and with bullet holes in the backs of their skulls, offer evidence of summary executions.<sup>605</sup>

On July 1, at a proceeding similar to an arraignment, Saddam and 11 of his top officials were brought before a Tribunal judge and read preliminary charges.<sup>606</sup> The seven charges against Saddam range from intended killing of members of the Kurdish and Shi-ite Muslim populations to the 1991 invasion of Kuwait (see box on p. 87 for a list of preliminary charges). Other alleged atrocities of Saddam may lead to further charges. Amnesty International has questioned the fairness and openness of the July 1 proceeding, which did not allow defense lawyers or Iraqi national press to be present.<sup>607</sup>

Tribunal investigative judges are now investigating Saddam Hussein's command responsibility, as former president, over the actors and institutions that carried out the atrocities. These investigations may result in formal charges, likely including war crimes and crimes against humanity. Others may also be brought to trial, including captured



Baath Party officials, officials of Saddam's Revolutionary Command Council and cabinet senior armed forces commanders, the chiefs of the country's four security services, and provincial governors.<sup>608</sup>

The Tribunal has been criticized on several fronts, including its impartiality given its origin under the CPA guidance during occupation.<sup>609</sup> Moreover, human rights organizations assert that the drafting of the Tribunal statute occurred with inadequate international and Iraqi consultation and lacked transparency.<sup>610</sup> In addition, an exiled U.S.-educated lawyer, Salem Chalabi (nephew of ex-Iraqi National Congress leader Ahmad Chalabi), was appointed to lead the Tribunal, furthering concerns of the Tribunals' politicization.<sup>611</sup> These concerns were exacerbated on August 7, 2004, when an Iraqi magistrate charged Salem Chalabi with involvement in the murder of an Iraqi official and charged Ahmed Chalabi with counterfeiting.<sup>612</sup> The Chalabis claim that the magistrate, the interim Iraqi government, or American advisers prompted the warrants for political reasons.<sup>613</sup>

The Tribunal's prosecutors and judges are Iraqis, in contrast to war crimes tribunals established for Rwanda, the former Yugoslavia, Sierra Leone and East Timor, all of which have significant international involvement.<sup>614</sup> Iraqi judges and prosecutors may lack the necessary experience and technical capacity to investigate and prosecute complex international criminal cases because, under Saddam's regime, they were not in a position to keep up with developments in international and criminal jurisprudence.<sup>615</sup> To address these concerns, the statute requires the Tribunal's president to appoint non-Iraqi nationals to act as advisors and observers.<sup>616</sup> However, if there is excessive technical assistance from the U.S., it may make the prosecution of Saddam Hussein and other members of his Baathist regime appear as a victor's court.<sup>617</sup>

Although 60 percent of Iraqis believe that Saddam should receive the death penalty, including the death penalty as a possible form of punishment could threaten the Tribunal's legitimacy.<sup>618</sup> A large majority of nations prohibit the death penalty and the U.K. is reportedly struggling with the decision of whether to hand over evidence of Saddam's atrocities to Iraqi prosecutors, given that this material might ultimately be used to condemn the former dictator to death.<sup>619</sup>

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## AA. SADDAM HUSSEIN: PRELIMINARY CHARGES AND ALLEGED ATROCITIES

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Articles 10-14 of the Statute of the Iraqi Special Tribunal grants the court jurisdiction over any Iraqi national or resident accused of genocide, crimes against humanity (including extermination, rape, torture, deportation, disappearance, persecution, etc.), war crimes (willfully targeting civilians, denying fair trial, etc.) and other violations of certain Iraqi laws (attempting to manipulate the judiciary, squandering national resources, and abuse of position or pursuit of policies that lead to the threat of war or use of armed forces against an Arab country).

## Preliminary Charges Issued by the Tribunal Judge on July 1, 2004

- Killing religious figures in 1974<sup>620</sup>
- Chemical attacks/gassing of Kurds in Halabja in 1988, killing between 4,000 and 5,000 people, primarily civilians<sup>621</sup>
- Killing 8,000 members of the Barzani clan, a prominent Kurdish family, in 1983, for supporting Iranian forces earlier in the year<sup>622</sup>
- Killing political party opposition leaders and members over 30 years<sup>623</sup>
- Displacing and deporting the Kurdish population, including destroying Kurdish villages, agriculture and economy as well as forced resettlement to camps, from 1986-1988<sup>624</sup>
- Attacks against Northern Kurds and Southern Shiites following their 1991 uprisings<sup>625</sup>

Possibly Including:

Killings, massacres and massive displacement of thousands of Kurds in 1991, as retribution for those who fought for autonomy in northern Iraq after the first Gulf War<sup>626</sup>

Disappearance, killing and displacement of thousands of unarmed southern Shiite civilians in 1991 following uprisings against Saddam Hussein after the first Gulf War<sup>627</sup>

Persecuting Marsh Arabs, including the draining of marshes in southern Iraq after the 1991 Shiite uprising to undermine the Marsh Arabs' culture and economy and the displacement of 140,000 Marsh Arabs over a two-decade period<sup>628</sup>

- Invading Kuwait in 1990<sup>629</sup>
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## Armed Actors and Requirements to Protect Civilians

Under international law, all parties to the conflict – including coalition forces, insurgents and militia— are forbidden to attack civilians and civilian objects, and when attacking military objectives are required to avoid or minimize civilian casualties.<sup>630</sup> This report does not discuss the legality of specific actions taken by armed actors during attacks. Respected human rights organizations specializing in international law as it applies to military conflict have condemned clear violations by armed actors and called for further investigations into military operations in cases where insufficient evidence is available.<sup>631</sup>

It is imperative to note, however, that the insurgents bear responsibility for flagrant and ongoing violations of international law, and for instigating the current security crisis and ongoing instability in Iraq. The intentional targeting of civilians by insurgents and members of the militia is a blatant breach of international law. While the U.S.-led

Coalition may have fallen short — through inadequate planning or other factors — in its obligation to establish public security and the rule of law, these shortcomings have occurred in the face of an onslaught of violent and illegal attacks which continue to threaten a peaceful future for Iraq.

## Abuse of Detainees by U.S. Military Personnel and Civilians

The responsibilities of occupying powers concerning the protection and treatment of detainees are primarily set forth in the Third and Fourth Geneva Conventions.<sup>632</sup> In situations of international armed conflict or occupation, an individual can be detained as (a) a combatant entitled to prisoner of war status under the Third Convention (b) a civilian suspected of having committed a common crime or a hostile act or because he/she presents a security risk, but who is protected under the Fourth Convention; or (c) as an unprivileged combatant who has directly participated in the hostilities either in violation of his/her protected status or without fulfilling the requirements for privileged combatant status set forth in the Third Convention. Although various protections apply to these detainees, any such person, regardless of classification, must be afforded (as a matter of customary law) the minimum guarantees of humane treatment and other protections set forth in the Geneva Conventions' Common Article 3 and Article 75 of Additional Protocol I.<sup>633</sup>

In April 2004, the systematic abuse of Iraqi detainees by U.S. forces was publicly revealed. The abuses — committed at the Abu Ghraib prison, Saddam Hussein's most notorious jail — violate the Geneva Conventions and the Uniform Code of Military Justice (the U.S. Congressional code of military criminal law applicable to all U.S. military members worldwide).<sup>634</sup> The abuses also violate the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT), to which the U.S. is a party.<sup>635</sup>

The release of extraordinary photographs documenting serious mistreatment by Coalition soldiers of Iraqi detainees in Abu Ghraib prompted questions about the extent of Pentagon investigations. The "Taguba Report," named after Major General Antonio M. Taguba who led the investigation into the conduct of operations within Abu Ghraib, found "systematic and illegal abuse of detainees."<sup>636</sup> Allegations against U.S. reservist military police, intelligence agents and private contractors include beatings, humiliation, sodomy, and sexual abuse.<sup>637</sup> The Taguba Report also includes accusations of U.S. personnel and contractors using threats of physical harm by electrocution, rape, military dogs and a charged 9 mm pistol.<sup>638</sup> According to Secretary of Defense Donald Rumsfeld, the report cites a "broad pattern of command failures."<sup>639</sup>

The International Committee of the Red Cross (ICRC) repeatedly made U.S. officials aware of detainee abuse in Iraq.<sup>640</sup> In addition, contrary to international humani-

tarian law, U.S. Secretary of Defense Donald Rumsfeld directed that at least one detainee in Iraq be excluded from prisoner lists shared with ICRC delegations.<sup>641</sup> Critics have charged that controversial legal memoranda taking an extremely restrictive view of the prohibitions on torture, combined with repeated demands at senior levels for more and better intelligence, created fertile ground for abuse as a way of "softening up" detainees, in the words of Army Major General Geoffrey Miller.<sup>642</sup>

As a party to the above mentioned treaties, the U.S. is legally obligated to remedy the situation. The Third and Fourth Geneva Conventions obligate the U.S. to investigate and bring to trial (in its own courts) those who commit grave breaches of the Convention.<sup>643</sup> The U.S. has in part fulfilled this obligation through investigations and trials under the Uniform Code of Military Justice.<sup>644</sup> Taguba identified two military intelligence officers and two civilian contractors as primary culprits, who were "either directly or indirectly responsible for the abuses at Abu Ghraib" and strongly recommended disciplinary action.<sup>645</sup>

In February 2004, 17 soldiers were suspended from duty under suspicion of involvement in abuses. In May 2004, seven Military Police officers were facing court-martial and seven supervisors had received official reprimands or admonitions.<sup>646</sup> As of late-August 2004, an independent panel created by U.S. Secretary of Defense Donald Rumsfeld to investigate reported abuses, had: received reports of at least 300 incidents of abuse of prisoners in Iraq and Afghanistan; completed 155 investigations; and found abuses of prisoners under United States control in at least 66 of those cases.<sup>647</sup> In mid-June, a U.S. military judge declared Abu Ghraib prison a crime scene and ordered that it not be torn down, as offered by President Bush during a May 2004 conference.<sup>648</sup> The Senate Armed Services Committee held hearings throughout June and July to review treatment of detainees in U.S.-run Iraqi detention centers.<sup>649</sup> These hearings included review of ICRC reports and Pentagon investigative reports.<sup>650</sup>

The U.S. now faces the question of whether and how to prosecute private contractors and other civilians, such as U.S. intelligence agents, involved in the abuse. Under the Geneva Conventions, the U.S., as the occupying force, is responsible for its branches and agencies as well as all those empowered by it or operating under its direction or control (including military contractors who have been accused of involvement in the abuse, and civilian officials who may have approved policies sanctioning detainee abuse).<sup>651</sup> The U.S. has numerous jurisdictional provisions in domestic laws that would enable prosecution of U.S. civilians implicated in the abuse, including the War Crimes and Torture Act.<sup>652</sup>

The overlapping obligations of the Geneva Conventions and other international agreements on civil and political rights and torture also require the U.S. and occupying forces to prevent future abuses.<sup>653</sup> Other important steps the U.S. government might consider to meet international obligations include 1) pursuing an independent commission

or investigation into the chain of command and structural failures that made the abuses of Iraqi detainees possible 2) exploring opportunities for restitution for Iraqi victims of U.S. abuse 3) devising and implementing a formal protocol for auditing the activities of private military contractors (PMCs) in post-conflict environments 4) separating detention and interrogation responsibilities and 5) introducing outside observers into all U.S.-controlled detention facilities in Iraq.

## VII. Appendices

### Appendix 1. Relevant Actors and Institutions

#### Key Iraqi Political Figures

##### *Dr. Iyad Allawi*

On May 28, the Iraqi Governing Council nominated Dr. Allawi, a former Iraqi exile, to be Prime Minister after the June 28 handover of power. Allawi was a Baathist who served in the Iraqi intelligence services until splitting with the regime and leaving Iraq in 1971 to study neurology in London.<sup>654</sup> Dr. Allawi lived in London from 1971 to April 2003, where he led the Iraqi National Accord (INA), a CIA-funded anti-Saddam Hussein opposition group that attempted an unsuccessful coup d'état against Saddam in 1996.<sup>655</sup> Upon returning to Iraq in 2003, Allawi became a member of the Iraqi Governing Council and chaired the security committee in charge of reconstituting Iraq's police and armed forces. Allawi has publicly opposed purging former Baath party members from the new government.

