



# SPECIAL REPORT

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## ABOUT THE REPORT

The United States and its allies have taken military action to restore democracy and the rule of law in Iraq. Prior to the intervention, the United States Institute of Peace held a workshop on February 19, 2003 on "Establishing the Rule of Law in Iraq" to examine this challenge. The workshop's discussion focused on a paper prepared by Robert M. Perito, senior adviser to the Institute's Rule of Law Program. In addition to Perito, the other principal speakers at the workshop were Lt. Col. Michael Kelly, Australian Army, and Michael Hartmann, senior fellow at the Institute. Kelly discussed the application of the Fourth Geneva Convention in peace operations, drawing upon Australia's experience in Somalia and East Timor. Hartmann described the United Nations experience in using international jurists in Kosovo. Paul Stares, director of research and studies at the Institute, chaired the workshop.

Robert Perito prepared this report. It draws on the views expressed by participants during the workshop, which was held on a not-for-attribution basis.

The views expressed in this report do not necessarily reflect views of the United States Institute of Peace, which does not advocate specific policies.

## Establishing the Rule of Law in Iraq

### Briefly . . .

- In Iraq, the immediate post-war period is likely to be difficult, confusing, and dangerous. Based on the experience of previous peace operations, the U.S.-led coalition's most important objective should be establishing the rule of law. The Fourth Geneva Convention makes this an obligation for the U.S. military administration. It will also be necessary to ensure that post-conflict reconciliation and reconstruction go forward successfully.
- Saddam Hussein exercised power in Iraq through a sophisticated structure of security services, revolutionary courts, emergency decrees, a network of informers, and the brutal crushing of dissent. The security services, special courts, and emergency laws must be dismantled, and the regular police, judiciary, and legal system reformed and reconstituted.
- It will be necessary to establish an international war crimes tribunal to consider the cases against Saddam Hussein and other major offenders and to create special Iraqi courts to deal with lesser figures. There may also be a need to establish a mechanism similar to the "truth commissions" used in other countries to provide a forum for victims and offenders to present their grievances and confess their crimes.
- According to administration officials, the United States plans for a military administration to rule Iraq until conditions stabilize. Authority would then transition to an Iraqi regime that would come to power on the basis of a new constitution and democratic elections. During the period of occupation, the U.S.-led coalition would be responsible for internal security, public order, and introducing the rule of law.
- Unfortunately, the United States is ill prepared to perform this function. American troops can enforce public order, but soldiers are not trained or equipped to deal with civil disturbances and law enforcement. The United States does not have civilian constabulary forces, nor does it have a national police force that could provide personnel for Iraq. The United States is the only country that uses commercial contractors to staff its contingents in UN police missions.
- To establish the rule of law in Iraq, the United States should create a civilian "Stability Force" composed of constabulary, police, and legal teams of prosecutors, judges, and corrections officers. This force should arrive in Iraq as soon as possible after conclusion of the conflict. It should work with local police, courts, and prisons to

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maintain public order, control crime, prosecute war criminals, protect minorities, and ensure respect for human rights.

- The United States must be prepared to bear the burden of establishing the rule of law in Iraq. This will not be easy, but the contribution of a U.S. Stability Force to creating sustainable security will be more than worth the effort.

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## INTRODUCTION

The United States faces an unprecedented security challenge. It arises from a global terrorism whose adherents are willing to sacrifice their lives and to use weapons of mass destruction. U.S. military forces and their Afghan allies have driven al Qaeda and the Taliban from Afghanistan, but the leadership has survived. We are entering the second phase of the war on terrorism. The ongoing search for al Qaeda operatives has been punctuated by terrorist attacks abroad and periodic alerts for new attacks in the United States. Concurrently, the Bush administration has sounded an alarm concerning the threat posed by an old enemy, President Saddam Hussein of Iraq. According to President Bush, Iraq "possesses and produces chemical and biological weapons. It is seeking nuclear weapons. It has given shelter and support to terrorism and practices terror against its own people. While there are other dangers in the world, the threat from Iraq stands alone because it gathers the most serious dangers of our age in one place" (Associated Press, October 8, 2002).

There should be no illusions that post-war Iraq will be anything but difficult, confusing and dangerous for everyone involved. The U.S.-led coalition will have to adjust quickly from combat to peacekeeping operations to avoid a new outbreak of ethnic and religious strife. Without a total commitment by coalition forces to maintaining public order, Iraq's ethnic and religious factions will again descend into a fury of revenge-taking that will leave large areas of the country in chaos. If such a breakdown in public order occurs, neighboring states could be expected to interfere to support their proxies, protect their co-religionists, and promote their interests. Failure of coalition forces to control widespread civil disturbances would also prevent international humanitarian assistance agencies and non-governmental relief organizations from reaching those in need. Intervention forces may also have to deal with areas affected by the release of chemical or biological weapons and to aid those affected.

Given the type of operational demands that would be placed on coalition forces in the post-conflict period, the international security forces chosen to perform this function should be the most capable forces available. Further, the Iraqi people would likely prefer that the peacekeeping force be composed of Americans and Europeans rather than soldiers and police from the region. In the initial phase of the post-war transition, members of the U.S.-led coalition would be responsible for restoring public order, providing security, and ensuring effective law enforcement as part of their obligations as occupying powers under the 1949 Fourth Geneva Convention.

Under the Geneva Convention, the Law of Occupation applies whenever a foreign military force is in a country without the government's consent. There is no exception and there does not have to be armed resistance. Occupying powers have the responsibility to maintain public order and respect human rights. They also have an obligation, subject to certain exceptions, to preserve existing laws and institutions. They do, however, have the authority to repeal unjust laws and promulgate new regulations, as needed to ensure security and maintain the orderly administration of the territory, establish criminal courts, detain individuals, and remove and appoint local officials. They can seize state-owned property and use the proceeds to finance the occupation. They can also collect taxes and use them to run the military administration. Since the U.S.-led coalition will not have a UN Security Council mandate, the Geneva Convention will constitute the principal legal basis for occupying and administering Iraq.

