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Report of Inspection

Inspection of Rule-of-Law Programs, Embassy Baghdad

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KEY JUDGMENTS

- A fully integrated approach to justice-sector reform in Iraq is essential and does not exist at present. An approved, integrated, adjustable strategic plan would sharpen the debate and shape the thoughts of policymakers for each stage of the process.
- The U.S. government has spent approximately \$400 million on rule-of-law programs other than police training. Most of the money appears to have been well spent. Embassy Baghdad's ongoing comprehensive review of the U.S. government's reconstruction program, funded through September 30, 2006, under the Iraq Relief and Reconstruction Fund (IRRF), offers the last best chance for the U.S. government to ensure that the remaining reconstruction resources are deployed to maximum effect. The defining characteristic of this new phase must be that it enhances the transition from a U.S.-directed program to a sustainable Iraqi-directed program.
- Basic to the success of all U.S. hopes for democracy and good governance in Iraq is an effective anticorruption regime. The institutional framework for anticorruption activities is in place, but it is fragile and untested.
- Although many rule-of-law projects in Iraq are still nascent, those that are further along appear on target. Interagency coordination in Baghdad, however, remains a major challenge, and there is an overriding need for a full-time, senior rule-of-law coordinator at Embassy Baghdad.
- The difficulties for coordination in Baghdad mirror similar problems in Washington. The Iraq Steering Group, which is jointly chaired by the National Security Council (NSC) Senior Advisor for Iraq and the Department of State's Senior Advisor to the Secretary and Coordinator for Iraq (S/I), and the rule-of-law working group, which is chaired by the NSC Director for Iraq Stability Operations, are well-regarded entities aimed at ensuring policy coherence. They have had limited success, however, in smoothing frictions between U.S. government agencies or in tracking

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program activities. Of particular concern is the absence of Embassy Baghdad participation in the working group. Without the involvement of the embassy to provide an on-the-ground view, Washington discussions can miss key issues of concern to day-to-day practitioners.

- The Department of Defense (DOD) is actively involved with myriad other aspects of rule of law throughout Iraq. The role of local commanders using the Commander's Emergency Response Program (CERP) funds and locally available expertise is enormous. These efforts, while numerous, widely dispersed throughout Iraq, and broadly appreciated, would be even more effective with central coordination and an infusion of civilian personnel working on rule of law in Iraq's provinces.
- The Office of Inspector General (OIG) strongly supports the deployment of resident legal advisors to provincial centers beyond Basra, especially where regional embassy offices already exist.
- For months, interagency differences in Washington have stalled projects that involve expanding the Central Criminal Court of Iraq (CCCI) outside of Baghdad, establishing a joint U.S.-Iraqi investigative task force for major crimes, and launching a comprehensive justice reform program. OIG found that the disagreements surrounding these programs are diverting the attention of agencies already at work in Iraq and amplifying existing interagency tension in Baghdad. Policymakers must break this interagency logjam so that projects go forward or let the funds set aside for these projects go elsewhere.
- Security requirements and logistics must be heavily factored into the current cost of doing business in Iraq. Security issues detract from the efficiency and productivity of all project activity and can occasionally call into question the value of proceeding with an activity at all. This is particularly vexing in that implementation of rule-of-law projects increasingly mandates placing U.S. civilian personnel outside of Baghdad, where security costs are higher.
- The Bureau of International Narcotics and Law Enforcement Affairs (INL) office in Baghdad has taken an effective lead in international donor coordination on rule of law, with a series of successful donor workshops in 2005. Other international actors have lauded these efforts and credit them with laying the groundwork for an initiative of the Iraqi Ministry of Planning to give the process an Iraqi imprimatur.

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The inspection took place in Washington, DC, between July 26 and August 12, 2005; in Baghdad, Basra, Falluja, Mosul, and Hilla, Iraq, between August 14 and 31, 2005; and ended in Washington, DC, on September 27, 2005. Ambassador Vincent Battle and Ambassador Franklin Huddle, Jr., co-leaders, and Theodore Aposporos, Jay Dehmlow, and Lawrence Lesser conducted the inspection.

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CONTEXT

The U.S. government's focus on the development of rule of law in Iraq began soon after the government of Saddam Hussein fell. In May 2003, a team of federal

What is Rule of Law?