##### *Sheikh Ghazi al-Yawar*

Ghazi al-Yawar is the new President of the interim Iraqi government. Born in Mosul and a graduate of the Petroleum and Minerals University in Saudi Arabia and George Washington University in the U.S., Yawar took over the rotating presidency of the Governing Council in May 2004 after the assassination of Izzedin Salim. Yawar is a leader of the Sunni Shammar tribe, one of the largest in the region, and is said to enjoy the support of Shiite and Kurdish council members.<sup>656</sup> Yawar has been a vocal critic of the U.S. and U.K. occupation of Iraq.<sup>657</sup>

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**MEMBERS OF THE NEW INTERIM IRAQI GOVERNMENT WHO ASSUMED CONTROL ON JUNE 28, 2004<sup>658</sup>**

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- **President:** Ghazi al-Yawar, former Governing Council member, Sunni tribal sheikh, educated in U.S. and relatively unknown throughout Iraq<sup>659</sup>
- **Deputy President:** Ibrahim Jaafari, medical doctor, leader of the Shiite Dawa party and brother-in-law of Shiite Cleric Ayatollah Ali al-Sistani
- **Deputy President:** Rowsch Shways, senior member of the Kurdistan Democratic Party, who represented Masoud Barzani in the Transitional Administrative Law negotiations
- **Prime Minister:** Iyad Allawi, former Governing Council Member, Shiite leader of the Iraqi National Accord, former Baath party member and a returning exile
- **Deputy Prime Minister (for national security):** Barham Salih, served for 10 years as Jalal Talabani and the PUK's representative in Washington, DC, assumed the premiership of the of the Kurdistan Regional Government in Sulaimania in 2001
- **Foreign Minister:** Hoshyar Zebarii, former member of Iraqi Governing Council and senior member of the Kurdistan Democratic Party
- **Oil Minister:** Thamir al-Ghadban, former senior advisor at oil ministry under Saddam Hussein, appointed by U.S. to run Iraq's Oil Ministry until Governing Council and Cabinet were established, remained an oil ministry advisor during occupation
- **Interior Minister:** Falah al-Naqib, Sunni and former exile, originally from Samarra, elected governor of Tikrit (Saddam Hussein's hometown) in February 2004
- **Finance Minister:** Adel Abdul Mahdi, economist, deputy head of the Shiite Supreme Council for Islamic Revolution in Iraq (SCIRI), served as special envoy of the late Ayatollah Baqir al-Hakim to Iraqi Kurdistan before U.S. occupation
- **Justice Minister:** Malik al-Hassan, president of the Iraqi Bar Association, spent one-and-a-half years imprisoned under Saddam Hussein
- **Defense Minister:** Hazim Shalan, governor of the Qadisiyah Province in central southern Iraq
- **Human Rights Minister:** Bakhtiar Amin, Kurdish, educated at the Sorbonne, executive director of International Alliance for Justice, a human rights NGO umbrella organization
- **Electricity Minister:** Ayham Samaraii (unchanged from Governing Council), Sunni and a returning exile who is closely associated with Adnan Pachachi and his Iraqi Independent Democrats<sup>660</sup>
- **Health Minister:** Alaadin al-Alwan (formerly education minister under Governing Council)
- **Communications Minister:** Muhammad al-Hakim
- **Housing and Construction Minister:** Omar al-Damluji, president of the Department of Civil Engineering, University of Baghdad

- **Environment Minister:** Mishkat Mumin
  - **Displacement and Migration Minister:** Pascale Warda, president of Assyrian Women's Union of Iraq
  - **Higher Education Minister:** Taher al-Bakaa, elected acting president of University of Baghdad during occupation, former Baath party member
  - **Industry and Mineral Resources Minister:** Hashim al-Hassani, leading member of the Islamic Party of Iraq
  - **Labor and Social Affairs Minister:** Leyla Abdul Latif
  - **Culture Minister:** Mufid al-Jazairi (unchanged from Governing Council), a member of the Iraqi Communist Party who studied journalism in Prague
  - **Agriculture Minister:** Sawsan al-Sharifi (deputy agriculture minister under Governing Council), has a Ph.D. from Iowa State University in Animal Breeding
  - **Education Minister:** Sami al-Mudhaffar (deputy higher education minister under the Governing Council), one of the most senior biochemists in Iraq and former president of University of Baghdad
  - **Water Resources Minister:** Abdul Latif Rashid, senior PUK leader and former representative of Jalal Talabani in Washington, DC, a civil engineer, who obtained his Ph.D. in the U.K.
  - **Planning Minister:** Mahdi al-Hafidh (unchanged from Governing Council)
  - **Public Works Minister:** Nasrin Mustapha Barwari (unchanged from Governing Council), member of the KDP, studied in the U.S., narrowly escaped assassination attempt in March 2004
  - **Science and Technology Minister:** Rashad Omar (unchanged from Governing Council), briefly lived in exile abroad and received his Ph.D. in Civil Engineering in London
  - **Trade Minister:** Muhammad al-Juburi, director of Iraq's state oil marketing organization during occupation
  - **Transport Minister:** Louay al-Aris
  - **Youth and Sports Minister:** Ali al-Ghabban (unchanged from Governing Council)
  - **Minister of State for Women:** Narmin Othman, Kurd, top higher-education official in Iraqi Kurdistan
  - **Minister of State for Provinces:** Wael Abdul al-Latif (former Governing Council member), Judge, Governor of Basrah
  - **Minister of State:** Qasim Dawud
  - **Minister of State:** Mahmoud Farhad Othman, member of the Kurdish Socialist Party
  - **Minister of State:** Adnan al-Janabi
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## Key International Actors

### *Lieutenant General John Abizaid*

Lt. Gen. John Abizaid, head of U.S. Central Command, is responsible for military operations from the Horn of Africa to Central Asia, including Iraq and much of the Middle East. Gen. Abizaid has a degree in Middle Eastern area studies from Harvard University, was an Olmsted Scholar at the University of Jordan in Amman and speaks fluent Arabic.<sup>661</sup> Gen. Abizaid commanded U.S. forces in Kosovo, and served as Deputy Commander in Operation Iraqi Freedom in March 2003. Staff assignments have included a tour with the United Nations and a tour in the Office of the Chief of the Staff, U.S. Army.

### *Robert Blackwill*

Robert Blackwill, a veteran diplomat and former U.S. Ambassador to India, was President Bush's unofficial envoy in Iraq during occupation. Blackwill worked with CPA Administrator Bremer and UN Envoy Lakhdar Brahimi in Baghdad to set up the new interim Iraqi government.<sup>662</sup> Blackwill reportedly furnished Brahimi with the names of tribal sheikhs and provincial leaders that the U.S. felt would have been viable candidates for Iraq's interim government.<sup>663</sup> According to Amatzia Baram, Middle East expert with the US Institute of Peace, "Blackwill is the single most influential person when it comes to decision-making in Baghdad today."<sup>664</sup>

### *Lakhdar Brahimi*

UN Special Envoy Lakhdar Brahimi was dispatched to Iraq in March 2004, at the request of the Iraqi Governing Council and CPA, to meet with a wide cross-section of Iraqi society and determine the most legitimate and viable way to create a new interim Iraqi government. Brahimi is a former foreign minister of Algeria. His experience includes overseeing the 1994 elections that made Nelson Mandela South Africa's first democratic president, acting as UN special representative to Haiti after the U.S. invasion (1994-1996), and helping to construct a new government in Afghanistan after the U.S. defeated the Taliban in 2001. Brahimi is also the author of the influential "Brahimi Report" of 2000, the first systematic and comprehensive effort to identify and address the challenges with UN peacekeeping missions and operations in the field.

### *Administrator L. Paul Bremer, III*

Administrator L. Paul Bremer, III was named Presidential Envoy to Iraq on May 6, 2003 and in this capacity served as Administrator of the Coalition Provisional Authority during occupation. Bremer is a career Foreign Service officer who served as President Reagan's Ambassador at large for counterterrorism and was Ambassador to the Netherlands for three years beginning in 1983. Bremer also served as executive secretary of the State Department.

### *John Negroponte*

John Negroponte was sworn in as U.S. Ambassador to Iraq on June 23, 2004.<sup>665</sup> He took over non-military U.S. interests in Iraq from Administrator Bremer on June 28 and will run the U.S.'s embassy in Baghdad, which will be the world's largest. Negroponte is one of the U.S.'s most senior career Foreign Service officers, and served as President Bush's Ambassador to the UN until this appointment. During a controversial tenure as U.S. Ambassador to Honduras from 1981-1985, he was alleged to have overlooked serious human rights violations.<sup>666</sup>

## Key International Organizations

### *The International Monetary Fund*<sup>667</sup>

The International Monetary Fund (IMF) has carried out a macroeconomic assessment of Iraq for potential donors, provided economic policy advice to the CPA, provided technical assistance on rebuilding financial infrastructure to the Iraqi Finance Ministry and Central Bank, overseen auditors of the Development Fund for Iraq, and released an Iraqi debt sustainability analysis for consideration by the Paris Club of Creditors. The IMF has indicated it can provide \$2.5 - \$4.25 billion in loans over a three-year period now that an internationally recognized Iraqi government is in place, pending negotiations that are ongoing as of late-August 2004.<sup>668</sup>

### *The United Nations*<sup>669</sup>

The UN's role in Iraq has been dramatically shaped by the U.S. government's desire to take the lead in post-conflict activities. While the UN very frequently takes the lead in post-conflict reconstruction situations — including the provision of emergency health care, reviving operations of government institutions, and helping restore legal systems — it has had a much more circumscribed role in Iraq. The UN's status in Iraq has also been affected by considerable security problems. On August 19, 2003, a bomb tore through the UN's Baghdad headquarters, killing at least 23 people, including UN Special Representative of the Secretary-General in Iraq, Sergio Vieira de Mello. The UN immediately pulled all international staff out of Iraq. UN Special Envoy Lakhdar Brahimi went to Iraq in May 2004 and participated in the selection of the new interim Iraqi government that took control on June 28. During occupation, UN Secretary-General Kofi Annan appointed Ross Mountain as acting Special UN Representative to Iraq and set up a small staff of 40 for the UN Assistance Mission for Iraq (UNAMI), based in Cyprus and Amman. In July 2004, Secretary-General Kofi Annan appointed Ashraf Jehangir Qazi as his Special Representative for Iraq.<sup>670</sup> Qazi, who served as Pakistan's Ambassador to the U.S. at the time of his appointment, replaced Sergio Vieira de Mello.<sup>671</sup>

### *The World Bank*<sup>672</sup>

By the end of occupation, the World Bank had trained more than 500 Iraqis in program and financial management to increase their capacity to oversee and spend international aid.<sup>673</sup> As of late-August, 2004, the World Bank was holding back the balance of any further contributions until security and monitoring concerns were sufficiently addressed.<sup>674</sup> As of August 2004 the Bank had no significant presence in Iraq, and has indicated that staff will return and assume a prominent role in the country's reconstruction process when its concerns about security are met.<sup>675</sup> The World Bank is also a member of the International Advisory and Monitoring Board, and co-manages the International Reconstruction Fund Facility for Iraq with the UN.

### *The Arab League*<sup>676</sup>

The Arab League staunchly opposed the U.S.-led invasion in Iraq. The League has nonetheless been supportive of the interim Iraqi government, and Secretary General Amr Mussa visited Iraq in August 2004 for consultations on future assistance. The results of this discussion are expected to be presented in September 2004 at the Arab League summit in Cairo. Mussa has said that Arab League member states will not send soldiers to Iraq until U.S.-led forces have left the country.

## Appendix 2. Timeline of weapons inspections in Iraq<sup>677</sup>

June 9, 1991	UN weapons inspectors enter Iraq (UNSCOM)
April 9, 1992	Iraq calls for halt of UNSCOM aerial surveillance flights
January 1993	Iraq refuses UNSCOM use of its own planes to fly into Iraq
July 1995	Iraq threatens to end all cooperation with UNSCOM if oil sanctions are not lifted
November 1995	Government of Jordan intercepts large shipment of high-grade missile components destined for Iraq, which Iraq denied. UNSCOM found similar shipments on the Tigris River
September 17, 1997	UNSCOM inspectors witness and videotape the destruction and disposal of files
November 13, 1997	Iraq requires all US employees of UNSCOM to leave Iraq immediately
December 16, 1998	All UNSCOM weapons inspectors are forced to leave Iraq
December 17, 1999	UN Security Council replaces UNSCOM with UNMOVIC under Resolution 1284
May 14, 2002	UNSC overhauls sanctions, implementing "smart" sanctions to narrow the focus on blocking weapons without hindering civilian trade
November 27, 2002- March 18, 2003	UN weapons inspectors return to Iraq for first time in nearly 4 years (UNMOVIC)

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## Appendix 4. Extended Bibliography

### *After Saddam: Assessing the Reconstruction of Iraq*

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<http://www.brookings.edu/dybdocroot/views/papers/pollack/20040107.pdf>

### *Capturing Iraqi Voices*

Bathsheba N. Crocker and Frederick D. Barton

Center for Strategic and International Studies: Post-Conflict Reconstruction Project, July

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[http://www.csis.org/isp/pcr/0407\\_Capturing\\_Iraqi\\_Voices.pdf](http://www.csis.org/isp/pcr/0407_Capturing_Iraqi_Voices.pdf)

### *The Current Military Situation in Iraq*

Anthony H. Cordesman

Center for Strategic and International Studies, November 14, 2003

<http://www.csis.org/features/031114current.pdf>

### *Executive summary of Article 15-6 investigation of the 800th Military Police Brigade by Maj.*

*Gen. Antonio M. Taguba*

Major General Antonio M. Taguba, February 2004

<http://msnbc.msn.com/id/4894001>

### *Fallujah, Sadr, and the Eroding U.S. Position in Iraq*

Anthony H. Cordesman

Center for Strategic and International Studies, April 30, 2004

[http://www.csis.org/features/iraq\\_fallujah.pdf](http://www.csis.org/features/iraq_fallujah.pdf)