As we have learned from previous peace operations, the most important objective in the initial phase of the post-conflict period is to establish the rule of law. In his pre-departure press conference on December 17, 2000, Bernard Kouchner, the senior UN official in Kosovo, said the "lesson of Kosovo" was that "peacekeeping missions need to arrive with a law-and-order kit made up of trained police, judges, and prosecutors and a set of draconian security laws. This is the only way to stop criminal behavior from flourishing in a post-war vacuum of authority" (R. Jeffrey Smith, "Kosovo Still Seethes as UN Official Nears Exit," *Washington Post*, December 18, 2000, A20). Such a judicial package must be supported by effective military forces that can quickly subdue armed opposition, disarm opposing forces, perform basic constabulary tasks, and ensure that civilian law enforcement officers and administrative officials can perform their functions in an atmosphere of relative security.

The first step for the intervention force is to break the cycle of impunity for those who commit criminal acts of violence. Democratic governments, including those emerging in post-conflict states, must be rooted in the rule of law. Post-conflict states must provide their populations with security, stability, personal safety, and the assurance that transparent law enforcement and judicial processes provide the same protections and penalties for all citizens. Such regimes need help in accomplishing this mission. Recent peace operations demonstrate that the international force has to make immediate progress in this area; without it, international engagement will be jeopardized by a loss of credibility and an entrenchment of organized crime, extra-judicial processes, and terrorist activities.

Paddy Ashdown, the high representative in Bosnia, also confirmed the importance of the rule of law. According to Ashdown, "In Bosnia, we thought that democracy was the highest priority and we measured it by the number of elections we could organize. In hindsight, we should have put the establishment of rule of law first, for everything else depends on it: a functioning economy, a free and fair political system, the development of civil society, and public confidence in police and courts. We should do well to reflect on this as we formulate our plans for Afghanistan, and, perhaps, Iraq" ("What I Learned in Bosnia," Press Office, Office of the High Representative, October 8, 2002).

For Ashdown, "rule of law" meant the provision of effective police, courts, and prisons. Beyond these immediate core elements, establishing the rule of law in post-conflict societies also involves dealing with human rights violations and crimes committed during and prior to the war. The relatively rapid arrest, trial, and punishment of regime officials and military officers who have committed major abuses are important to achieving a sense of justice. It is also important to remove fear from the society and to deter individuals from seeking revenge. In addition, there is a long-term need for a mechanism or forum that allows people who have suffered to describe their experiences publicly, assign blame, and have their statements recorded as part of the formal history of the conflict.

## **IRAQ'S INTERNAL SECURITY SYSTEM**

In Iraq, Saddam Hussein exercises power through a sophisticated security structure, a vast network of informers, and extreme brutality in dealing with dissent. He also skillfully balances competing forces within the country, playing upon ethnic and religious rivalries and coopting groups through political and financial inducements. He has concentrated decision making within a tight circle of family, other close relatives, members of his al-Bu Nasir tribe, and those from his hometown, Tikrit. Beyond this ruling group, he relies upon patronage, tribal allegiance, ethnic affiliation, and economic leverage. The core of this system is a pervasive security apparatus, with the primary units supervised by his youngest son, Qusai. At the same time, all state structures have been corrupted and transformed into instruments of support for one-man rule. The sanctions regime and UN "Oil-for-Food" program, which has allowed Hussein to decide which domestic and international firms get contracts, has increased his control of the economy and enabled him to reward loyalty.

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Officially sanctioned smuggling and sanctions evasion have provided lucrative sources of income to regime insiders, the Baath Party elite, and corrupt businessmen. Iraq's once substantial middle class has been reduced to poverty by the sanctions, while a class of nouveaux riches has emerged to flout their fortunes made on the black market.

### ***Security Organizations***

To ensure his rule, Hussein established an interlocking network of military and civilian security organizations with different official missions, but with overlapping and redundant functions concerned with intelligence gathering and internal security. These security services are responsible to Hussein through the National Security Council, which he chairs. Their redundant responsibilities and vaguely defined relationships ensured that plots against the regime were likely to be detected and that the various agencies would compete with each other. The result was a pervasive and encompassing system that converted Iraq into a police state. The following civilian security services are dedicated to protecting the regime.

- **Special Security Directorate (SSD; in Arabic, al-Amn al-Khas).** Under the leadership of Qusai Saddam Hussein, Saddam's youngest son, the SSD became Iraq's most important internal security agency. Its 5,000 members belong to Saddam Hussein's Tikrit clan and are hand picked for their loyalty from other parts of the security apparatus. The SSD's responsibilities include protecting the president and his immediate family and securing the presidential palaces. It also supplies security details for other senior officials that both provide protection and report on their activities. The SSD is charged with the regime's most sensitive security tasks such as concealing the weapons of mass destruction (WMD) program, evading the embargo on sensitive technologies, and supervising the military forces that are responsible for protecting the president. These include the Presidential Guard, the Palace Guard, the Special Republican Guard, and the Republican Guard, all of which report to the head of the SSD.
- **General Intelligence Directorate (Jihaz al Mukhabbarat).** Between 1973 and the first Gulf War, the Mukhabbarat was headed by Saddam Hussein's brother and its powers increased significantly. After the war, it lost influence and personnel with the rise of the Special Security Directorate headed by Saddam Hussein's son. The Mukhabbarat's purview is all-inclusive, but its primary missions are foreign espionage and intelligence collection, supervision of Iraqi embassy personnel, covert action, assassination, and terrorist operations. Domestically, its responsibilities include suppression of Kurdish and Shiite opposition, monitoring foreign embassies, and surveillance of all other intelligence and security agencies, government ministries, the Baath Party, and the Iraqi military.
- **General Security Directorate (GSD; al-Amn al-Amm).** The GSD is the oldest and largest of the security services. Its primary concern is internal security and its operatives are located in every jurisdiction and keep abreast of everything that transpires within their area. GSD personnel are responsible for detecting dissent among the general public and monitoring the daily lives of Iraqi citizens, especially prominent personalities. A good part of the GSD's mission is intimidating the population. Its heavy-handed tactics are responsible for most of the official harassment suffered by Iraqi citizens.
- **Baath Party Security Agency (BPS; al-Amn al-Hizb).** The ruling Baath Party has an internal security apparatus that oversees the activities of Iraqis through party security branches in organizations such as universities, factories, and trade unions. The BPS is responsible for security in all party offices and for monitoring the activities of party members.
- **The Iraq National Police (INP; Shurta).** Below the security agencies, which are concerned with threats to the regime, are the Iraqi National Police and border guards that

are responsible for law enforcement. Under the monarchy, the Iraqi National Police grew to 23,400 personnel by the time of the revolution in 1958. Established with the assistance of British advisers, the National Police were under the jurisdiction of the Ministry of the Interior and performed routine police functions. The INP included representatives from all ethnic groups and religious denominations. In the 1960s, police academies were established to improve training. The INP had positive relations with the public and enjoyed a reputation for professionalism, political neutrality, and honesty.

