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Timing of the Constitution

Because of the addition of Sunni Arab Iraqis who were not elected members of the national assembly, the final composition of the constitutional committee charged with drafting a permit Iraqi constitution was not determined until the early days of July, 2005. This leaves the members of the committee with three choices: 1) moving rapidly to release the constitutional draft for debate in the national assembly and eventual submission to a referendum on ratification; 2) delaying the formulation of a draft so as to encourage participation by the newly appointed Sunni members of the committee; or 3) offering a compromise between these two positions, producing a draft of a partial constitution now, and deferring some major constitutional questions until later.

It is likely that the key decision among these options will be driven by the newly appointed Sunni members of the committee. These committee members face an extremely difficult and delicate challenge. On one hand, they understand that the Sunni boycott of Iraq's first post-war election was disastrous for their constituency. The sooner a new constitution is ratified, the sooner they can run for office in the hopes of giving Sunnis an elected voice in the government. A delay in ratification of the constitution would mean a delay for new national elections. This gives the Sunni committee members an incentive to encourage the rapid release of a constitutional draft. Furthermore, these members have now received a certain degree of national recognition, and most or all of them could be expected to stand as candidates in the new elections.

On the other hand, the Sunni members of the constitutional committee must demonstrate to their potential constituency that Sunni participation on the committee has had a material impact on the substance of the new draft constitution. If it looks to the Sunni public as though the constitutional committee members chosen to represent them have merely rubber-stamped a previously existing constitutional draft negotiated before their appointments by Shi'i and Kurdish members of the committee, the Sunnis on the committee could well be discredited, and the new constitutional draft with them. It is extremely important for the Sunni committee members to have an impact in the drafting process, and what is more, to be seen to have such an impact.

The Sunnis on the constitutional committee are crucial participants in the nascent movement to get Sunni Arab Iraqis involved in Iraq's new political process, with the eventual goal of ending the insurgency by weakening support for it in predominantly Sunni areas. The outcome of this political process is by no means certain. The Sunnis on the constitutional committee need to be able to show results in order to advance the process. Violence is likely to continue while constitutional process proceeds, certainly

perpetrated by the jihadi wing of the insurgency, but also by other insurgents when they think it will advance the Sunni cause.

The more visible gains accomplished by Sunni leaders, the more ordinary Sunnis will come to see politics as preferable to violence as a means to accomplish their ends. In particular, the goal of those pursuing the political process must be to discredit the violent jihadi wing of the insurgency, which rejects political compromise altogether. It is no coincidence that the jihadi wing of the insurgency has been kidnapping and killing diplomats from Sunni Muslim countries in Iraq. Those diplomats have the potential to forge connections between a pragmatic Sunni leadership and the new Iraqi government. The jihadis understand such connections as a major threat to their goal of keeping violent insurgency alive and resisting political compromise of the kind that more pragmatic insurgents – as well as much of the undecided Sunni Arab community – find potentially appealing. Killing *these* diplomats is aimed at the specific strategic goal of blocking political progress designed to bring the Sunni community into a pragmatic and nonviolent relationship with new Iraqi government. The Sunni members of the constitutional committee are therefore also themselves at risk, both politically and in terms of their personal safety.

Meanwhile, the Shi'i and Kurdish members of the constitutional committee would like to see a rapid move to the release of a constitutional draft. As elected officials, they share desire to end street progress to an increasingly frustrated public. On the Kurdish side, there is a lingering (and warranted) concern that an extended constitutional process might lead to the loss of some of the gains that Kurds have made in convincing at least the Shi'i political leadership to accept substantial de facto Kurdish regional autonomy under the rubric of federalism.

The best posture for U.S. policy at this juncture is to express the view that, if the Sunnis appointed to the constitutional committee prefer some circumspection so as to consider the draft constitution and promote the interests of their constituents, the other members of the committee should show substantial concern for this desire. Having labored to bring these Sunni members to the committee, with the goal of developing Sunni politics and eventually marginalizing violent insurgents, the U.S. would not be well-served by an approach that ran roughshod over Sunni interests in a way that rendered Sunni political participation useless.

It may well be that the Sunni members of the constitutional committee would themselves prefer some sort of compromise option, with the deferral of many of the difficult constitutional decisions that are ahead. If so, such a compromise should be perfectly acceptable from the U.S. standpoint. Deferral is a standard strategy for constitution drafting under difficult circumstances. It does not work indefinitely, as the American Civil War demonstrates. But it can accomplish the short-term goal of shifting at least some underlying tension into the political realm and away from the use of force.

The Ratification Process

It is crucial that, unlike the Transitional Administrative Law, which by necessity was drafted privately and was not subject to national ratification, the final Iraqi constitution be ratified through a process that involves substantial public involvement and discussion. Only such a public process can save the constitution from the inevitable criticism, which will be heard in Sunni areas of Iraq as well as elsewhere in the Muslim world, that it is the product of political elites sequestered in the Green Zone, who may have been elected, but who govern at the sufferance of the Coalition.