### *Field Report on Iraq's Post Conflict Reconstruction*

A joint statement by John Hamre, Frederick Barton, and Bathsheba Crocker, CSIS,

Johanna Mendelson-Forman, UNF, and Robert Orr

Council on Foreign Relations, July 23, 2003

<http://www.csis.org/hill/tso30723hamreetal.pdf>

### *Final Report of the Independent Panel to Review DoD Detention Operations*

The Honorable James R. Schlesinger, the Honorable Harold Brown, the Honorable Tillie

K. Fowler and General Charles A. Horner, August 2004

<http://wid.ap.org/documents/iraq/040824finalreport.pdf>

### *Intelligence, Iraq, and Weapons of Mass Destruction*

Anthony H. Cordesman, Center for Strategic and International Studies, January 26, 2004

[http://www.csis.org/features/040126\\_WMDIntellLesAnnex.pdf](http://www.csis.org/features/040126_WMDIntellLesAnnex.pdf)

### *International Humanitarian Law Issues In A Potential War In Iraq*

Human Rights Watch Briefing Paper, February 20, 2003

<http://www.hrw.org/background/arms/iraq0202003.htm#9>

### *Investigation of Intelligence Activities At Abu Ghraib (Fay Report)*

Major General George R. Fay, August 25, 2004

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### *Iraq: A Strategy for Progress*

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<http://www.americanprogress.org/site/pp.asp?c=biJRJ8OVF&b=65958>

### *Iraqi Interim Government Announcement Ceremony Press Packet*

Coalition Provisional Authority, June, 2004

[http://www.iraqCoalition.org/government/press\\_packet.pdf](http://www.iraqCoalition.org/government/press_packet.pdf)

### *The Iraq Jobs Crisis: Workers Seek their Own Voice*

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Education for Peace in Iraq Center, June 1, 2004

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### *Iraq: On a Knife Edge*

International Crisis Group, April 27, 2004

[http://www.crisisweb.org/library/documents/middle\\_east\\_\\_\\_north\\_africa/iraq\\_iran\\_gulf/27\\_iraq\\_transition\\_on\\_a\\_knife\\_edge.pdf](http://www.crisisweb.org/library/documents/middle_east___north_africa/iraq_iran_gulf/27_iraq_transition_on_a_knife_edge.pdf)

### *Iraq One Year Later*

Stephen Zunes

Foreign Policy in Focus, March 2004

<http://www.fpif.org/pdf/reports/PR2004iraq-ann.pdf>



## Appendix 5. Links to Key UN Security Council Resolutions on Iraq's Reconstruction

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Amnesty International, March 8, 2004

[http://web.amnesty.org/aidoc/aidoc\\_pdf.nsf/Index/MDE140062004ENGLISH/\\$File/MD E1400604.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/Index/MDE140062004ENGLISH/$File/MD E1400604.pdf)

*Iraq: The Day After*

Thomas R. Pickering, James R. Schlesinger, and Eric P. Schwartz

Council on Foreign Relations, April, 2003

[http://www.cfr.org/pub6847/thomas\\_r\\_pickering\\_james\\_r\\_schlesinger\\_eric\\_schwartz/iraq\\_one\\_year\\_after.php](http://www.cfr.org/pub6847/thomas_r_pickering_james_r_schlesinger_eric_schwartz/iraq_one_year_after.php)

*Joint Iraq Needs Assessment*

United Nations and World Bank, October 2003

[http://lnweb18.worldbank.org/mna/mena.nsf/Attachments/Iraq+Joint+Needs+Assessment/\\$File/Joint+Needs+Assessment.pdf](http://lnweb18.worldbank.org/mna/mena.nsf/Attachments/Iraq+Joint+Needs+Assessment/$File/Joint+Needs+Assessment.pdf)

*The Political Transition in Iraq: Report of the Fact-finding Mission*

The United Nations Security Council, February 23, 2004

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*Reconstructing Iraq: A Guide to the Issues*

Open Society Institute/United Nations Foundation, May 2003

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*The Road Ahead: Lessons in Nation Building from Japan, Germany and Afghanistan for Post-war Iraq*

Ray Salvatore Jennings

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<http://www.usip.org/pubs/peaceworks/pwks49.html>

*UN/World Bank Present Iraq Reconstruction Needs to Core Group*

United Nations and World Bank, News Release No: 2004/103/S

<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20130299~menuPK:34463~pagePK:64003015~piPK:64003012~theSitePK:4607,00.html>

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*UNSCR 1546, 6/8/2004:*

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*UNSCR 1511, 10/16/2003:*

<http://ods-dds-ny.un.org/doc/UNDOC/GEN/No3/563/91/PDF/No356391.pdf?OpenElement>

*UNSCR 1500, 8/14/2003:*

<http://ods-dds-ny.un.org/doc/UNDOC/GEN/No3/467/78/PDF/No346778.pdf?OpenElement>

*UNSCR 1483, 5/22/2003*

<http://ods-dds-ny.un.org/doc/UNDOC/GEN/No3/368/53/PDF/No336853.pdf?OpenElement>

## Appendix 6. Links to Other Key Websites

- Arab Fund for Economic and Social Development: <http://www.arabfund.org>
- Coalition Provisional Authority: <http://www.iraqCoalition.org/>
- Independent Inquiry Committee (IIC) into the Oil for Food Program: <http://www.iic-offp.org>
- International Advisory and Monitoring Board: <http://www.iamb.info>
- International Monetary Fund Iraq Page: <http://www.imf.org/external/country/IRQ/>
- Paris Club: <http://www.clubdeparis.org>
- Program Management Office: <http://www.rebuilding-iraq.net>
- U.K. Department for International Development: <http://www.dfid.gov.uk>
- UN Iraq Page: <http://www.un.org/apps/news/infocusRel.asp?infocusID=50&Body=Iraq&Body1=inspect>
- U.S. Agency for International Development Iraq Page: <http://www.usaid.gov/iraq/>
- U.S. Department of Defense Iraq Page: <http://www.defenselink.mil/issues/dpi-iraq.html>
- U.S. State Department Iraq Page: <http://www.state.gov/p/nea/ci/c3212.htm>
- U.S. Embassy in Baghdad: <http://iraq.usembassy.gov/>
- World Bank Iraq Page: <http://lnweb18.worldbank.org/mna/mena.nsf/Countries/Iraq/B159E92EFE1EBBC485256CF500753888?OpenDocument>

## Appendix 7. Key Acronyms

CAT	Convention Against Torture
CPA	Coalition Provisional Authority
CERP	Civil Emergency Response Program
CPA	Coalition Provisional Authority
DFI	Development Fund for Iraq
DOD	United States Department of Defense
GDP	Gross Domestic Product
IAEA	International Atomic Energy Agency
IAMB	International Advisory and Monitoring Board
ICCPR	International Covenant on Civil and Political Rights
ICDC	Iraqi Civil Defense Corps
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IMF	International Monetary Fund
INA	Iraqi National Accord
INC	Iraqi National Congress
IRRFI	International Reconstruction Fund Facility for Iraq
NATO	North Atlantic Treaty Organization
OFF	Oil-for-Food Program
PMC	Private Military Contractor
PMO	Project Management Office (Pentagon)
TAL	Transitional Administrative Law
UCMJ	Uniform Code of Military Justice
UK	United Kingdom
UN	United Nations
UNAMI	United Nations Assistance Mission for Iraq
UNICEF	United Nations Children's Fund
UNMOVIC	United Nations Monitoring, Inspection and Verification Commission
UNSC	United Nations Security Council
UNSCOM	United Nations Special Commission
US	United States
USAID	United States Agency for International Development
WMD	Weapons of Mass Destruction

# Notes

- 1 See Open Society Institute and United Nations Foundation, *Reconstructing Iraq: A Guide to the Issues*, May 30, 2003, <http://www.soros.org/initiatives/washington>. For President Bush's declaration on the end of major combat activities in Iraq, see Office of the White House Press Secretary, "President Bush Announces Combat Operations in Iraq Have Ended (Remarks by the President from the USS Abraham Lincoln At Sea Off the Coast of San Diego, California,)," May 1, 2003, <http://www.whitehouse.gov/news/releases/2003/05/iraq/20030501-15.html>.
- 2 This report explicitly does not refer to the transfer of power on June 28, 2004 as a restoration of "sovereignty," due to the fact that under international law, Iraq never actually lost its sovereign status. The 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Fourth Geneva Convention of 1949 Relative to the Protection of Civilian Persons in the Time of War stipulate that occupying powers do not, through occupation, gain sovereignty over the occupied territory, as occupation is considered a transitory phase. The occupying power instead assumes provisional control of the occupied territory, and the right to "subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfill its obligations under the present (Fourth Geneva) Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them." In addition, however, the occupying power(s) assume(s) the responsibility of administering this territory, providing for the health and wellbeing of occupants, and maintaining public order and safety. See Human Rights Watch, *The War in Iraq and International Humanitarian Law*, May 16, 2003, <http://www.hrw.org/campaigns/iraq/ihlfaqoccupation.htm> and Amnesty International, *Iraq: Responsibilities of the occupying powers*, April 16, 2003, <http://web.amnesty.org/library/index/eng-mde140892003>. Also see text of the 1907 Hague Regulations (IV), <http://www.icrc.org/ihl.nsf/o/1d1726425f6955aec125641e0038bfd6?OpenDocument> and the text of the Fourth Geneva Convention, <http://www.icrc.org/ihl.nsf/o/6756482d86146898c125641e004aa3c5?OpenDocument>.
- 3 A note on terminology; **Occupying Powers:** Under UNSC Resolution 1483, the U.S. and U.K. occupying powers were referred to as "the Authority." For the purposes of the report, however, we will refer to the U.S. and U.K. as "the occupying powers." See text of UNSC Resolution 1483, [http://www.un.org/Docs/sc/unsc\\_resolution03.html](http://www.un.org/Docs/sc/unsc_resolution03.html). **CPA:** When the CPA was formed in May 2003, the occupying powers in both their civil and military capacities became commonly referred to by the CPA and in the press as "the Coalition." We will refer to members of the CPA involved in Iraq's civil administration as "CPA officials." See the Council on Foreign Relations Iraq page, specifically the "Background on the News" section, [http://www.cfr.org/reg\\_index.php?id=613511](http://www.cfr.org/reg_index.php?id=613511). Also see the CPA website, specifically the "Transcripts" section, <http://www.iraqcoalition.org/transcripts/index.html> for references to "coalition officials" and "the coalition." **U.S.-led Coalition:** We refer to the U.S.-led Coalition which invaded Iraq in March 2003 (made up of U.S., U.K. and Australian troops) as "the U.S.-led Coalition." **Coalition Forces:** We refer to the U.S.-led multinational force (made up of over 30 countries at its height) in Iraq during occupation as "the Coalition forces." All references to the Coalition and Coalition officials should be taken as past tense, since the CPA no longer exists and the occupation has formally ended. **Multinational Force:** After June 28, 2004, what was formerly referred to as the Coalition force is known as the U.S.-led multinational force.
- 4 Specifically, these obligations reside in the Fourth Geneva Convention of 1949 and the Hague Convention of October 1907 and Annexed Regulations concerning the Laws and Customs of War on Land (Convention No. IV of 1907). For text of the four Geneva Conventions of 1949, see <http://www.redcross.org.uk/index.asp?id=11>. For text of Hague Conventions of 1899 and 1907, see [http://en.wikipedia.org/wiki/Hague\\_Conventions\\_\(1899\\_and\\_1907\)](http://en.wikipedia.org/wiki/Hague_Conventions_(1899_and_1907)).
- 5 See text of UNSC Resolution 1483, [http://www.un.org/Docs/sc/unsc\\_resolution03.html](http://www.un.org/Docs/sc/unsc_resolution03.html).
- 6 See text of UNSC Resolution 1483, [http://www.un.org/Docs/sc/unsc\\_resolution03.html](http://www.un.org/Docs/sc/unsc_resolution03.html). Also see text of UNSC Resolution 1511, [http://www.un.org/Docs/sc/unsc\\_resolution03.html](http://www.un.org/Docs/sc/unsc_resolution03.html).
- 7 In testimony to the U.S. Senate Foreign Relations Committee on August 2002, Dr. Phebe Marr said, "The first is the kin and clan network that dominates most institutions, particularly the security organs and the military. Saddam, as we know, has maintained power by putting his kin and clan in these functions. Together with neighboring clans from the Sunni Arab triangle they have developed an ever-thickening net-

work of kin and clan relations in these leading institutions." See "Prepared Testimony by Dr. Phebe Marr, Senate Foreign Relations Committee (107th Congress), August 1, 2002, <http://www.iraqwatch.org/government/US/HearingsPreparedstatements/marr-sfrc-080102.htm>.