After 1968, the Baath Party enacted legislation that led to the militarization of the INP and its association with the army. Over time, as Hussein consolidated power, the INP became increasingly marginalized and their responsibilities for internal security and protecting the regime were taken over by the various security organizations. The police remained responsible for law enforcement, but the pervasiveness of the regime's security apparatus and its brutal methods meant that crimes were more likely to be committed by regime operatives than criminals. In many cases, the INP was prevented from investigating criminal activity under orders from the security services.

After the first Gulf War, the impact of the sanctions regime, the collapse of the economy, and the general decline in living standards impacted the INP more than the security services, which benefited from favored treatment by the government. INP officers that previously enjoyed a reputation for integrity came increasingly to engage in petty corruption to feed their families. This behavior seemed more a function of necessity than of any ideological commitment to Hussein or collapse of internal discipline.

## *Judiciary*

During the Mandate period, the British established and staffed Iraq's modern, post-Ottoman judicial system. As a consequence, the judiciary had a tradition of independence from the executive that continued after the Iraqi revolution of 1958. During the period before the Baath Party came to power, the courts made a number of important decisions against the government. After 1968, the new Baathist constitution marginalized the judiciary by ending the separation of powers, making civilian courts subservient to the military court system, and creating special courts outside the regular judicial system. Iraq's civilian court system is composed of a high court, civil courts, and criminal courts and the criminal prosecutorial system. Judges are appointed by the Justice Council, which is chaired by the Minister of Justice. The civil court system has the following components:

- **Court of Cassation (Mahkamat al-Tamyeez).** Iraq's highest court, the Court of Cassation has jurisdiction over the civil and criminal court systems. It is headed by a president and has 25–40 members. Its functions are divided into several sections: civil, criminal, trade, tax, administration, and religion. The Court of Cassation hears appeals from the lower civil and criminal courts.
- **Civil Courts (Makhamat al-Bidaya).** The Civil Court of First Instance addresses disputes between individuals or corporations and disputes with the government's administrative bodies. Appeals for administrative disputes are sent directly to the Court of Cassation. Appeals of cases between individuals or corporations go first to one of 18 regional Courts of Appeal before reaching the Court of Cassation.
- **Criminal Courts (Mahkamat al-Junah and Muhkamat al-Jinayat).** Iraq's Criminal Court of First Instance hears cases involving misdemeanors and certain minor felonies (penalties of five years or less). The Higher Criminal Court hears more serious felony cases and appeals from the Court of First Instance.
- **Prosecutorial System.** The prosecutorial system has three components: the judicial investigator, the investigative judge, and the prosecutor. Following the commission of a crime, a judicial investigator questions witnesses and surveys the crime scene with the assistance of the police. Based upon the judicial investigator's report, an investigative judge decides whether to prosecute, issues arrest warrants, and determines

whether suspects should be remanded to custody. The prosecutor, acting on behalf of the government, tries the cases. The prosecutor has the power to argue against the conclusion reached by the investigative judge, if he or she thinks the investigation was mishandled or the accused is innocent.

- **Religious Courts.** Although Iraq is a secular state, Moslem religious courts play an important role in adjudicating disputes over family matters such as inheritance, marriage, divorce, and alimony. These courts apply Sharia law, but decisions can be appealed to the Court of Cassation. For non-Moslems, cases involving family matters are handled by the Civil Court of First Instance, which may seek the advice of the relevant religious authorities in reaching a verdict.
- **Military Courts (al-mahkama al-Khasa and al-mahkama al-da'imiyyah).** Soldiers cannot be tried for crimes by civilian courts without permission of the Ministry of Defense, which is seldom given. Instead, they are tried by military courts, which are under the jurisdiction of the Ministry of Defense and staffed by military legal officers. The structure of the military court system parallels the civilian courts. Special Military Courts deal with misdemeanors and minor felonies. More serious offenses are brought to the Permanent Military Court. Decisions from both courts can be appealed to the Military Court of Cassation.
- **Law Enforcement Courts (Mahakem Qi'wa al-Amn al-Dakhili).** The Baath Party established these courts in 1968 to handle cases involving members of the security services and the police force. Their structure and procedures are similar to those of the civil and military courts, with the right to appeal to the Law Enforcement Court of Cassation. There are also Joint Military and Law Enforcement Courts for cases involving both military and law enforcement officers. In practice, the Law Enforcement and Military Courts have protected their constituents.
- **Revolutionary Courts and Special Courts.** These courts were established after 1968 to deal with matters related to the security of the state and official corruption. Their powers supersede other courts and they are independent of the regular judicial system. These courts normally are staffed by Baath Party members without legal training. The Revolutionary Courts have the power to ignore habeas corpus and their decisions are final and without appeal. In addition to the Revolutionary Courts, there are other special ad hoc courts that are staffed by party and regime officials and established to hear special cases concerned with threats against the regime and other security-related matters.

While the civilian courts hear cases and render verdicts, they are powerless to resist political direction from the government and interference from the security services. They also have suffered from the corruption that has infected the rest of Iraq's institutions following the first Gulf War. Like the civil police, the regular judiciary has been marginalized by the use of special courts created by the regime for political purposes. The exclusion of military and law enforcement personnel from the jurisdiction of the regular courts and the use of extra-judicial courts to hear security cases has severely limited the role of the regular judicial system. At the same time, the impact of economic sanctions and social dislocation has resulted in the spread of corruption among the judiciary, which previously enjoyed a reputation for integrity.