This said, the U.S. should be extremely cautious about designing or directing a public campaign either to promote or discuss the constitution. Instead, the Coalition should stand prepared to fund efforts in this direction designed by members of the national assembly and the constitutional committee. The Transitional Administrative Law provides for a popular referendum on the constitution, thus affording a formal measure of democratic legitimacy. Beyond this formal structure, the new Iraqi government needs to develop its own, distinctively Iraqi process for discussing and analyzing the constitution. U.S. officials are poorly placed to determine the right format or forum for such debates.

The town meeting is a particular form of political expression developed in a particular time and place and today not widely used even in the United States. The framers of the U.S. Constitution designed a republican, representative form of government, not a direct democracy, and even the ratification conventions that took place in the thirteen U.S. states were not open meetings, but involved representatives selected by localities and state legislatures. The “town meeting” as such does not have its roots in Iraqi political culture. Instead Iraqis will probably develop some sort of model of consultative discussion more closely linked to the traditional Arab institution of the *majlis*.

It is to be emphasized that when a new constitutional draft is made public, many ordinary Iraqis will experience a kind of “sticker shock” with respect to some of its more innovative aspects, especially those concerning federalism. An immediate, open, public discussion will generate some angry rejection of the degree of independence to be enjoyed by the Kurdish region. By the same token, religious radicals intent on destabilizing the constitutional process could well criticize the draft as insufficiently Islamic – a process which would be perfectly natural in public speeches or on television, but which would be potentially destabilizing if it were to take place in town meetings designed to debate the new constitution.

The members of the constitutional committee have now had experience considering political realities and compromising on the basis of them. They must have the opportunity to explain the draft they have developed to their constituents in their own

way. We must be vigilant about unwittingly undermining their efforts through a well intentioned but ill executed policy of encouraging town meetings.

Avoiding Shi'i-Sunni Violence

The jihadi wing of the insurgency has continued to make great efforts to provoke all-out civil war between the Sunni and Shi'i communities in Iraq. In particular, attacks on Shi'i civilians, holy places, and prominent clerics are specifically aimed at causing Shi'is to break their restraint. Were it not for the steady hand of Ayatollah 'Ali al-Sistani, it is entirely likely that violent retaliation would already have occurred on a significant scale. The great risk continues to be an attempt on the life of Sistani himself, which, if successful, would both provide enormous cause for retaliatory anger and remove the primary barrier to its expression. It would be astonishing if such an attempt were not being planned at present. Many of the jihadis consider Shi'i Muslims to be heretics, and there is no reason to expect that they would show any respect at all for the person of Sistani.

To avoid the outbreak of serious inter-denominational violence, it is necessary to develop a network of contacts who can speak credibly on behalf of the Sunni community, and even, indirectly, on behalf of the pragmatic, largely ex-Baathist or ex-military wings of the insurgency. The Sunnis appointed to the constitutional committee may be considered the vanguard of such a group. Some Sunni clerics may also be useful for this purpose, especially if they would be willing to meet with Shi'i clerics on terms of equality. Diplomats from Sunni countries can play some constructive role in this process by identifying potential Sunni spokesmen. But ultimately, there is no substitute for elected Sunni officials serving in the same government bodies as their Shi'i counterparts. Developing a formalized mechanism outside of political institutions for communicating to Sunnis is likely to marginalize those political institutions, with serious long-term consequences.

The Emerging Political Leadership

The highly fluid political situation in Iraq is generating a new group of political leaders who are acting as entrepreneurs filling a gap in the market. More such leaders will emerge in the coming years, both from within existing political parties and from without. The only generalization that is appropriate is that these leaders are quick to learn and shape the rules of the emerging political sphere. They have general ideological goals, but are typically willing to work with anybody to achieve them, and those goals are themselves open to rapid change and development.

Muqtada al-Sadr is the model of these new political players. From challenging democracy as un-Islamic he moved to participating in elections. From fighting the Coalition through his militia, he moved to accepting Coalition money for projects in neighborhoods he controls. He challenged Sistani directly, then acknowledged the latter's authority. None of these is a marker of any underlying moderation; each was a tactical decision taken in the light of circumstances.

The chief failing of U.S. policy with regard to Sadr has been its uncertainty. The Coalition needs to decide whether to co-opt and buy off potential militants or arrest and kill them. Fluctuations in policy are counterproductive given the general uncertainty and fluidity on the ground in Iraq.

More broadly, given the U.S. force posture in Iraq, a policy of pragmatic accommodation with new political leaders is necessary. That means that even those who have in the past taken up arms against the Coalition must be engaged where there is a chance of redirecting them to political, rather than military means. The key is to insist that any interlocutor must not simultaneously be involved in violence, and to demonstrate that giving up violence is rewarded with stature and money. This provides an incentive for mainstreaming that is crucial to encouraging politics in lieu of violence. Some contacts with violent insurgents will probably continue *sub rosa*, and that is not necessarily a bad thing if it encourages other insurgents to choose politics over violence on the ground of self-interest.

Such interlocutors may be former Baathists, militia members, or others. (Two members of the constitutional committee are reported to have been members of the Baath Party.) If they will participate in peaceful politics, they should not be excluded on the basis of past membership alone. Of course criminals must be brought to justice – but in the short term, it is far more important to create political contact with all factions, especially those who presently threaten the future of the Iraqi political process.