Rule of law includes the entire legal complex of a modern state, from a constitution and a legislature to courts, judges, police, prisons, due process procedures, a commercial code, and anti-corruption mechanisms.

judges and prosecutors visited Iraq to assess the situation. Several members stayed on under an interagency memorandum of agreement between INL of the Department of State (Department) and the Department of Justice's (DOJ) Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT). This team was instru-

mental in shaping the CCCI (see Figure 1 below). It also provided initial training for judges throughout the country. Both U.S. government entities remain fully engaged in promoting rule of law in Iraq.

Over the past two years, the interagency environment for U.S. assistance on all rule-of-law components in Iraq and the scope of their effort have expanded significantly and become much more complex. Much of the energy and a large portion of the resources have gone into police training programs, which were the subject of a joint OIG assessment by the Departments of State and Defense (ISP-IQO-05-72, July 2005).

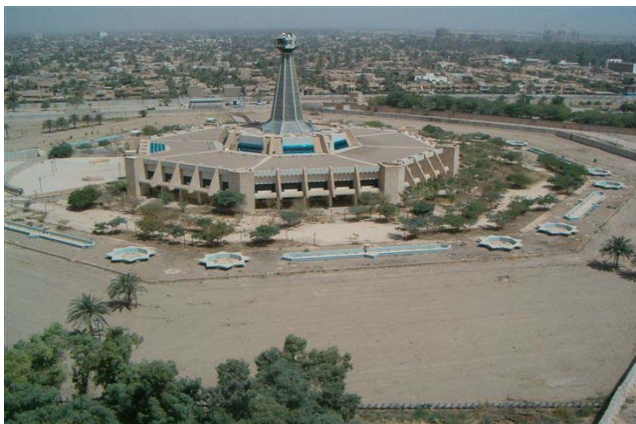


Figure 1: Central Criminal Court of Iraq

Police training and the improvement of the Iraqi police services, however, do not occur in a vacuum. In fact, experience gained elsewhere in the world confirms that piecemeal approaches to rule of law do not produce sustainable results for nations in transition.

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Effective rule-of-law strategies are essential for the functioning of a democracy and are central to protecting the rights and liberties of individuals. Rule of law must be comprehensive, engaging all institutions and individuals of the justice sector, both official and nongovernmental, in the development and implementation of a single, nationally owned and led strategic plan for the sector. Such a strategy must include attention to the international standards of justice, the laws that codify them, the institutions that implement them, and the mechanisms that monitor them. Such a strategy also requires a standard of due process that facilitates access to justice for all and a mechanism for educating citizens about their legal rights. More broadly, rule of law has been called the "software" of democracy in that it determines whether countries can operate the "hardware" of free markets and democratic institutions. For Iraq, effective rule of law will promote democratic reform and enhance stability. As such, it is a national security priority for the United States.

THE PURPOSE

OIG surveyed U.S.-funded rule-of-law programs in Iraq to determine how effectively the programs address these multiple components of Iraq's justice sector. In so doing, OIG also reviewed the Chief of Mission's oversight of these programs, identified possible synergies and disconnects in the programs, and discussed management efficiencies with the office of the Special Inspector General for Iraq Reconstruction. Additionally, OIG developed an inventory of the numerous U.S.-funded programs in Iraq as a foundation for establishing a comprehensive database of all rule-of-law activity there.

THE PARTICIPANTS

The primary U.S. participants in the civilian rule-of-law universe in Iraq include the Iraq Steering Group, INL, DOJ's International Criminal Investigative Training Assistance Program (ICITAP), and the Department's Bureau of Near Eastern Affairs (NEA), where a deputy assistant secretary oversees Iraqi affairs and an officer in its political unit has rule of law in his portfolio. The Iraq Steering Group, which is co-chaired by the NSC Senior Advisor for Iraq and S/I, meets frequently to consider the work of six interagency working groups, one of which is devoted to the rule of law. NSC's Director for Stability Operations chairs this group. INL, which was involved at the very beginning of the U.S. involvement in the rule of

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law in Iraq, continues to funnel IRRF funding to rule-of-law activities and works to provide long-term strategic direction. INL implements its projects via fund transfers to other U.S. agencies, contracts with prequalified government contractors, and grants to nongovernmental organizations (NGO) or international bodies. ICITAP, meanwhile, is the civilian implementing entity with the largest presence on the ground. Other DOJ entities involved in rule of law are OPDAT and the U.S. Marshals Service.