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### ***Iraqi Law***

The 1958 revolution, which overthrew the monarchy, abrogated Iraq's 1925 constitution. Since then, the country has had five interim constitutions. A sixth constitution was put forward by the Baath Party in 1990, but was never ratified in the aftermath of the Gulf War. The last interim constitution, which in principle remains in effect, was promulgated in 1970. This constitution gives ultimate authority to the Baath Party. In fact, Hussein has ruled by fiat. Since 1991, the Revolutionary Command Council, which he chairs,

has issued some 1,500 resolutions annually, ranging from amendments to the constitution and security decrees to changes in laws concerning trade and taxes. This has created a legal jumble that will have to be addressed in the immediate post-conflict period.

## JUSTICE AND THE RULE OF LAW

### *Dealing with Those Implicated in Past Abuses*

Establishing the rule of law will require a two-track process, involving: (1) administering justice for past atrocities and ridding the Iraqi government of those implicated in the abuses of the regime, and (2) rebuilding the justice system to establish law and order and protect the rights of all Iraqis. It will first be necessary to dismantle and disband the interlocking network of internal security services that have been used to control the country, while interning, re-assigning, or otherwise monitoring their personnel to ensure they do not become “spoilers” to the transition. The Revolutionary and Special Courts should also be promptly abolished.

In several previous post-conflict scenarios, demands for justice have been met through the creation of international and local war crimes tribunals that have considered the cases of major offenders. There appears to be no question that Saddam Hussein, senior members of the Baath Party, top officials of the security services, and senior military commanders must be brought before a special war crimes tribunal. This could be: (1) an ad hoc international body, modeled on the International War Crimes Tribunals for the former Yugoslavia and Rwanda; (2) a hybrid special court comprised jointly of Iraqi and international jurists, like the special court now functioning in Sierra Leone or the one under negotiation for Cambodia; or (3) a wholly Iraqi tribunal, with international technical assistance. This court would deal with crimes covered under international law. During Hussein's rule, Iraq has been guilty of military aggression against its neighbors. It has also used poison gas and biological weapons despite being a signatory to the 1949 Geneva Convention and other international treaties dealing with human rights and armed conflict. There is also a case to be made that the Iraqi leadership is guilty of crimes under the Convention on Genocide for its repeated attacks on its Kurdish citizens, Shiites, and the Marsh Arabs.

At the same time, there will be a need for a reformed Iraqi court system to establish a forum for hearing cases against lesser figures and those that are guilty of domestic crimes such as the murder of prisoners, the illegal expropriation of property, and corruption. In establishing such a mechanism and determining who will be brought before it, the military administration must be aware that modern Iraqi history is replete with show trials where officials were accused of political crimes. It must also be remembered that international tribunals do not have the death penalty, which is permitted under the Geneva Convention and provided for in Iraqi law. For a variety of reasons—including an anomaly in which those found guilty of lesser crimes by the lower courts receive harsher sentences than those meted out to the top criminals by the special tribunal—it will be advisable to suspend application of the death penalty during the transition period.

There will also be the problem of determining how many of those who have committed crimes will be held accountable. During its rule, the all-pervasive reach of the Baath Party and security organs has involved vast numbers of Iraqis in the apparatus of abuse. As a consequence, the number of individuals implicated in the crimes of the regime may run into the tens or even hundreds of thousands. The decisions on who will be held accountable will have to be made in a fully transparent manner, conscious of the very significant practical limitations of the nascent justice system. Such decisions must also be made with the awareness that the entire process will fail if it appears such trials are a means of taking revenge or of assigning collective guilt or if the ultimate result is not reconciliation and the promotion of national unity.

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Beyond these two tiers of criminal trials, which can only handle the tip of the iceberg, a process of “de-Baathification,” or the post-war vetting of officials, will need to screen the larger numbers of those who may be implicated in past abuses. On the basis of this vetting process, determinations would be made by occupation authorities and credible Iraqis to remove war criminals, human rights abusers, senior party and regime officials, members of the security services, and common criminals from positions of authority. The Baath Party has a total affiliation of 1 to 1.5 million, but only 50,000 are “full members.” Most government officials, military officers, and senior administrators are party members for convenience rather than because of ideological commitment. Party membership is required to hold office, for promotions, to obtain economic advantages, and to avoid harassment. It is likely that only full party members will be removed from their positions as a result of vetting.

The vetting process would involve the use of international data banks, including those of coalition intelligence as well as human rights organizations; a review of local records, in particular those of the party and the security agencies; publication of names to encourage public submission of relevant information; and personal interviews. This process should also involve probationary appointments to ensure that officials could be subsequently removed for unacceptable performance. While vetting would take place across the government, it will likely be particularly important—and particularly extensive—in those sectors most crucial to the reform of Iraqi society. First among these will be the military, police, and judiciary; other areas for scrutiny may include the media and educational sectors, while large numbers of technocrats in the economic or energy sectors might continue their work without posing any threat to the transition.

Since the Iraqis have suffered from exploitation and oppression on such a large scale for over 30 years, limited criminal trials, even combined with the purge of tainted personnel, will likely not adequately address the legacy of past abuse. Other societies have employed a variety of approaches in recent years, including “truth and reconciliation commissions” and traditional mechanisms such as religious purification ceremonies for dealing with perpetrators. Iraqis will require a process for achieving justice and reconciliation that is in keeping with their unique history, culture, and political needs.

In this regard, it may be advisable to create a truth and reconciliation process to enable those who are guilty of lesser offenses to confess to their actions and thereby avoid prosecution—an option recently proposed by a team of Iraqi exiles studying the question. Under one scenario, modeled on the commission currently in place in East Timor, this process might also entail some form of community service by perpetrators to make amends for their actions. As in other post-conflict societies, this would also provide an opportunity for those who were victims of abuse and witnesses to atrocities to tell their stories and have their experiences recorded as part of the formal record. It would also provide a forum for all Iraqis to explore what kinds of structural and institutional reforms should be implemented to prevent any recurrence of such abuses in the future. Finally, to ensure that the effort contributes to national reconciliation, it will be important that a truth and reconciliation process avoid any implication of collective guilt.