- 8 See, Human Rights Watch, *Iraq's Crime of Genocide: The Anfal Campaign Against the Kurds* (New Haven and London: Yale University Press, 1995). We use the term "praetorian" to evoke the political venality of Saddam's Republican guard, in keeping with Arthur Schlesinger Jr.'s oft quoted remark "A large praetorian bureaucracy, filled with ambitious, possessive... and often sycophantic people, makes work and makes trouble." See the American Heritage Dictionary of the English Language: Fourth Edition, 2000.
- 9 David Reiff, "Were Sanctions Rights?" *New York Times Magazine*, July 27, 2003.
- 10 David A. Lopez and David Cortright, "Containing Iraq: Sanctions Worked," *Foreign Affairs*, July/August 2004.
- 11 The principal sources of International Humanitarian Law ("IHL") are the four Geneva Conventions of 1949, their Additional Protocols I and II of 1977, the Hague Conventions of 1899 and 1907 and their associated regulations, and the customary laws of war. For text of the four Geneva Conventions of 1949, <http://www.redcross.org.uk/index.asp?id=11>. For text of Hague Conventions of 1899 and 1907, [http://en.wikipedia.org/wiki/Hague\\_Conventions\\_\(1899\\_and\\_1907\)](http://en.wikipedia.org/wiki/Hague_Conventions_(1899_and_1907)).
- 12 On May 22, 2003, UNSC Resolution 1483 formally recognized the U.S. and U.K. as occupying powers of Iraq, subject to "the specific authorities, responsibilities, and obligations under applicable international law." These obligations refer to the Hague Convention (IV) respecting the Laws and Customs of War on Land (Hague Convention) and its annexed Regulations respecting the Laws and Customs of War on Land (Hague Regulations) of October 18, 1907; the Third Geneva Convention relative to the Treatment of the Prisoners of War (Third Geneva Convention) of August 12, 1949; the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) of August 12, 1949; and other rules of customary international law, such as those outlined in Additional Protocol I of 1977. Specifically, the authority, rights and duties of an occupying power are delineated in the Annexed Regulations to Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land and the Fourth (Civilian) Geneva Convention.
- 13 It should be noted that the Fourth Convention makes all its provisions relating to occupied territory applicable for only one year following "the general conclusion of military operations." Thereafter, only certain articles apply until an occupation ends. These articles importantly preserve, inter alia, the right to humane treatment, the right to a fair trial and protection against forced transfers, deportations and evacuations. See Article 6 of the Fourth Geneva Convention, <http://www.redcross.org.uk/index.asp?id=11>. The Additional Protocol I of 1977 was created to extend protections outlined in the Fourth Geneva Convention to keep pace with changing aspects of international armed conflict and close existing loopholes. It seeks to extend the obligations of occupying forces until the termination of occupation (Article 3 (b)). See International Humanitarian Law Initiative, *Military Occupation of Iraq: I. Application of IHL and the Maintenance of Law and Order*, April 14, 2003, <http://www.ihlresearch.org/iraq/>. Neither the U.S. nor Iraq are parties to the protocol, and hence it does not apply to the U.S. occupation of Iraq. Despite the U.S.'s refusal to ratify Additional Protocol I, it has expressed its support for many rules in the Protocol and has declared others to be customary international law. Moreover, the U.S. Army, Navy and Air Force manuals on international law applicable during warfare include prescriptions which often track the terminology in Additional Protocol I. See Michael J. Matheson, "The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions," *American University Journal of International Law and Policy* 2 (1987), 419.
- 14 Accordingly, in the case of the U.S., this law applied to members of U.S. armed forces, CIA employees, civilian administrators and private contractors in occupied Iraq. It is also important to note that under international law, as occupying powers, the U.S. and U.K. could have reasonably expected, if not required, Iraqi civilians to respect its authority and refrain from all hostile acts toward its armed forces and occupation personnel. In this connection, Iraqi citizens who, either individually or collectively, engaged in fighting or other hostile acts against U.S. or other occupation forces could have been treated upon capture as "unprivileged" combatants, and thus tried and punished for hostile acts. Such "insurgents" should, nonetheless, be held as protected persons under the Fourth Convention (for text of the four Geneva Conventions of 1949, see <http://www.redcross.org.uk/index.asp?id=11>). Foreign nationals who, for whatever reason, entered Iraq and took up arms against occupation forces should have been considered as waging "private" hostilities and upon capture be treated as unprivileged combatants and prosecuted and punished as such. Unlike Iraqi insurgents, these combatants would not necessarily be accorded protection under the Fourth Convention. If denied such protection, however, these persons must be treated humanely and afforded other customary law protections enshrined in the Geneva Conventions' Common Article 3 and Article 75 of Additional Protocol I of 1977.

- 15 A nonderogable right or provision is one that is considered fundamental and universally applicable without dispute, such as the right to freedom from slavery or murder. See “1994 International Covenant on Civil and Political Rights, Article 5 – Nonderogable Nature,” last modified June 18, 1999, [http://dosfan.lib.uic.edu/ERC/law/Covenant94/Specific\\_Articles/05.html](http://dosfan.lib.uic.edu/ERC/law/Covenant94/Specific_Articles/05.html).
- 16 Article 4, Fourth Geneva Convention of 1949.
- 17 Article 43, 1907 Hague Regulations.
- 18 Third Geneva Convention of 1949: Prisoners of War are entitled under the Third Geneva Convention “in all circumstances to respect for their persons and their honor” (Art. 14) and “must at all times be humanely treated” (Art.13). In addition, “no physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatsoever” (Art. 17). The willful killing, torture or inhuman treatment, causing great suffering or serious injury to body or health, or depriving a prisoner of war of the right to a fair and regular trial are made “grave breaches” i.e. serious war crimes (Art. 130). Fourth Geneva Convention of 1949: Civilians protected under the Fourth Geneva Convention (including, in principle, civilian detainees) are entitled “in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated and shall be protected especially against all acts of violence or threats thereof” (Art. 27). “No physical or moral coercion” can be employed against such protected civilians “in particular to obtain information from them or from third parties” (Art. 31). The willful killing, torture or inhuman treatment of, or causing great suffering or serious injury to a protected civilian are made grave breaches (Art. 147). Article 3 common to all four Geneva Conventions and Article 75, Additional Protocol I of 1977: Persons held as unprivileged combatants, but who are denied protection under the Third or Fourth Conventions, are entitled as a matter of customary law to the minimum guarantees of humane treatment, as well as other basic protections, enumerated in the Geneva Conventions’ Common Article 3 and Article 75 of Additional Protocol I.
- 19 Article 56, Fourth Geneva Convention of 1949.
- 20 Article 55, Fourth Geneva Convention of 1949.
- 21 Articles 55, 1907 Hague Regulations. Additionally, Article 46 of the 1907 Hague Regulations states “Private property cannot be confiscated.”
- 22 Articles 59, Fourth Geneva Convention of 1949, Article 61 is also applicable.
- 23 Article 47, Fourth Geneva Convention of 1949. Further, the Commentary on the Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, August 1949, states, “Certain changes [to institutions] might conceivably be necessary and even an improvement;...[the] object is to safeguard human beings and not to protect the political institutions and government machinery of the State as such...changes made in the internal organization of the State must not lead to protected persons being deprived of the rights and safeguards provided [by the Convention].” See “Commentary on the Convention (IV), Part III: Status and treatment of protected persons, Section III: Occupied territories Article 47 – Inviolability of Rights (1),” August 1949, <http://www.icrc.org/jhl.nsf/o/c4712fe71392afe1c12563cd0042c34a?OpenDocument>.
- 24 Article 64, Fourth Geneva Convention of 1949.
- 25 Article 49, Fourth Geneva Convention of 1949.
- 26 See Office of the White House Press Secretary, “President Bush Announces Combat Operations in Iraq Have Ended (Remarks by the President from the USS Abraham Lincoln at sea off the coast of San Diego, California),” May 1, 2003, <http://www.whitehouse.gov/news/releases/2003/05/iraq/20030501-15.html>. For more information on sanctions, see Open Society Institute and United Nations Foundation, *Reconstructing Iraq: A Guide to the Issues*, May 2003, appendix, <http://www.soros.org/initiatives/washington>
- 27 See text of UNSC Resolution 1483 (May 22, 2003), [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html)
- 28 For more information on the origin and structure of the CPA, see L. Elaine Halchin, “The Coalition Provisional Authority (CPA): Origin, Characteristics, and Institutional Authorities,” *Congressional Research Service*, April 29, 2004, <http://www.fas.org/man/crs/RL32370.pdf>.
- 29 In a March 2003 memo, Prime Minister Tony Blair’s top legal adviser, Lord Goldsmith, warned that “the imposition of major structural economic reforms” on Iraq during occupation might violate international law, unless the Security Council specifically authorized these measures. Coalition officials argued that UNSC Resolution 1483 did this, in granting the occupying powers the authority to “promote the welfare of the Iraqi people through the effective administration of the territory” and assist the “economic reconstruction and the conditions for sustainable development.” At the time, Scott Castle, general counsel to the CPA, argued, “We believe the CPA can undertake significant economic measures in Iraq particularly where those measures support Coalition objectives and the security of Coalition forces...there’s a close nexus between the economic health of Iraq and the security of Iraq.” See Daphne Eviatar, “Free Market Iraq? Not so Fast,” *New York Times*, January 10, 2004.
- 30 CPA Administrator Bremer passed numerous orders, regulations and memorandums which had the full status of law during occupation. See CPA Order 39, Foreign Investment Law, and all other occupation-era laws listed at <http://www.iraqcoalition.org/regulations/index.html#Regulations>.
- 31 Adam Roberts, a professor of international relations at Oxford University and an editor of *Documents on the Laws of War* (Oxford, 2000), says that Order 39 “raises the biggest single question about coalition policy as it relates to the laws of war...that order [39] embodies a major change not just in human rights or the political situation, but in the economic one...it would appear to go further in a free market direction and in allowing external economic activity in Iraq than what one would expect under the provisions of the 1907 Hague law about occupations.” With respect to interpreting the authority over Iraq’s economy granted to the CPA under occupation by UNSC Resolution 1483, David Scheffer, professor of international law at Georgetown University and a former U.S. ambassador at large for war crimes issues, observes that “the Security Council cannot require you to comply with occupation law on one hand and on the other give you authority to run the country in defiance of that law.” Because of this seeming contradiction, Scheffer argued that Resolution “1483 is internally inconsistent.” See also Daphne Eviatar, “Free Market Iraq? Not so Fast,” *New York Times*, January 10, 2004.
- 32 See Daphne Eviatar, “Free Market Iraq? Not so Fast,” *New York Times*, January 10, 2004.
- 33 Significantly, UNSC Resolution 1500 welcomed the establishment of what it called the “broadly representative Governing Council of Iraq” on July 13, 2003 as “an important step towards the formation by the people of Iraq of an internationally recognized, representative government that will exercise the sovereignty of Iraq.” See text of UN Resolution 1500, [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html).
- 34 See United Kingdom Foreign Office, “Statement on the UN Resolution 1511 on the Future of Iraq; Statement by the Foreign Secretary Jack Straw,” October 16, 2003, <http://www.fco.gov.uk/servlet/Servlet?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1063632562982&a=KArticle&aid=1065715554687>
- 35 See text of UNSC Resolution 1511 (October 16, 2003), [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html).
- 36 Ibid.
- 37 See text of UNSC Resolution 1546 (June 8, 2004), [http://www.un.org/Docs/journal/asp/ws.asp?m=s/res/1546\(2004\)](http://www.un.org/Docs/journal/asp/ws.asp?m=s/res/1546(2004)).
- 38 Ibid.
- 39 Ibid.
- 40 The agreement would be based on two letters of understanding written by interim Iraqi Prime Minister Iyad Allawi and U.S. Secretary of State Colin Powell. In his letter, Prime Minister Allawi promised to create a new security ministerial committee to help coordinate decision-making on controversial operations. Powell’s letter, in turn, promises that the multinational force “will coordinate with Iraqi security forces at all levels — national, regional, and local — in order to achieve unity of command of military operations in which Iraqi forces are engaged with the MNF.” See text and appendix of UNSC Resolution 1546 (June 8, 2004), [http://www.un.org/Docs/journal/asp/ws.asp?m=s/res/1546\(2004\)](http://www.un.org/Docs/journal/asp/ws.asp?m=s/res/1546(2004)).
- 41 See Human Rights Watch, *Iraq: No ‘Sovereignty Lite’: U.S., Britain Still Responsible for Security After June 30*, May 24, 2004, <http://www.hrw.org/english/docs/2004/05/24/iraq8613.htm>; Judy Aita, “Iraq Needs Multinational Force, Foreign Minister Says,” U.S. State Department Washington File, June 4, 2004, [http://www.cpa-iraq.org/transcripts/20040604\\_Zebari\\_MNE.html](http://www.cpa-iraq.org/transcripts/20040604_Zebari_MNE.html); and Robin Wright, “U.S. Immunity in Iraq Will Go Beyond June 30,” *Washington Post*, June 24, 2004.
- 42 For a full list of CPA orders passed during occupation, see <http://www.iraqcoalition.org/regulations/index.html#Regulations>. For a discussion of last minute orders (including Orders 96 and 72) which were the source of some controversy toward occupation’s end, see Rajiv Chandrasekaran and Walter Pincus, “U.S. Edicts Curb Power of Iraq’s Leadership,” *Washington Post*, June 27, 2004 and Jim Krane, “Iraq Government Must Abide by U.S. Made laws,” *Associated Press*, June 27, 2004.
- 43 On June 28, Bremer’s last order (100) affirmed that “the laws, regulations, orders, memoranda, instructions and directives of the CPA remain in force unless and until rescinded or amended by legislation enacted and having the force of law.” See Order 100 at CPA Official Documents, <http://www.iraqcoalition.org/regulations>.
- 44 See text of TAL Annex, [http://www.cpa-iraq.org/government/TAL\\_Annex.html](http://www.cpa-iraq.org/government/TAL_Annex.html).
- 45 For information on the reasons behind the TAL’s exclusion from UN Resolution 1546, see Sharon Otterman “Iraq: U.N. Resolution 1546,” *CFR.org*, June 10, 2004, [http://www.cfr.org/background/background\\_iraq\\_1546.php](http://www.cfr.org/background/background_iraq_1546.php). Also see International Crisis Group, *Iraq’s Transition: On a Knife Edge*, April 27, 2004, p. 26, <http://www.icg.org/home/index.cfm?id=2679&l=1>