Other U.S. government agencies receive funding through direct allocations from the IRRF. The U.S. Agency for International Development (USAID) is implementing several democracy and governance programs that, aside from the drafting of the constitution, impact rule of law chiefly in the reform of Iraqi commercial law and in promoting anticorruption activities. Some officials at USAID/Baghdad would like to increase the agency's attention to rule of law in Iraq. The Department's Bureau of Democracy, Human Rights and Labor (DRL) and Bureau of Population, Refugees and Migration participate in interagency discussions on rule of law and have limited program responsibilities in Iraq.

In May 2004, National Security Presidential Directive 36 mandated the establishment of a temporary organization and used the hiring authorities of 5 U.S.C. § 3161 to facilitate the transition of the reconstruction effort from the Coalition Provisional Authority. The directive also specified that the Secretary of State is responsible for the continuous supervision and general direction of all assistance to Iraq. With the opening of the embassy on June 28, 2004, the Iraq Reconstruction Management Office (IRMO), under the authority of the Ambassador and in full consultation with the Iraq Steering Group, took on responsibility for allocation of IRRF funding. The IRMO also assumed from the Coalition the advisory function in Iraqi government ministries, and more than 90 IRMO advisors remain in Baghdad. At the behest of the new Ambassador, who arrived in July 2005, the structure of reconstruction management in Iraq is under review.

In October 2004, INL named a rule-of-law professional to its office at Embassy Baghdad. The move aimed to bolster strategic planning and to monitor the programs receiving INL funding. In June 2005, the Department appointed a senior advisor to the Ministry of Interior who also serves as the senior rule-of-law coordinator within the embassy. Thereafter, the Ambassador set up a rule-of-law task force with a strategic and programmatic mandate.

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SECURITY AND LOGISTICS

For all work in Iraq, security is paramount, and logistics are arduous. This takes a toll on the efficiency of even the best-run operation, and the rule-of-law projects OIG reviewed are no exception. The portion of security costs for individual projects ranges from six percent for the \$120 million Parsons' prison construction to one case where they were 80 percent of the cost. The complex logistics of living and working in Baghdad detract from effective interagency coordination and amplify an already well-developed tendency toward stove piping. These imperatives are unlikely to change in the medium term.

BUDGET CONSTRAINTS

Simultaneous with the OIG review of U.S. rule-of-law programs in Iraq, the embassy was conducting its own assessment of the management and resource base of the Iraq reconstruction program. With the projected end of supplemental IRRF funding (all to be obligated by September 30, 2006), a new phase will begin. The defining characteristic of this new phase must be that it enhances the transition from a U.S.-directed program to a sustainable Iraqi-directed program.

U.S. assistance to Iraqi reconstruction will almost certainly continue after the end of supplemental IRRF funding. Within the normal budget cycles that will subsequently identify and quantify this assistance, the issue of sustainability will emerge as a priority. It is essential that strategies for all reconstruction efforts, including rule of law, reflect this fact.

OUTCOME OF RULE-OF-LAW PROJECTS

U.S. government attention to the rule of law in Iraq is just over two years old. At times, disbursement of funds has been slow, particularly for capacity-building projects. This means that many of these activities are still nascent. Indeed, three major project proposals have yet to be offered for competitive bidding. Most of the early disbursements for projects that support rule of law have been directed toward construction projects that are fully in train. Nearly \$180 million went to one contractor for the construction of two new prisons and the refurbishment of other detention facilities; more than \$130 million has supported U.S. Marshals Service efforts to improve court security at such locations as the Iraq Special Tribunal,

where Saddam Hussein will be tried; and another \$62.8 million has funded Corps of Engineers work on construction of a new courthouse in Basra and refurbishing other facilities throughout Iraq. These projects strengthen rule-of-law capacity in Iraq and appear on target for completion. The outcome of these projects is clear: they will be successful, although several sources say that, even with new construction, the number of prison beds will fall far short of what Iraq needs.