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### *Rebuilding the Justice System*

Beyond dealing with past abuses, a successful and stable transition in Iraq will demand a quick and intensive effort to reform the country's system of justice. The 1925 constitution was adopted by a constituent assembly after a limited process of popular consultation; some have suggested that it might serve as a basis for legal reform. It would have to be amended, however, to take into account the significant development in international human rights law in the past 75 years, including the major UN declarations on human rights and fundamental freedoms. In any event, it will be advisable for the Iraqi people to engage in a broad-based and deliberative process to craft a new constitution for the country.



There will be the need to update Iraq's criminal and commercial codes to ensure they correspond to the needs of a modern, democratic society and market economy. With the support of the U.S. State Department, a group of Iraqi exile jurists have already drafted over 600 pages of analysis and proposals for revisions to the codes, as well as proposals for trials of the leadership and reform of the courts, police, and prison system. The occupation regime will also have to consider whether local law will apply in cases involving coalition civilians, including commercial contractors, and whether such cases will be tried by local judges in Iraqi courts. Such cases may have high public profiles and will strongly influence the attitudes of the Iraqi people toward the presence of foreigners in their country.

Following the vetting process described above, the coalition will need to rehabilitate, retrain, and reform the Iraqi National Police, the judiciary, and corrections personnel so they can assume responsibility for local law enforcement, particularly in rural areas. Given Iraq's size, the coalition will need to rely upon existing Iraqi personnel. These officials would require the support of coalition security forces, as well as international supervision, technical assistance, and retraining to make the difficult transition to ensuring the rule of law in Iraq's new democratic society. Although creating a changed legal culture is a lengthy process, early attention to, and investment of adequate resources in, the rebuilding of all components of the local system of justice will be crucial to a successful transition, and will have a direct impact on the timetable for attainment of stability and the exit of coalition forces.

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### ***Post-War Planning***

On February 11, 2003, the Bush administration made its first formal statements concerning its plans for post-war Iraq. In testimony before the Senate Foreign Relations Committee, Marc Grossman, under secretary of state for political affairs, and his Defense Department counterpart, Douglas Feith, provided a general outline of the administration's thinking. Grossman said President Bush had not made a final decision about how the United States would proceed, but he had provided clear guidance that the United States should be prepared to meet the humanitarian, reconstruction, and administrative challenges that would follow the "liberation" of Iraq. According to Grossman, the administration was planning on a three-stage transition to a future democratic Iraq. The stages would include:

- Stabilization, where an interim coalition military administration would ensure security, stability, and public order for a period of up to two years;
- Transition, where authority progressively would be passed to Iraqi institutions; and,
- Transformation, where a democratically elected Iraqi government would govern Iraq on the basis of a new constitution drafted by representatives of the Iraqi people.

To ensure the United States could meet its responsibilities, Feith said, the president had signed a National Security Presidential Directive in January, creating the Office of Reconstruction and Humanitarian Assistance at the Pentagon. The office is responsible for detailed pre-planning and for nation building in Iraq. The office is headed by Lieutenant General Jay Garner (U.S. Army, ret.), who in 1991 played a leading role in Operation Provide Comfort, the post-Gulf War response to the humanitarian crisis created by Hussein's attacks on the Kurds. The office is staffed by personnel on detail from State, Treasury, Energy, the Agency for International Development, and Agriculture and also includes experts on police training and judicial reform from the Justice Department. It is responsible for three operations, each under a civilian coordinator: emergency relief, reconstruction, and humanitarian assistance. A fourth coordinator is responsible for communications, logistics, and the budget. (The office, with some 200 personnel, deployed to the region in mid-March in preparation for military operations.) Feith said the United States would try to share the post-war burden and would encourage participation by coalition partners, the United

*Although Grossman's statement provided some initial insight into the administration's intentions, the general nature of his comments sent a message that planning for post-Hussein Iraq was still very much "a work in progress."*

Nations, non-governmental organizations, and others. The U.S. goal is to transfer authority to the Iraqis as soon as possible. Feith added that the United States would not, however, "foist burdens on those who were not prepared to carry them."

Although Grossman's statement provided some initial insight into the administration's intentions, the general nature of his comments sent a message that planning for post-Hussein Iraq was still very much "a work in progress." This produced criticism from Congress and the press that the administration was unprepared to deal with a post-conflict situation in Iraq that was likely to be chaotic and dangerous. On February 20, administration officials briefed reporters on a "finalized blueprint" for dealing with post-war Iraq. Under this plan, the commander of U.S. Central Command, U.S. Army general Tommy Franks, would head a U.S. military administration that would remove the Hussein regime, dismantle its terrorist infrastructure, and run the country until Iraq's WMD were located and neutralized. In the immediate aftermath of the fighting, U.S. military teams would deliver emergency humanitarian aid under a program directed by Garner. This effort would demonstrate to Iraqis that they were better off under U.S. military rule than under Saddam. In addition, the military regime would patrol Iraq's borders and ensure the country remained a unitary state that was free of interference from its neighbors, particularly Iran.

When conditions stabilize, Franks would hand over to an American civilian administrator (a former state governor or ambassador, for example) who would direct reconstruction. Administration officials indicated they had developed several contingency plans for the second and third phases of the transition process, but wanted to wait until they could access conditions on the ground. Among the possibilities was a plan for turning authority over to an interim UN administration that would oversee the transition to an Iraqi government. In any case, responsibility for food and humanitarian aid would be handed off to the UN World Food Program, which would utilize the distribution network that had been created by the Oil for Food Program. For its part, the UN Department of Peacekeeping Operations is already engaged in contingency planning for creating an Afghanistan-style, UN political office that would be able to help administer Iraq and deliver humanitarian assistance. In January, the United Nations issued an appeal for international donors to provide \$37 million to finance initial preparedness for post-war Iraq.