- 46 For more information on the reasons behind the TAL's exclusion from UN Resolution 1546, see Sharon Otterman, "Iraq: U.N. Resolution 1546," *CFR.org*, June 10, 2004, [http://www.cfr.org/background/background\\_iraq\\_1546.php](http://www.cfr.org/background/background_iraq_1546.php).
- 47 See Liz Sly, "Government in peril as Kurds balk," *Chicago Tribune*, June 10, 2004 and Twana Osman, "Talabani Gives Cautious Backing to Iraq Resolution," *Reuters*, June 10, 2004.
- 48 Dexter Filkins, "Iraqi seeks to calm Kurds by backing constitution," *New York Times*, June 10, 2004.
- 49 Amnesty International, "Iraq: Protection of human rights vital during transition," Press Release, July 14, 2004, <http://www.amnestyusa.org/countries/iraq/document.do?id=80256DD400782B8480256EBE005DEEE7>
- 50 Ibid. Once released, IHL states that detainees may be subject to re-arrest by the national government depending on their status and the grounds for their original arrest.
- 51 Amnesty International, "Iraq: Protection of human rights vital during transition," Press Release, July 14, 2004, <http://www.amnestyusa.org/countries/iraq/document.do?id=80256DD400782B8480256EBE005DEEE7>
- 52 For text of all of these orders, regulations and memorandums, see <http://www.iraqcoalition.org/regulations/index.html#Regulations>.
- 53 See Article 43 of the 1907 Hague Regulations.
- 54 See text of UNSC Resolution 1483 (May 22, 2003), [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html).
- 55 See text of UNSC Resolution 1511 (October 16, 2003) at [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html).
- 56 See Amnesty International, *Amnesty International Report 2004*, May 26, 2004, Iraq section, <http://web.amnesty.org/report2004/irq-summary-eng>. Also see Rajiv Chandrasekaran, "U.S. errors hang over Iraq handover," *Washington Post*, June 20, 2004, and "Winning and Losing," *Online Newshour*, May 10, 2004, with William Odom (a senior fellow at the Hudson Institute), Retired Marine Corps Lt. General Bernard Trainor (an adjunct senior fellow at the Council on Foreign Relations, and co-author of *The Generals' War*, a book about the 1991 Gulf War), and Larry Diamond (a former political adviser to the CPA in Baghdad and senior fellow at the Hoover Institution at Stanford University), [http://www.pbs.org/newshour/bb/middle\\_east/jan-june04/prospects\\_5-10.html](http://www.pbs.org/newshour/bb/middle_east/jan-june04/prospects_5-10.html).
- 57 The "Future of Iraq Project," led by the U.S. Department of State, began in April 2002 and involved dozens of exiled Iraqi professionals and 17 U.S. agencies, including the Pentagon. Its job was to prepare strategies for the governance and reconstruction of Iraq after Saddam's removal, and covered everything from post-war security and anticipated rioting to drafting a new Iraqi judicial code. Key conclusions included warning that the summary disbanding of the Iraqi army would lead to resistance and security problems for Coalition forces, and predicted that massive looting and a vacuum of law and order would ensue immediately following Saddam's removal. Retired Lt. Gen. Jay Garner, the first civil administrator in Iraq, requested that Tom Warrick, the Future of Iraq project director, join his staff in Baghdad. However, the Pentagon reportedly vetoed his appointment. According to one former U.S. official, before, during and after the March 2003 invasion, post-conflict planning documents from the State Department, CIA and elsewhere were "simply disappearing down the black hole" at the Pentagon. See "U.S. failed to plan for postwar Iraq," *Associated Press*, July 13, 2003, and Jonathan S. Landay and Warren S. Strobel, "Lack of Planning Contributed to Chaos in Iraq," *Knight Ridder/Tribune Wire*, July 12, 2003, and Andrew F. Tully, "Iraq: Report Says Pentagon Ignored 'Valuable' Input," *Radio Free Europe/Radio Liberty*, October 22, 2003. Also see Isam al-Khafaji, "Iraq: After Regime Change," *Le Monde Diplomatique*, January 2003, in which the author urgently calls for the rehabilitation of Iraq's regular armed forces and national police force as a key first step in Iraq's transition to democracy.
- 58 For more information on the internal political divisions within the U.S. government on the administration of post-conflict Iraq, see Open Society Institute and United Nations Foundation, *Reconstructing Iraq: A Guide to the Issues*, May 2003, <http://www.soros.org/initiatives/washington>. For more on the looting and climate of lawlessness that ensued following the March 2003 conflict and the negative precedent this set for Iraqis with respect to the Coalition's commitment to law enforcement, see Amnesty International, "Iraq: Looting, lawlessness and humanitarian consequences," April 11, 2003, <http://web.amnesty.org/library/index/ENGMDE140852003>. For information on Iraqi/Coalition relations, see Juan Cole, "Testimony at Senate Foreign Relations Committee: U.S. Mistakes in Iraq," April 20, 2004, <http://hnn.us/articles/4823.html>. Also see the results of a CPA poll conducted in late March/early April 2004, in which 80 percent of Iraqis said they mistrusted the CPA and 82 percent disapprove of US and allied forces in their country. See "POLL: Eighty percent of Iraqis mistrust US-led coalition," *Agence France-Presse*, May 13, 2004.
- 59 See Amnesty International, "Iraq: Looting, lawlessness and humanitarian consequences," April 11, 2003, <http://web.amnesty.org/library/index/ENGMDE140852003>, and Edmund L. Andrews and Susan Sachs, "Iraq's Slide Into Lawlessness Squanders Good Will for U.S.," *New York Times*, May 18, 2003.
- 60 Edmund L. Andrews and Susan Sachs, "Iraq's Slide Into Lawlessness Squanders Good Will for U.S.," *New York Times*, May 18, 2003. Also see "Blasts kill 6 at Baghdad Ammunition Dump," *Associated Press*, April 26, 2003.
- 61 See Scott Wilson, "Insurgency Leaves U.S. Forces Baffled," *Washington Post*, June 27, 2004. Also see Jim Krane, "Extent of Foreign Fighters in Iraqi Insurgency May Be Less than Often Portrayed," *Associated Press*, May 3, 2004. With respect to al-Qaeda's alleged involvement in Iraq, on May 19, 2004, a Spanish judge accused three Algerians of belonging to al-Qaeda as well as forming part of an Abu Musab al-Zarqawi-led network that has recruited Islamists across Europe to fight the U.S.-led occupation in Iraq. See Daniel Trotta, "Spain Judge Links al-Qaeda Suspects to Insurgency," *Reuters*, May 19, 2004.
- 62 On June 28, 2004, in a surprise ceremony reportedly intended to catch insurgents off-guard and afford a more peaceful transition, the U.S.-led CPA, represented by Administrator Bremer, officially handed over political power to the interim Iraqi government. The unexpected turnover to the Iraqi government took less than 20 minutes and came two days ahead of schedule; under UNSC Resolution 1546, June 30 had been the declared date of transfer. See Rebecca Ford Mitchell, "Early Transfer of Iraq Sovereignty Driven by Readiness, Security," U.S. State Department Washington File, June 28, 2004, <http://usinfo.state.gov/is/Archive/2004/Jun/28-421994.html>. With respect to the ongoing instability in Iraq after June 28, see Anthony S. Cordesman, "Inexcusable Failure: Progress in Training the Iraqi Army and Security Forces as of Mid-July 2004," Center for Strategic and International Studies, July 20, 2004, [http://www.csis.org/features/iraq\\_inexcusablefailure.pdf](http://www.csis.org/features/iraq_inexcusablefailure.pdf); Michael O'Hanlon, "Is Iraq 'Calming Down,'" National Public Radio, July 20, 2004, <http://www.brook.edu/views/interviews/ohanlon/20040720.htm>; Michael O'Hanlon and Adriana Lins de Albuquerque, "Iraq: By the Numbers," *Los Angeles Times*, September 3, 2004; and International Crisis Group, "Reconstructing Iraq," <http://www.icg.org/home/index.cfm?l=1&id=2936>.
- 63 See text of President Bush's speech on June 1, welcoming the establishment of the new Iraqi interim government, when he warned that more violence was likely. White House, "President Bush Discusses the Iraqi Interim Government; Remarks by the President on Iraqi Interim Government," June 1, 2004, <http://www.whitehouse.gov/news/releases/2004/06/20040601-2.html>. Also see Robert Burns, "Iraqi violence likely to get worse before it gets better," *Associated Press*, May 19, 2004.
- 64 Iraqi civilian fatalities almost tripled between January and February 2004 (rising from 93 to 296 people), and continued to escalate through April (400 people). See Michael O'Hanlon and Adriana Lins de Albuquerque, *Iraq Index* (current as of September 8, 2004), Brookings Institution, <http://www.brook.edu/fp/saban/iraq/index.pdf>. For more on the targeting of Iraqi nationals employed by the CPA by insurgents, see Dan Murphy, "Surprise ending: Occupation over," the *Christian Science Monitor*, June 29, 2004 and Greg Hansen, "Humanitarian Action in Iraq — Emerging Constraints and Challenges," Humanitarianism and War Project, April 27, 2004.
- 65 Abdulwahab Alkebsi, a Middle East program officer at the National Endowment for Democracy, states, "These people [Iraqis], like interpreters for example, the ones who work directly with the Americans in the CPA have been targeted. We haven't heard a lot about them in the news. Since the signing of the transitional administrative law on March 8, we've had about a dozen of them who are targeted at pointblank range and shot and assassinated. So they know they are the targets but these are the pioneers." See Sewell Chan and Scott Wilson, "Violence Leaves Iraqis in Despair," *Washington Post*, May 19, 2004.
- 66 The "Green Zone" was a four-square-mile area surrounded by 15-foot concrete walls and barbed-wire rings where the CPA was headquartered. Frank Dall, project director for a U.S. contractor in Iraq, said of the Green-Zone during occupation "The Americans are behind the walls in the palace...they have difficulty knowing what's going on... I call it the 'green area syndrome.'" See Ariana Eunjung Cha, "Baghdad's U.S. Zone A Stand-In for Home," *Washington Post*, December 6, 2003. Also see "Text of Redacted Memo by U.S. Official in Iraq Posted," AAN, April 23, 2004, where the author stated "Throughout Iraq, we are handicapped by our security bubble....few in CPA- Baghdad get out of the Green Zone anymore, at least outside the normal business of going to their respective ministries." <http://www.aan.org/gyrobase/Aan/viewArticle?oid=134346>.
- 67 Dexter Filkins and Somini Sengupta, "Iraq Government Considers Using Emergency Rule," *New York Times*, June 21, 2004.
- 68 Coalition officials based this argument on human rights clauses in the Transitional Administrative Law, which prohibit the interim Iraqi government from engaging in "administrative detention." Further, Coalition leaders allegedly interpreted UNSC Resolution 1546 to mean that the "multinational force will have the

- power to take all actions traditionally associated with martial law," given that 1546 grants the multinational force in Iraq the authority to take "all necessary measures" to provide security." See also Nicolas Pelham, "Iraq ministers told only U.S. can impose martial law," *Financial Times*, June 24, 2004 and "Iraqi leaders mull martial law; U.S. attacks suspected hideout of terrorist leader," *Associated Press*, June 26, 2004.
- 69 See text of Iraq Security Law, <http://www.washingtonpost.com/wp-dyn/articles/A33496-2004Jul7.html>.
- 70 Ibid. Also see "The Week in Iraq," *Washington Post*, July 10, 2004, and "Iraq adopts emergency powers law," CNN, July 7, 2004.
- 71 See Michael O'Hanlon and Adriana Lins de Albuquerque, *Iraq Index* (current as of September 8, 2004), Brookings Institution, <http://www.brook.edu/fp/saban/iraq/index.pdf>. Also see Edmund Sanders, "Kidnappers target, torture Iraq's best doctors," *Los Angeles Times*, June 1, 2004; Odai Sirri, "Iraq's postwar kidnapping crime wave," Al Jazeera, April 13, 2004; and Neela Banerjee, "After The War: Urban Violence; Rape (and Silence About It) Haunts Baghdad," *New York Times*, July 16, 2003.
- 72 See Michael O'Hanlon and Adriana Lins de Albuquerque, *Iraq Index* (current as of September 8, 2004), Brookings Institution, <http://www.brook.edu/fp/saban/iraq/index.pdf> for trends in crime-related deaths since May 1, 2003. Also see *Climate of Human Rights Watch, Fear: Sexual Violence and abduction of Women and Girls in Baghdad*, July 2003, <http://hrw.org/reports/2003/iraq0703/>.
- 73 George Packer, "Caught in the Crossfire," *The New Yorker*, May 17, 2004, p. 63. For more information on the deteriorating human rights situation resulting from the lack of security, see Joe Stork and Fred Abrahams, *Sidelined: Human Rights in Postwar Iraq*, Human Rights Watch, January 2004, [http://hrw.org/wr2k4/6.htm#\\_Toc58744955](http://hrw.org/wr2k4/6.htm#_Toc58744955).
- 74 See Human Rights Watch, "Background on Women's Status in Iraq Prior to the Fall of the Saddam Hussein Government," November 2003, <http://www.hrw.org/backgrounder/wrd/iraq-women.htm>.
- 75 Accurate reports on the incidence of kidnapping, rape and murder of women in post-conflict Iraq are difficult to obtain. The lack of security and resources has seriously undermined the ability of police, hospitals and other related services to record, investigate and prosecute crimes against women and girls. Further, women and girls may be reluctant to report crimes such as rape or defilement, given that this can often lead to further violence against the victim, including murder. As punishment for her "transgression," female victims of rape are sometimes subject to "honor killings," where a family member contracts someone to murder the woman to "preserve" the family's reputation. Overall, women in post-conflict Iraq have reported heightened fear of rape and kidnapping (into prostitution rings and as revenge for support of Saddam Hussein's regime prior to the March 2003 conflict). See Human Rights Watch, *Climate of Fear: Sexual Violence and abduction of Women and girls in Baghdad*, July 2003, <http://hrw.org/reports/2003/iraq0703/> and Suzanne Goldenberg, "Crime puts Iraqi women under house arrest," *The Guardian*, October 11, 2003. Also see George Packer, "Caught in the Crossfire," *The New Yorker*, May 17, 2004, p. 63.
- 76 See *Iraq: One year after the war the human rights situation remains critical*, Amnesty International's report, March 18, 2004 at <http://web.amnesty.org/library/Index/ENGMDE140052004>. Also see Susan Milligan, "Iraqi Women Recoiling in Fear of Crime," *Boston Globe*, August 4, 2003.
- 77 Gal Luft, *Iraq's Oil Sector One Year After Liberation*, Saban Center Middle East Memo #4, Brookings Institution, June 17, 2004, <http://www.brookings.edu/fp/saban/luftmemo20040617.htm>.
- 78 See Iraq Revenue Watch, *Controlling Iraq's Skies: the Secret Sell-off of Iraq's air industry*, February 2004, <http://www.iraqrevenuewatch.org/reports/020604.shtml.pdf>.
- 79 See *Iraq Index* for troop levels in June and otherwise, current as of September 8, 2004, at <http://www.brook.edu/iraqindex>. Also see Robin Wright and Bradley Graham, "U.S. Works to Sustain Iraq Coalition," *Washington Post*, July 15, 2004.
- 80 See *Iraq Index*, current as of September 8, 2004, <http://www.brook.edu/iraqindex>.
- 81 South Korea began sending these troops to Iraq in August 2004. The commitment came despite the June 22 assassination of Kim Sun-il, a South Korean citizen working as a contractor in Iraq who was beheaded by radical insurgents demanding that South Korea withdraw its troops from Iraq. See Jun Kwanwoo, "South Korea Deploys 2,800 Troops to Iraq," *Agence France-Presse*, September 22, 2004. Also see "Sorrow, outrage over hostage fate," CNN, June 23, 2004.
- 82 Katherine Pfleger Shrader, "U.S. Relies on Private Security in Iraq," *Associated Press*, April 27, 2004.
- 83 For a detailed map of troop locations, see the DoD's April 30, 2004 briefing slides, available at <http://www.globalsecurity.org/military/ops/images/040430-d-6570c-006.jpg>.
- 84 See CPA daily briefings for specific descriptions of activities at <http://www.defenselink.mil/transcripts/>.
- 85 "Spain Completes Troop Pullout From Iraq," *Associated Press*, April 27, 2004.
- 86 Elaine Sciolino, "Spain is Firm: Troops Won't Return," *New York Times*, May 7, 2004.
- 87 Gustavo Palencia, "Honduras to pull troops soon from Iraq," *Reuters*, April 20, 2004. Also see Robin Wright and Bradley Graham, "U.S. Works to Sustain Iraq Coalition," *Washington Post*, July 15, 2004.
- 88 See Robin Wright and Bradley Graham, "U.S. Works to Sustain Iraq Coalition," *Washington Post*, July 15, 2004. Also see "Last of Philippine troops leave Iraq in bid to safe hostage's life," Channel News Asia, July 20, 2004.
- 89 See Paul Richter, "NATO Balking at Iraq Mission," *Los Angeles Times*, May 9, 2004, and John Vinocur, "Chaos control is the aim in Europe," *International Herald Tribune*, May 11, 2004.
- 90 See "U.S. probe finds Iraqi security forces plagued by mass desertions," *Agence France-Presse*, June 30, 2004. Also see Pamela Hess, "DoD Disappointed With Iraqi Security Forces," *Insight Magazine*, April 13, 2004, "Iraq Needs Coalition Help, Allawi Says," *Associated Press*, June 1, 2004 and Robert McMahon, "Iraq: Contours of Sovereignty Unclear as Handover Looms," Radio Free Europe/Radio Liberty, May 18, 2004.
- 91 Carl Conetta, *The Wages of War: Iraqi Combatant and Noncombatant Fatalities in the 2003 Conflict*, Project on Defense Alternatives Research, October 20, 2003, <http://www.comw.org/pda/031orm8.html>.
- 92 See *Iraq Index*, current as of September 8, 2004, <http://www.brook.edu/iraqindex>.
- 93 Ibid.
- 94 Estimates of Iraqi combatant fatalities are problematic, given that most information is based on speculation from "embedded reporters" on the scene, hospital workers, or groups that summarize casualty information based on news reports. According to an extensive analysis conducted by Carl Conetta of the Project on Defense, total Iraqi combatant casualties during the 2003 Iraq conflict totaled 9,600, plus/minus 1,600 individuals (17.5 percent). See Carl Conetta, *The Wages of War: Iraqi Combatant and Noncombatant Fatalities in the 2003 Conflict*, Research Monograph 8, Project on Defense Alternatives, October 20, 2003, <http://www.comw.org/pda/031orm8.html#4.%20iraqi%20combatant%20fatalities%20in%20the%202003>.
- 95 See <http://www.iraqbodyscount.net>. These are independent estimates and include casualties during the war. There is not a reliable count of the number of Iraqi security force casualties between May 1, 2003 and June 28, 2004.
- 96 Ibid.
- 97 This figure is as of July 30, 2004.
- 98 R. Nicholas Burns, the U.S. ambassador to NATO, said in a speech in Luxembourg in early May 2004 that defining a NATO mission in Iraq would be "a leading issue" at the NATO summit in late June. At the Sea Island, Georgia G-8 summit in early June, President Bush said, "We discussed NATO — the NATO involvement over breakfast, and we believe NATO ought to be involved. We will work with our NATO friends to at least continue the role that now exists, and hopefully expand it somewhat. There is going to be some constraints, obviously. A lot of NATO countries are not in a position to commit any more troops — we fully understand that. But I do think NATO ought to stay involved, and I think we have a good chance of getting that done." See White House Press Release, "President Bush, Prime Minister Blair Discuss Iraq at G8 Summit", June 9, 2004, available at <http://www.whitehouse.gov/news/releases/2004/06/20040609-1.html> and Paul Richter, "NATO Balking at Iraq Mission," *Los Angeles Times*, May 9, 2004.
- 99 See NATO Update, "Alliance to support Iraq with troop training," June 29, 2004, <http://www.nato.int/docu/update/2004/06-june/eo629b.htm> and Mike Allen, "NATO Agrees to Aid Iraq With Military Training," *Washington Post*, June 28, 2004.
- 100 NATO Update, "Alliance to support Iraq with troop training," June 29, 2004, <http://www.nato.int/docu/update/2004/06-june/eo629b.htm>. Also see Jonathan Landay, "NATO Agrees to Train Iraqis," Knight Ridder, June 29, 2004.
- 101 Jonathan Landay, "NATO Agrees to Train Iraqis," Knight Ridder, June 29, 2004.
- 102 See text of UNSC Resolution 1546, [http://www.un.org/Docs/sc/unscl\\_resolutionso4.html](http://www.un.org/Docs/sc/unscl_resolutionso4.html).
- 103 Ibid.
- 104 Ibid.
- 105 See Jean Eaglesham, "Details of Iraq pull-out on way, says Blair," *Financial Times*, June 30, 2004. For number of U.S. troops currently in Iraq as of July 15, see Robin Wright and Bradley Graham, "U.S. Works to Sustain Iraq Coalition," *Washington Post*, July 15, 2004. Also see U.S. Department of Defense, "Background Roundtable to Discuss U.S. Forces Deploying from Republic of Korea to Iraq," May 17, 2004, <http://www.dod.gov/transcripts/2004/tr20040517-0762.html>.
- 106 These soldiers have been heavily involved in training thousands of Iraqi security forces. For more on this subject, see Robert Burns, "Troops will stay longer in Iraq," *Associated Press*, April 15, 2004.
- 107 Alan Elsner, "U.S. Military Overstretched, Morale Risked," *Reuters*, January 8, 2004.
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- (1991) of 15 August 1991, 715 (1991) of 11 October 1991, 986 (1995) of 14 April 1995, and 1284 (1999) of 17 December 1999, and 1382 (2001) of 29 November 2001. See [http://www.un.org/Docs/sc/unscl\\_resolutions.html](http://www.un.org/Docs/sc/unscl_resolutions.html) for text of resolutions.
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- 279 See Council on Foreign Relations, *Iraq's Governing Council*, May 17, 2004, [http://www.cfr.org/background/background\\_iraq\\_council.php](http://www.cfr.org/background/background_iraq_council.php).
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- 301 See the full text of the Transitional Administrative Law, <http://www.cpa.gov/government/TAL.html>. Iraq Kurdistan itself is officially composed of three governorates; Dohuk, Arbil and Sulaimaniya.
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- 585 See U.S. Department of State, *Iraq Country Report 2002*, 2002, <http://www.state.gov/g/drl/rls/hrrpt/2002/18277.htm>. See Colin Freeman, "Wheels of Justice Turn Tentatively in Iraq," *The Scotsman*, June 26, 2004, <http://news.scotsman.com/topics.cfm?tid=404&id=732082004>.
- 586 Amnesty International, "Iraq: Ensuring justice for human rights abuses," April 14, 2003, <http://web.amnesty.org/library/index/engmde140802003>.
- 587 See text of Iraq Security Law, <http://www.washingtonpost.com/wp-dyn/articles/A33496-2004Jul7.html>, "the Week in Iraq," *Washington Post*, July 10, 2004, and "Iraq adopts emergency powers law," CNN, July 7, 2004.
- 588 See Amnesty International, "Iraq: Protection of human rights vital during transition," July 14, 2004, <http://www.amnestyusa.org/countries/iraq/document.do?id=80256DD400782B8480256EBE005DEEE7>.
- 589 These courts are comparative to trial courts, appeals courts, and a highest court of appeals respectively. See Library of Congress, "Iraq, Criminal Justice" Country Studies/Area Handbook Series, 1988, <http://countrystudies.us/iraq/117.htm>.
- 590 Ibid.
- 591 For example, "A 1992 decree granted immunity from prosecution to members of the Ba'ath Party and security forces who killed anyone while in pursuit of army deserters. Unconfirmed but widespread reports indicated that this decree had been applied to prevent trials or punishment of regime officials." See U.S. Department of State, "Iraq Country Report 2002," 2002, <http://www.state.gov/g/drl/rls/hrrpt/2002/18277.htm>. Also see Amnesty International, "Iraq: Ensuring justice for human rights abuses," April 14, 2003, <http://web.amnesty.org/library/index/engmde140802003>, and Amnesty International, "Iraq: Victims of Systematic Repression," November 24, 1999, <http://web.amnesty.org/library/Index/engMDE140101999>.
- 592 Amnesty International has advised that the interim Iraqi government invite the UN Special Rapporteur on the independence of judges and lawyers, the chair of the Working Group on arbitrary detentions, and the Special Rapporteur on torture visit Iraq and provide advice on how to bring the justice system into compliance with international standards. See Amnesty International, "Iraq: Protection of human rights vital during transition," July 14, 2004, <http://www.amnestyusa.org/countries/iraq/document.do?id=80256DD400782B8480256EBE005DEEE7>.
- 593 The CPA reviewed the 1969 Penal Code and 1971 Penal Procedure. Some of the amendments to the legal system, including those directed in CPA Order number 7, may contradict international humanitarian law. For more information, see Amnesty International, *Report 2004*, <http://web.amnesty.org/report2004/irq-sum-mary-eng> also see Global Security, "Iraq: Ministry of Justice," <http://www.globalsecurity.org/intell/world/iraq/justice.htm>.
- 594 The Central Criminal Court is one of many initiatives the CPA and USAID has undertaken to revive Iraq's judicial system (75 percent of Iraq's courts were destroyed during occupation), including judicial employee salaries, refurbishing prisons, and rebuilding court houses. See Global Security, "Iraq: Ministry of Justice," <http://www.globalsecurity.org/intell/world/iraq/justice.htm>, and Colin Freeman, "Wheels of Justice Turn Tentatively in Iraq," *The Scotsman*, June 26, 2004, <http://news.scotsman.com/topics.cfm?tid=404&id=732082004> for more information on Iraq's justice system during and since occupation.
- 595 See full statement of Administrator Paul Bremer: "Bremer's statement in full," BBC News, December 14, 2003 and Susan Sachs and Kirk Semple, "Ex-Leader, Found Hiding in Hole, Is Detained Without a Fight," *New York Times*, December 14, 2003.
- 596 "Rumsfeld: In the End, Saddam not Terribly Brave," CNN, December 14 2003.
- 597 Susan Sachs and Kirk Semple, "Ex-Leader, Found Hiding in Hole, Is Detained Without a Fight," *New York Times*, December 14, 2003.
- 598 Ibid.
- 599 According to Iraqi Governing Council member Dara Noor Aldin, a judge who helped draft the war crimes tribunal statute, the tribunal sessions will be "open to the public, with the press, so that people in Iraq can see the nature of crimes committed with Saddam at the helm." See "Saddam to face war crimes tribunal," CNN, December 14, 2003.
- 600 The investigation of war crimes in Iraq will include the exhumation of mass graves, taking witness accounts, and reviewing a portion of the 3.6 million pages of documents of the Baath Party and Saddam Hussein himself. See Peter Slevin, "U.S. would seek to try Saddam Hussein for War Crimes," *Washington Post*, October 30, 2002. However, Human Rights Watch (HRW) has reprimanded Coalition forces for failing to secure mass grave sites and substantial evidence of criminal wrong-doing when they took control of Iraq in March 2003. HRW states, "In the widespread looting that occurred following the fall of Baghdad and other cities, numerous documents were pilfered or ruined. Efforts are now being made to protect some gravesites, but much damage has already been done. See Human Rights Watch, "Ensuring Justice for Iraq: Evidence Preservation and Fair Trials," September 2003, <http://www.hrw.org/press/2003/09/iraq091203.htm>.