As for the Iraqi exile community, the State Department has worked with Iraqi exile organizations through the Future of Iraq Project. This involved creating 17 working groups on topics ranging from transitional justice and democratic principles to education and energy. Administration officials said expatriate Iraqis would provide advice through a 25-member "consultative council" that would be appointed by the United States. Iraqi expatriates would also be asked to participate in a commission to advise on the judicial system and the drafting of a new constitution. The United States made clear, however, that it opposed any attempt by Iraqi exile groups to form a provisional government. U.S. officials said Ahmed Chalabi, head of the Iraqi National Congress (INC) and the primary proponent of such a plan, was told that any such attempt would result in an immediate break in U.S.-INC relations. The U.S. goal was the creation of a democratic, unified, multi-ethnic Iraq that was at peace with its neighbors and devoid of weapons of mass destruction and ties to terrorism.

Meanwhile, the U.S. Defense Department began providing civil-military operations training to a force of up to 1,000 Iraqi exiles at a military base in Taszar, Hungary. The Pentagon's intention is to create a force of Iraqis that can assist coalition forces with non-military duties in Iraq. During their one month of training, the Iraqis are not given military instruction, but are trained to serve as liaison officers, guides, and translators for coalition forces. The Iraqis receive training in first aid, self-defense, land mine identification, and how to use protective equipment in the event of an encounter with chemical or biological weapons. Major General David Barno, U.S. Army, the commander of the training program, said they might also serve as police in liberated areas.

## *Creating Post-Conflict Security*

As in previous peace operations, public order and basic rule of law functions will have to be performed by coalition military forces in the initial phase of the post-conflict period. But regular soldiers are neither trained nor equipped to undertake such duties and they have other responsibilities. The U.S. military is particularly ill equipped to perform post-conflict duties as it lacks constabulary forces such as Italy's Carabinieri and France's Gendarmerie Nationale. These standing forces have characteristics of both military and police. They are equipped with armored vehicles and mounted weapons and can fight as light infantry, if required. They are trained to maintain public order and are specially equipped to deal with civil disturbances. They are also trained to conduct investigations, make arrests, direct traffic, and perform other police functions. These units are able to deploy rapidly, are highly mobile, and, in Bosnia, Kosovo, and East Timor, have proven extremely versatile in responding to unforeseen requirements. The U.S. military, on the other hand, has been forced to rely upon Special Forces to ensure public order in Haiti and Afghanistan. Immediately following the U.S.-led intervention, Special Forces teams were deployed in rural villages in Haiti where they performed police functions. In Afghanistan, Special Forces teams have been sent to defuse disputes between rival warlords and keep the peace in rural areas. Having the nation's elite combat soldiers perform police functions is not appropriate and misuses a scarce military resource.

U.S. Military Police (MP) might offer a short-term and partial solution. MPs are trained to perform both public order and law enforcement functions. They can also establish and run corrections facilities. MPs are taught interpersonal skills, how to establish trust, and how to use mediation and other conflict resolution techniques to resolve disputes. Like civil police, MPs are trained to use only the minimum amount of force necessary to control the situation. They are comfortable with making individual decisions and handling ambiguous situations. MPs are also trained to assist victims. This is important in stability operations, particularly in dealing with victims of sexual assault and people with medical problems. But directing MPs to take on peacekeeping duties as a primary mission would require a change in U.S. Army doctrine. It would also take them away from their traditional duties, which are policing military installations and directing traffic and handling prisoners on the battlefield.

In addition, the number of MPs on active duty is small and these "high demand, low density" units are among the busiest in the military. Most MP units are located in the Army Reserves and are composed of civilian police officers. Activating these units disrupts families and deprives communities of police protection at a time when terrorist threats are placing unprecedented demands on local law enforcement. The same is true of U.S. Army Civil Affairs units that are staffed with experts in civilian functions such as restoring electricity, water, and other public services and providing interim government administration, legal, and penal experts. These units, which largely are staffed by reservists, are already stretched thin by commitments in the Balkans and Afghanistan. In many cases, these are also the same people that fill civilian jobs that are vital for homeland security.

On the civilian side, the U.S. government is also poorly equipped to provide security forces for post-conflict environments. No single department has responsibility for stabilization and no one at the planning table can present a comprehensive view of what the United States can offer, or what it will cost. As noted above, the United States does not have civilian constabulary forces. It also lacks a national police force such as the Royal Canadian Mounted Police that could provide police for a post-war Iraq mission. Although the United States is among the largest contributors of civilian police to UN peacekeeping missions, with 550 police officers in Kosovo and East Timor, it is the only country that uses commercial contractors to staff its civilian police contingents. The U.S. Civilian Police Program is run by the State Department and administered through a commercial firm that hires mostly retired police officers from state and local agencies. These officers come from widely

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varied backgrounds with very different levels of experience and expertise, particularly with respect to the unique kinds of challenges they will face in a foreign post-conflict environment that will be dramatically different from their local experience. They also lack the cohesion and organizational discipline of a standing, or even a reserve, police force. It is an open question whether the current State Department program, which relies on indirect government supervision and commercial contractors, would prove adequate in Iraq.

The United States also lacks an organized cadre of judicial personnel and corrections officers. There is no agency or office in the federal government with the mandate to organize and train judicial teams of American prosecutors, judges, and corrections officers for service in Iraq. Such teams likely will be needed, however, at least in the short term. They will also be needed for supervising and reforming the Iraqi judicial and penal system as soon as the fighting stops. There are Americans with relevant experience, but they would have to be recruited by the State or Justice Department, trained, equipped, and maintained once deployed. This would take programs, organization, and funding that currently are not available. The Justice Department does have programs for training indigenous police and prosecutors, but not judges and corrections officers. These programs rely upon State Department policy guidance and ad hoc project funding. In past instances, funding for training local police and prosecutors has not been appropriated prior to the intervention or fully coordinated, resulting in delays in program implementation.