- 601 U.S. Institute for Peace, "Building The Iraqi Special Tribunal: Lessons from Experience in International Criminal Justice," Special report #122, <http://www.usip.org/pubs/specialreports/sr122.html>. Also see "Mystery Tribunal," *Washington Post*, April 5, 2004.
- 602 See Hans Blix, "Iraqi WMD and the U.N. Plan of Action," *Middle East Forum wires*, May 10, 2002, <http://www.meforum.org/article/176> where Mr. Blix remarks that "Iraq's president, Saddam Hussein, used WMD during his war with Iran (1980-88)...He also dropped mustard gas and an unidentified nerve agent on the Kurdish population of northern Iraq in 1988."
- 603 See Human Rights Watch, "Justice for Iraq: A Human Rights Watch Policy Paper," December 2002 <http://www.hrw.org/backgrounder/mena/iraq1217bg.htm>.
- 604 See USAID, *Iraq's Legacy of Terror: Mass Graves*, <http://www.usaid.gov/iraq/legacyofterror.html>.
- 605 Ibid.
- 606 As of July 30, 2004, Saddam Hussein and the 11 aides remained in the physical custody of coalition forces, reportedly until a sufficiently secure Iraqi facility can be created. See Rajiv Chandrasekaran and Fred Barbash, "Iraq Takes Legal Custody of Hussein Wednesday," *Washington Post*, June 29, 2004. The 11 top officials included Kamal Mustafa Abdullah, secretary of the Republican Guard and Hussein's son-in-law; Sultan Hashem Ahmed, defense minister; Tariq Aziz, deputy prime minister and foreign minister; Sabir Abdul Aziz Douri, governor of Baghdad and head of military intelligence during Gulf War; Barzan Ibrahim Hassan, presidential advisor and Hussein's half brother; Watban Ibrahim Hassan, presidential advisor and Hussein's half brother; Abed Hamid Mahmud, presidential secretary; Ali Hassan Majeed, directed the use of chemical weapons against Kurds; Aziz Saled Numan, Baghdad regional command chairman of the Baath party; Taha Yassin Ramadan, vice president and revolutionary command council member; and Muhammed Hamza Zubaydi, retired revolutionary command council member and leader of the suppression of the 1991 Shiite rebellion. See Rajiv Chandrasekaran, "Defiant Hussein Hears Charges in Court," *Washington Post*, July 2, 2004.
- 607 Amnesty International, "Iraq: Saddam Hussein's trial must be fair, and seen to be fair," July 2, 2004, <http://www.aiusa.org>.
- 608 Peter Slevin, "U.S. Would Seek to Try Hussein for War Crimes," *Washington Post*, October 30, 2002. The U.S. has encouraged the Tribunal to follow the model of the Special Court in Sierra Leone and try only those who hold the greatest responsibility, while Salem Chalabi has stated interest in casting a broader net. See Marlise Simons, "Iraqis seek advice on trying war crimes," *New York Times*, April 6, 2004.
- 609 For criticisms see Michael Posner, *Prosecuting Saddam: Tribunals Face Challenges to Legitimacy*, Human Rights First, December 15, 2003, [http://www.humanrightsfirst.org/media/2003\\_alerts/1215.htm](http://www.humanrightsfirst.org/media/2003_alerts/1215.htm) and Human Rights Watch, "Iraq: Law Creating War Crimes Tribunal Flawed," December 11, 2003, <http://www.hrw.org/press/2003/12/iraq121103.htm>.
- 610 See Human Rights Watch, *Memorandum to the Iraqi Governing Council on 'The Statute of the Iraqi Special Tribunal'*, <http://hrw.org/backgrounder/mena/iraq121703.htm>. See also Amnesty International, "Iraq: Tribunal established without consultation," December 10, 2003, <http://www.amnestyusa.org/countries/iraq/document.do?id=80256DD400782B8480256DF80064341B>.
- 611 "Iraqi leaders establish tribunal to try Saddam," *Associated Press*, April 21, 2004.
- 612 Tavernise, Sabria, "Chalabi Links U.S. to Charges Against Him and His Nephew," *New York Times*, August 10, 2004.
- 613 Ibid. See also Andrew Buncombe, "Uncle Accuses US. Nephew Blames Iraqi Factions. The Chalabis come out fighting," *The Independent* (UK), August 10, 2004.
- 614 Article 28 of the Tribunal Statute available at [http://www.cpa-iraq.org/human\\_rights/Statute.htm](http://www.cpa-iraq.org/human_rights/Statute.htm) requires that these positions be filled by Iraqi nationals with the exception of Article 4d, which allows the Iraqi Governing Council or successor government to appoint non-Iraqi judges. However, Salem Chalabi announced that the tribunal judges will be Iraqi nationals. See Marlise Simons, "Iraqis seek advice on trying war crimes," *New York Times*, April 6, 2004. Recent war crimes tribunals have been either of an international character based outside the country where crimes were committed (such as the Rwanda and former Yugoslavia tribunals) or of a hybrid nature mixing national and international laws, judges, and prosecutors and based in the country of conflict (such as the courts in Sierra Leone and East Timor). See Human Rights Watch's background on the Iraqi Special Tribunal, *Memorandum to the Iraqi Governing Council on 'The Statute of the Iraqi Special Tribunal'*, June 2004 at <http://hrw.org/backgrounder/mena/iraq121703.htm> or for more information or visit the International Justice page of the International Center for Transitional Justice's website at <http://www.ictj.org>. Also see U.S. Institute for Peace, *Building The Iraqi Special Tribunal: Lessons from Experience in International Criminal Justice*, Special report #122, <http://www.usip.org/pubs/specialreports/sr122.html>.
- 615 Officials involved in other international tribunals have visited Iraq to advise the court and U.S. Justice Department representatives have traveled to assist with logistics, investigations and prosecution. See Marlise Simons, "Iraqis seek advice on trying war crimes," *New York Times*, April 6, 2004.
- 616 Article 6(b) of the Tribunal Statute, see [http://www.cpa-iraq.org/human\\_rights/Statute.htm](http://www.cpa-iraq.org/human_rights/Statute.htm)
- 617 See Marlise Simons, "Iraqis seek advice on trying war crimes," *New York Times*, April 6, 2004.
- 618 On August 8, 2004, the interim Iraqi government reinstated the death penalty for offenses including murder, endangering national security and distributing drugs. Administrator Bremer suspended the death penalty in June 2003 for the duration of occupation, pointing out that "... the former regime used certain provisions of the penal code as a means of oppression, in violation of internationally acknowledged human rights." The death penalty was applied to more than 100 offenses under Saddam Hussein. However, in mid-June, Iraqi Special Tribunal director Salem Chalabi asserted that the interim Iraqi government would have the power to end the suspension of capital punishment following the end of occupation. Salem Chalabi has recently been charged with murder, a charge now punishable by death. See Weinberg, Christian, "Divisions loom over Iraqi capital punishment as Denmark suspends prisoner handover," *Associated Press*, August 10, 2004. Also See Lama al-Shummary, *Return of Death Penalty Urged*, ICR No. 35, 14-Nov-03. Also see Patrick Cockburn and Stephen Khan, "Saddam may face death penalty, say Iraqis", *The Independent* (UK), June 21, 2004. For information on Iraqi opinion polls regarding Saddam Hussein's guilt and preferred punishment see Brian Brady, "Death penalty may force UK out of Saddam trial," *The Scotsman*, May 23, 2004.
- 619 Although neither Iraq nor the U.S. have ratified Optional Protocol 2 to the International Covenant on Civil and Political Rights abolishing the death penalty, only six other states in the UN system have failed to adopt the protocol. In total, 50 states have ratified the protocol. The Optional Protocol and a list of ratifications can be found at OHCHR's website at [http://www.unhcr.ch/html/menu3/b/a\\_opt2.htm](http://www.unhcr.ch/html/menu3/b/a_opt2.htm). The U.K. is reportedly struggling with the decision of whether to hand over evidence of Saddam's atrocities to Iraqi prosecutors, given that this material might ultimately be used to condemn the former dictator to execution.
- 620 Rajiv Chandrasekaran, "Eleven Lieutenants are also arraigned before Iraqi Judge," *Washington Post*, July 2, 2004.
- 621 Ibid, and Human Rights Watch, *Iraq: Whatever happened to the Iraqi Kurds?* March 11, 1991, <http://www.hrw.org/reports/1991/IRAQ913.htm#6>.
- 622 Rajiv Chandrasekaran, "Eleven Lieutenants are also arraigned before Iraqi Judge," *Washington Post*, July 2, 2004.
- 623 Ibid.
- 624 Ibid.
- 625 Ibid.
- 626 "Saddam's Iraq: Reign of Terror," Defend America, U.S. Department of Defense News About the War on Terrorism, December 2003, <http://www.defendamerica.mil/specials/dec2003/atrocities122203.html>.
- 627 Human Rights Watch, "Endless Torment: the 1991 Uprising in Iraq and its Aftermath," 1992, <http://www.hrw.org/reports/1992/Iraq926.htm>.
- 628 Human Rights Watch, "Iraq: Devastation of Marsh Arabs," January 25, 2003, <http://www.hrw.org/press/2003/01/iraq012503.htm>; Human Rights Watch, "The Iraqi Government Assault on the Marsh Arabs," Briefing Paper, January 2003, <http://www.hrw.org/backgrounder/mena/marsharabs1.htm>; Heather Sharp, "Iraq's 'devastated' Marsh Arabs," *BBC News Online*, March 3, 2003.
- 629 Rajiv Chandrasekaran, "Eleven Lieutenants are also arraigned before Iraqi Judge," *Washington Post*, July 2, 2004.
- 630 See Additional Protocol I, Article 51(5)(b) for limitations on excessive civilian casualties. Although the U.S. has not ratified Additional Protocol I, it has accepted Article 51 as customary international law.
- 631 See International Humanitarian Law Research Initiative, "Bomb Attacks Targeting Civilians Amount to War Crimes," Briefing Note, <http://www.ihlresearch.org/iraq/feature.php?a=38>; Amnesty International, "Iraq: Killings of civilians in Basra and al-Amara," 2004 World Report, <http://www.aiusa.org>; and Human Rights Watch, "Hearts and Minds: Post-war Civilian Deaths in Baghdad Caused by U.S. Forces," October 2003, <http://www.hrw.org>. Also see Human Rights Watch, "Legal Aspects of the Ongoing Fighting in Iraq: Frequently Asked Questions (FAQ)," April 29, 2004, <http://www.hrw.org/campaigns/iraq/ihlfaq042904.htm#What%20are%20legitimate%20objects%20of%20a%20attack%20during%20an%20armed%20conflict?>; Human Rights Watch, "Iraq: Reprisal Killing of Civilian is a War Crime," May 13, 2004, <http://hrw.org/english/docs/2004/05/13/iraq8582.htm>; Amnesty International USA, "IRAQ: Amnesty International Strongly Condemns Beheading of Civilian," May 12, 2004, <http://www.aiusa.org>; Amnesty International USA, "All Hostages Must be Released by Armed Groups," May 12, 2004,