Unlike previous peace operations, this time it appears unlikely the United States can depend on its allies to provide the military police, civilian constabulary, civil police, judicial personnel, and corrections officers that will be required. Neither Britain nor Australia, our most likely coalition partners, has constabulary forces, and the United Kingdom does not have a national police force. It is also unlikely that constabulary and civil police forces will come from NATO, the European Union, or the Organization for Security and Cooperation in Europe, which have staffed missions in the Balkans. France and Germany are opposed to taking military action to remove Saddam Hussein. After September 11, NATO was quick to help defend the United States and NATO troops participated in the war in Afghanistan and manned the International Security Assistance Force. There is little indication, however, that NATO will react in a similar manner in Iraq. It seems the United States will have to primarily rely upon its own resources to ensure post-conflict stability in Iraq.

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***The solution to the security gap, which the United States will face in post-conflict Iraq, is straightforward. . . . A large stability mission led by American forces will be needed, most likely requiring up to several hundred thousand military personnel.***

## RECOMMENDATIONS

### *A U.S. Stability Force*

The solution to the security gap, which the United States will face in post-conflict Iraq, is straightforward. First, the Gulf region is too vital for the United States to simply remove Hussein and leave the clean up to others. A large stability mission led by American forces will be needed, most likely requiring up to several hundred thousand military personnel. To be successful this cannot be a small or short-term commitment. It must be clear from the beginning the United States will remain until the goal of a stable, democratic, and economically viable Iraq is achieved. We should not repeat the mistake made in Bosnia where the United States set a series of artificial deadlines for withdrawal. This encouraged the spoilers—the extreme nationalists, corrupt politicians, and organized crime figures that opposed the peace process—to dig in and wait until the international community withdrew. The model for Iraq must be the long-term U.S. commitments in Germany, Japan, Taiwan, and South Korea, not the brief U.S. interventions in Somalia, Haiti, and Afghanistan.

Second, American military forces should be augmented by a civilian U.S. Stability Force that contains Special Police Constabulary Units (SPCUs); civil police (street cops); and judicial teams of prosecutors, defense attorneys, judges, and corrections officers.

Such a force would provide the military with an effective civilian security partner. It would also provide the capability required to restore public order, maintain stability, and, ultimately, enable a new Iraqi government to provide for its own security through the rule of law. Making internal stability an immediate priority and rapidly moving toward sustainable security are musts in post-conflict scenarios. Almost everything else can wait. Absent effective security, we will have a repeat of the experience in Afghanistan, where reconstruction has been delayed for over a year by the general lawlessness outside of Kabul.

Third, all elements of the civilian U.S. Stability Force must be present at the earliest possible stage of the intervention. Special Police Constabulary Units will be needed for civil disorder management, high-risk arrests, and to deal with armed organized crime groups and terrorists. In the Balkans, such forces proved to be highly versatile, relieving regular military forces of such routine duties as escorting refugees; protecting airports, buildings, and historical sites; providing crowd control at public events; and guarding officials and foreign visitors. Civil police will provide traffic control, area security, law enforcement, and liaison with and management of Iraqi law enforcement agencies. The judicial teams will begin work in secure areas to ensure that an appropriate criminal code is in place, that courts function, and that adequate detention facilities are provided. They will establish the "investigation to incarceration continuum" that is required to ensure effective law enforcement. They will also create the vital foundation for the rule of law from which the other aspects of political, economic, and social reconstruction can go forward. To ensure unity of command, civilian elements initially will operate under military control, but civilian command of civilian elements should be restored as quickly as possible.

The civilian U.S. Stability Force for Iraq would consist of the following elements:

- **Special Police Constabulary Units.** Drawing on the experience of Kosovo and other recent operations, Special Police Constabulary Units should be established to respond rapidly to major challenges to public order. In Kosovo, the United Nations deployed highly mobile, company-size constabulary units that operated independently or in combination with other forces. These civilian UN Special Police Units (SPU) typically each had 115 personnel divided into three operational platoons, plus a headquarters staff and specialized elements for vehicle maintenance, medical care, and administration. Normally, these forces operated at the platoon level (30 personnel, 6 vehicles), although they could break down to the level of a team (10 officers, 2 vehicles) to conduct patrols, staff check points, provide close protection for international and local officials, and escort refugees. They could quickly coalesce into a company-size force (90 personnel) for crowd control. Individual SPUs could operate jointly with other constabulary units supported by military police or regular military forces. The 10 SPUs in Kosovo totaled 1,300 personnel. In addition to these civilian constabulary units, KFOR, the NATO military force in Kosovo, had a Multinational Specialized Unit (MSU) composed of 350 Italian carabinieri and French gendarmes. This unit operated under the military rules of engagement, which authorized its use for crowd control, but not law enforcement.

For Iraq, the U.S. Stability Force should include SPCUs with a total of 2,000 personnel organized into 17 company-sized units. These units should be stationed in the capital and four regional centers. This pattern of deployment would enable them to respond to emergencies throughout the country. The primary deployment would be in Baghdad (1,000) with additional personnel in Mosul (200) and Kirkuk (300) in the North and Basra (300) and Kut (200) in the South. In addition to ground transport, these forces should have access to airlift that would permit their rapid deployment. To be successful, these units will need the visible support of U.S. Military Police and regular army units in dealing with large-scale civil disturbances.

Organizing SPCUs for the Stability Force will require drawing together the necessary resources. It will also require new funding and new legislative authority. Cur-

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rently, there is no funding or agency in the federal government responsible for such a program. Fortunately, the equipment and personnel with the required skill sets are available from SWAT teams and special operations units of U.S. civilian law enforcement agencies. This personnel pool includes retirees within two years of active service that could augment the pool of younger officers. The component parts need to be organized into formed, trained, and equipped units. This should be done by a federal law enforcement agency.

- **Civil Police.** As for civil police (street cops), the U.S. Stability Force civil police component should include 4,000 members total. At least 1,000 members of this force would be stationed in Baghdad with the remainder assigned to the regional and provincial headquarters of the Iraqi police and to local stations. The force would include a mobile training unit of 100 personnel that would give courses and train local police trainers. Like the UN Police in Haiti, Kosovo, and East Timor, these officers should be armed and have “executive authority” to make arrests, conduct investigations, and use deadly force. This would enable them to engage in police operations and to operate independently if required.

In Haiti, Kosovo, and East Timor, UN Police operated with local police, but they could take over if local police were unable or unwilling to perform their duties. The fact that the international police were armed and had executive authority made them both more pro-active and more credible with their local counterparts. Once local police were properly trained and deployed, the international police rarely had to intervene beyond offering recommendations. U.S. civil police will also need vehicles, equipment, a headquarters, and the other trappings of a police organization. The duties of this force will include criminal investigation so it will need an independent forensics capability, which should be created as quickly as conditions permit.

Creating a U.S. civil police force for Iraq will require new funding and new legislative authority. It will require moving the U.S. Civilian Police Program from the State Department to an existing U.S. law enforcement agency. It will require creating a federalized corps of U.S. civilian police for deployment in foreign stability operations, rather than relying on commercial contractors. The United States now has several thousand police officers that have served in UN police missions. These veterans could form the core of a new federalized civil police force that would be recruited specifically for Iraq.

In Iraq, the U.S. civil police would play a major role in vetting the Iraqi National Police to ensure the removal of criminals and human rights offenders as was done by international civilian police in Bosnia and elsewhere. It is likely that all but the most senior leadership of the INP can remain in place and continue to provide routine law enforcement. The primary role of the U.S. civil police would be to provide organizational leadership, liaison, and guidance for their local counterparts. It will be important for most U.S. police officers to live in the area they are working in so they can monitor the activities of local police and provide real-time guidance. This practice was followed in Haiti, Kosovo, East Timor, and Bosnia. It will also be important for the civil police to work closely with the civilian constabulary units and U.S. military forces.

- **Judicial Teams.** Constabulary and police are important, but they cannot function effectively without the other two parts of the “justice triad”—courts and prisons. The U.S. Stability Force should include 10 teams of 20 individuals for a total 200 lawyers, judges, court administrators, and corrections officers. The judicial component of the Stability Force would also include a 10-person headquarters unit that would have a senior judge and prosecutor, a core group of 25 translators, and a 25-member training unit that would provide courses. A judicial team would be assigned to each of Iraq’s eight major cities, with an additional team for Baghdad and one team to deal with emergencies. These teams would be mobile and could, like circuit riders, use their headquarters in the city for major trials but also tour the countryside to provide advice

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and oversight. The teams would have authority to handle sensitive cases directly, as long as such actions were taken in a transparent and non-arbitrary manner.

While the judicial teams could dispense justice directly, their primary mission would be to provide liaison and monitor local courts that would continue to handle all but the most sensitive cases. The judicial teams would supervise the vetting and purging of local jurists and corrections officers. They would provide international legal assistance and training to local attorneys, jurists, and penal officers and insure that the courts function fairly and effectively. Judicial teams would also help ensure accountability for human rights violations, provide guidance on dealing with accused war criminals, and advise on and assist with the rehabilitation and reform of the justice system. In Bosnia and Kosovo, the United Nations discovered that local jurists were either too intimidated or biased to render proper verdicts in politically sensitive cases and those involving powerful gangsters, so international jurists were brought in to achieve fair trials.

International corrections officers would supervise the handling of important prisoners, ensure the release of political prisoners, and provide instruction on the humane treatment of prisoners and respect for human rights. They would also supervise reform of the corrections system. Corrections officers would cooperate with the military to create a maximum-security facility to house politically sensitive or extremely violent detainees and those accused of war crimes. In Bosnia and Kosovo, local corrections officers were either afraid or unwilling to jail high-profile offenders. In Kosovo, UN Special Police Units guarded prisons because the United Nations was unwilling to trust local guards with weapons.

### *Estimated Costs of the Civilian Component*

- **Personnel.** Annual personnel cost for a total of 6,000 members of the U.S. constabulary and civil police force would total approximately \$600 million. This total would be based upon \$100,000 total compensation for each officer (grade 14, step 1 on the federal General Schedule, plus benefits), which is equal to the annual compensation received by participants in the U.S. State Department/Dyncorp Civilian Police (CIVPOL) Program. All participants in the U.S. CIVPOL Program receive the same salary and benefits. In addition, annual personnel costs for the 255 members of the judicial teams would total \$38 million based on an average of \$150,000 in total compensation for each member (GS 15/10, plus benefits). Total annual personnel costs would amount to \$628 million.
- **Vehicles and Equipment.** Most of the equipment for the initial deployment could be obtained through drawdowns from U.S. government and military inventories and through various types of lease arrangements with manufacturers. Equipment utilized by UN constabulary and police units is obtained through leasing. Using a combination of drawdowns and leases would limit start-up costs.

Creating a U.S. Stability Force would be challenging. Its contribution to post-conflict security in Iraq, however, would more than justify the effort and the relatively modest cost, especially in comparison to the cost of using the military. Such a force would:

- Join together all the elements required to achieve sustainable security under a single, unified authority;
- Close the security gap that has plagued previous peace operations by providing a smooth transition from war fighting to institution building;
- Establish police and judicial authority from the outset, freeing the military to perform its functions and speeding its withdrawal;
- Create the rule of law as a platform from which political reconciliation and economic reconstruction could go forward successfully; and,

***Given the operational realities of post-war Iraq, the United States must be prepared to bear the burden of establishing the rule of law there.***

- Reduce the cost of the operation by substituting relatively inexpensive, light civilian forces for the type of heavy, regular military forces the United States was forced to rely upon in Bosnia and Kosovo.

Given the operational realities of post-war Iraq, the United States must be prepared to bear the burden of establishing the rule of law there. Other members of the coalition may play a role and additional countries may contribute as conditions stabilize. If experience in Haiti and other peace operations is a guide, countries will be more willing to contribute police, constabulary, and judicial experts if the United States participates and if Americans provide organizational leadership and manage rule of law functions. Eventually, the United States may be able to hand off this responsibility to UN, European, or regional law enforcement professionals, but initially, the overriding need for unity of command and internal coherence dictates that Americans should be in charge and carry the major responsibility. This will mean assuming additional burdens, but it will prevent mistakes and shorten the period before the United States can hand off responsibility to international or local authorities.

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