- <http://www.amnestyusa.org/countries/iraq/document.do?id=94EE71AB2751983F85256E92004D16FE>; Human Rights Watch, "Iraq: Avoid Harm to Civilians, Hostage-Taking Violates Laws of War," April 16, 2004, <http://hrw.org/english/docs/2004/04/16/iraq8446.htm>; Human Rights Watch, "Iraq: Abduction, Killing of Hostage is Heinous Crime," June 22, 2004, <http://www.hrw.org/english/docs/2004/06/22/iraq8944.htm>; Human Rights Watch, "U.S. Investigates Civilian Deaths in Iraq Military Operations," Washington D.C., June 18, 2004, <http://hrw.org/english/docs/2004/06/18/iraq8872.htm>; and Amnesty International, "Iraq: Killings of civilians in Basra and al-Amara," World Report, May 2004, <http://www.aiusa.org>.
- 632 For text of the four Geneva Conventions of 1949, see <http://www.redcross.org.uk/index.asp?id=11>. For text of Hague Conventions of 1899 and 1907, see [http://en.wikipedia.org/wiki/Hague\\_Conventions\\_\(1899\\_and\\_1907\)](http://en.wikipedia.org/wiki/Hague_Conventions_(1899_and_1907)).
- 633 Specifically, these protections are set forth in the Geneva Conventions' Common Article 3 and Article 75 of Additional Protocol I. Prisoners of war are protected by the Third Geneva Convention, specifically articles 13, 14, and 17. Civilians can be detained in a time of conflict or occupation if they have committed an unlawful act or crime or if they present a threat to the security of the occupying force. These individuals are protected by the 4th Geneva Convention (particularly Articles 27, 31, and 32). If an individual falls outside of traditional categories, for example as an unprivileged combatant, they are protected by Common Article Three (further articulated in Article 75 of Additional Protocol I of 1977, which is considered customary international law). See also Anthony Dworkin, "America's Interrogation Network: Rules on the Treatment of Prisoners," <http://www.CrimesofWar.org>.
- 634 The actions also violate domestic statutes that reflect international legal standards including the 1996 War Crimes Act (18 USC 2441, as amended) and the Torture Act (18 USC 2340A).
- 635 The International Covenant on Civil and Political rights was ratified by both Iraq and the U.S. and prohibits torture and cruel, inhuman or degrading treatment or punishment (Article 7). Article 7 can not be deviated from under any circumstance regardless of a state of public emergency (Article 4). The U.S. ratified the CAT in 1994, which prohibits torture (Article 1) and other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture (Article 16). The U.S. entered a reservation to both the CAT and ICCPR, amending the provision to read, "insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and-or Fourteenth Amendments to the Constitution of the United States." For full text of the CAT and reservations, see [http://www.unhchr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhchr.ch/html/menu3/b/h_cat39.htm). For full text and reservations to the ICCPR, see [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm).
- 636 To view the full text of the Taguba report, see Taguba Report: Article 15-6 Investigation of the 800th Military Police Brigade, California State University-Fullerton, Pollak Library, May 10, 2004 at [http://guides.library.fullerton.edu/docslinks/primary\\_iraqwar.htm](http://guides.library.fullerton.edu/docslinks/primary_iraqwar.htm).
- 637 Ibid.
- 638 Ibid.
- 639 For text of Secretary Rumsfeld's Senate testimony, see DOD transcript at <http://www.dod.gov/speeches/2004/sp20040507-secdefo443.html>, May 7, 2004. Also see David Espo, "Rumsfeld apologizes for abuse of Iraqi prisoners, favors compensating them," *Associated Press*, May 7, 2004.
- 640 See Human Rights Watch, *The Road to Abu Ghraib*, June 10, 2004, [http://hrw.org/reports/2004/usa0604/5.htm#\\_Toc74483704](http://hrw.org/reports/2004/usa0604/5.htm#_Toc74483704) and the text of the Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation, February 2004, see [http://www.redress.btinternet.co.uk/icrc\\_iraq.pdf](http://www.redress.btinternet.co.uk/icrc_iraq.pdf).
- 641 Matt Kelley, "Rumsfeld Ordered Secret Arrest in Iraq," *Associated Press*, June 17, 2004.
- 642 See Human Rights Watch, *The Road to Abu Ghraib*, June 10, 2004, [http://hrw.org/reports/2004/usa0604/5.htm#\\_Toc74483704](http://hrw.org/reports/2004/usa0604/5.htm#_Toc74483704) and "U.S. Military Describes Steps to Improve Conditions in Abu Ghraib Prison," *Voice of America*, May 19, 2004. According to the Taguba report, General Miller conducted an inquiry on interrogation and detention procedures in Iraq in August 2003, and ultimately "suggested" that prison guards could help set conditions for the interrogation of prisoners. According to the U.S. Army, this is a role that Military police are not trained to perform and are prohibited from undertaking. General Miller is the former warden of the Guantanamo Bay detention center in Cuba and was appointed in April 2004 to oversee U.S.-run prisons in Iraq. See Robert Burns, "IRAQ: General Told MPs to 'Soften Up' Prisoners," *Associated Press*, May 7, 2004. Also see Dana Priest, "Justice Dept. Memo Says Torture 'May Be Justified'" *Washington Post*, June 15, 2002 and Jess Bravin, "Pentagon Report Set Framework For Use of Torture: Security or Legal Factors Could Trump Restrictions, Memo to Rumsfeld Argued," *Wall Street Journal*, June 7, 2004 and Neil A. Lewis and Eric Schmitt, "Lawyers Decided Bans on Torture Didn't Bind Bush," *New York Times*, June 8, 2004.
- 643 See Geneva Convention III, Article 129 and Geneva Convention IV, Article 146 "Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts," available at <http://www.unhchr.ch/html/intlinst.htm>. Also see Leila Nadya Sadat, "International Legal Issues Surrounding the Mistreatment of Iraqi Detainees by American Forces," *American Society of International Law Insights*, May 2004, <http://www.asil.org/insights/insigh134.htm>.
- 644 The punitive articles of the UCMJ include cruelty and maltreatment of "any person subject to his orders" (Article 93), including all people subject to the UCMJ which includes prisoners of war (article 2, section 9); murder (Article 118); manslaughter (Article 119); rape and carnal knowledge (Article 120); maiming (Article 124); sodomy (Article 125); assault (Article 128); conduct unbecoming an officer (Article 133); and lesser charges dealing with conduct that discredits the military (Article 134). Violation of these provisions can result in reduction of rank, prison time and discharge. Article 134 covers disorders and neglects to the prejudice of good order, conduct of a nature to bring discredit upon the armed forces, and non-capital crimes or offenses which violate Federal law. Full text and discussion of these articles are available on the National Institute of Military Justice's website at "Discussions of Punitive Articles," May 21, 2004 at <http://www.nimj.org/home.asp>.
- 645 James Risen, "Command Errors Aided Iraq Abuse, Army Has Found," *New York Times*, May 3, 2004.
- 646 See Council on Foreign Relations, "Iraq: The Prison System," May 11, 2004, [http://www.cfr.org/background/background\\_iraq\\_prisons.php](http://www.cfr.org/background/background_iraq_prisons.php).
- 647 See John Cushman, Jr., "Outside Panel Faults Leaders of Pentagon for Prisoner Abuse," *New York Times*, August 24, 2004.
- 648 Fisman Abrashi and Jim Krane, "Judge says Abu Ghraib prison can't be destroyed," *Associated Press*, June 21, 2004. See also Joe Stork, "Bush's Proposal to Tear Down Abu Ghraib is a Bad Idea," *The Daily Star*, June 10, 2004.
- 649 Josh White and R. Jeffrey Smith, "House Panel Reviews Iraq Prison Reports," *Washington Post*, July 15, 2004 and "U.S. Senator John Warner (R-VA) Holds Media Availability Regarding the Abu Ghraib Prison Scandal," *Federal Document Clearing House, Inc.*, June 24, 2004.
- 650 Ibid. See also Eric Schmitt, "Army Report Says Flaws in Detection Didn't Cause Abuse," *New York Times*, July 23, 2004.
- 651 Common Article 1 to the four Geneva Conventions and Additional Protocol I of 1977. For further information on State Responsibility, see Marco Sassòli, "State responsibility for violations of international humanitarian law," March 6, 2002 available at <http://www.icrc.org/Web/eng/siteengon.nsf/iwpList510/BFB98C391C49E4FFC1256BFA002A6082>.
- 652 A jurisdictional provision that had been amended by the Patriot Act (18 USC Section 7 (9)(A)) has been used to indict former CIA contractor David A. Passaro for assault that resulted in the death of a detainee in Afghanistan in 2003, could be used to indict civilian intelligence contractors and agents involved in the abuses in Iraq. Richard A. O'Connell and Ariel Hart, "Contractor Indicted in Afghan Detainee's Beating," *New York Times*, June 18, 2004. Civilian intelligence agents and contractors could also be prosecuted in federal court under the 1996 War Crimes Act (18 USC 2441) or the Torture Act (18 USC 2340). See Michael N. Schmitt, "The American Military Justice System and the Response to Prisoner Abuse," *Crimes of War project*, June 2, 2004, <http://www.crimesofwar.org/onnews/news-justice.html>. On paper, the UCMJ can be read to cover U.S. military contractors under a variety of theories, but any effort to court-martial such contractor personnel would likely encounter serious legal obstacles. (For example, those who are subject to the UCMJ include persons who, in time of war, serve with or accompany the armed forces in the field. UCMJ art 2(a)(10). In the Vietnam war the "time of war" clause was held to require a congressional declaration of war, *United States v. Averette*, 19 U.S.C.M.A. 363, 41 C.M.R. 363 (1970) (2-1 decision) (civilian employee of government contractor), something Congress has not done since World War II. Article 2(a)(11) permits trial by court-martial, "[s]ubject to any treaty or agreement to which the U.S. is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the U.S. and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands." But a series of pre-Vietnam Supreme Court cases held that a variety of categories of civilians could not be tried by court-martial. E.g., *United States ex rel. Toth v. Quarles*, 350 U.S. 11 (1955) (former serviceman); see generally Homer E. Moyer, *Justice and the Military* § 1-310 et seq. (1972). The UCMJ also permits trial by general court-martial of persons who, under the law of war, are subject to trial by military tribunal for offenses against the law of war, UCMJ art. 18; *Manual for Courts-Martial, R.C.M. 201(f)(1)(B)*, but there is no history of that provision having been invoked since the statute took effect in 1951. Retired regular personnel—including those who happen to be employed by contractors—remain subject to the UCMJ under Article 2(a)(4). Questions also remain about the status of foreign nationals who work for US military contractors.

- Whether or not these foreign nationals might fall within U.S. court-martial jurisdiction (e.g., if charged with war crimes and found to be subject under the laws of war to trial by a military tribunal), they may be tried in federal district court under the Military Extraterritorial Jurisdiction Act of 2002. See the Military Extraterritorial Jurisdiction Act of 2002 (18 USC 3261-67).
- 653 Specifically, these other agreements are the International Convention on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT).
- 654 See Council on Foreign Relations, "Iraq: The interim government leaders," June 2, 2004, [http://www.cfr.org/background/background\\_iraq\\_ministers.php](http://www.cfr.org/background/background_iraq_ministers.php).
- 655 Ibid.
- 656 Rajiv Chandrasekaran and Fred Barbash, "Iraqi Caretaker Government Takes Temporary Authority," *Washington Post*, June 1, 2004.
- 657 Rajiv Chandrasekaran and Fred Barbash, "Iraqi Caretaker Government Takes Temporary Authority," *Washington Post*, June 1, 2004. See also, "Iraqi people's trust will be decisive," *Japan Times*, June 10, 2004.
- 658 Names and some background information taken from "Iraqi Cabinet: full list of posts," *The Times* (UK), June 1, 2004.
- 659 Aparisim Ghosh, "Who's Iyad Allawi, and Why Should He Run Iraq?" *Time*, June 1, 2004.
- 660 See *Science Daily Encyclopedia*, [http://www.sciencedaily.com/encyclopedia/ayham\\_al\\_samaraie](http://www.sciencedaily.com/encyclopedia/ayham_al_samaraie).
- 661 See United States Department of Defense, "General John Abizaid," (bio), November 28, 2003, [http://www.dod.mil/bios/abizaid\\_bio.html](http://www.dod.mil/bios/abizaid_bio.html) and "Arabic-speaking general may replace Franks," *Associated Press*, June 18, 2004.
- 662 See U.S. Department of State, "'Iraq's Future is Optimistic,' says Robert D. Blackwill," <http://usinfo.state.gov/mena/Archive/2004/Jul/01-943075.html> (this op-ed by Blackwill originally appeared in *USA Today* on July 1, 2004) and Robin Wright, "U.S., U.N. Gird for Major Effort to Pick Iraqi Leaders," *Washington Post*, May 2, 2004.
- 663 For more on Robert Blackwill, see Massimo Calabresi, "Our (Irascible) Man in Iraq" *Time*, June 28, 2004 and Office of the White House Press Secretary, "Ambassador Blackwill Named to White House Position," August 15, 2003, <http://usembassy.state.gov/mumbai/wwwwashnews664.html>.
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