The outcome of the capacity-building effort in the justice sector is less clear. Under the leadership of the INL rule-of-law officer, the embassy is developing a master plan that will define U.S. goals. Even without this master plan, progress is underway in several U.S.-funded programs, and there is a clear notion among project directors of where energies must be directed. The establishment of the CCCI in Baghdad and the appointment of U.S. resident legal advisors at Embassy Baghdad are successfully linked. The expansion of these projects outside of the capital is a clear priority that will advance with the upcoming transfer of one resident legal advisor to Mosul and the opening of a CCCI branch in Basra.

The United States has also successfully created an Iraqi system of inspectors general and a Commission on Public Integrity that already has a significant investigative caseload and a curriculum-development program for schools regarding government integrity. Increased coordination among these new watchdog institutions and the preexisting Board of Supreme Audit is a public integrity priority, as is training the investigators of all three institutions. In another success story, DOJ's prison advisory program has effectively fielded large numbers of U.S. experts with an active mentoring presence in Iraq's prisons. OIG observed the first steps in expanding this program beyond Baghdad to Basra.

A successful outcome for these and other capacity-building programs, however, cannot be defined by a time line imposed by U.S. funding and planning. In fact, the strengthening of rule of law is a continual process, and success will only emerge if sustainability can be built into every program design. Iraqi officials are increasingly assertive in identifying their own priorities for rule of law, including emphasis on the use of less-costly local training rather than sending large numbers of personnel abroad. Justice professionals, meanwhile, told OIG of tangible improvements, i.e., upgraded facilities and amenities that derive side by side with capacity building. To craft a successful outcome, the United States must move now to ensure that, beyond Iraqi buy-in for U.S. program designs, Iraqi views become the keystone for future planning.

ALONG THE WAY: CONSTITUTION BUILDING AND TRANSITIONAL JUSTICE

As Iraq implements a justice sector rooted in rule of law, it also confronts the need to write a new constitution and clean up the legal morass left behind by the Saddam Hussein regime. During the inspection in Iraq, OIG witnessed the intense work of finalizing the constitution and heard from Iraqi officials on the need for transitional justice. These subjects are not central to OIG's review of rule of law, but it is important to note that the U.S. government has been instrumental in supporting the Iraqis as they draft their constitution and create judicial institutions to implement transitional justice.

The Constitutional Drafting Committee was responsible for drafting the constitution in relatively rapid order. The U.S. government, through partnerships with U.S.-funded grantees, assisted in two ways. It provided technical assistance to the committee to facilitate its drafting process. For instance, international constitutional scholars came to Baghdad to share expertise, and other recently drafted constitutions and other documentation served as references for the committee. In addition, U.S. employees provided services such as copying and distributing drafts. The U.S. government also worked via the media and civil-society organizations to bring the constitution to the people and to ensure a lively, informed public discourse on the constitution.

Foremost among the institutions of transitional justice is the Iraq Special Tribunal in Baghdad, which will provide the venue for bringing Saddam Hussein and other leading officials of the old regime to trial. The U.S. effort has involved multiple agencies in improving courtroom facilities, strengthening their security, and sharpening a program for witness security. The first trials are anticipated soon.

The United States has also worked to resolve the issue of the large number of security detainees now in custody. The Combined Review and Release Board is the Iraqi-majority panel that reviews the files of detainees to determine whether they should be prosecuted under Iraqi law, released, or held in detention for posing a threat to security. In a related action, the U.S. government is helping prepare the Iraqi courts and prisons to handle detainees transferred to their custody. However, there are real U.S. and Iraqi concerns that the political imperative for the transfer will outweigh any realistic assessment of Iraqi capabilities.

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The Iraqi Property Claims Commission is adjudicating the claims of the tens of thousands of citizens seeking restitution of property that was arbitrarily expropriated by the Saddam Hussein regime. Many of the claims come from the volatile city of Kirkuk, where Saddam Hussein's government brought in large numbers of Arabs from outside the city to displace the Kurdish population. The potential multibillion-dollar funding requirements for appropriate compensation have not yet been made available, although \$200 million is on hand and \$36 million has already been disbursed.

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CHIEF OF MISSION ROLE

Embassy Baghdad is unique in its size and scope. At any given time, ten or so former Ambassadors serve here in subordinate capacities, and a constant whirlwind of activities draws the energetic Chief of Mission and deputy chief of mission in many directions. The Ambassador has a track record of effectively working with Washington on the issues he cares about, and he made his concern for rule of law evident early in his tenure. Initially, this position came in the context of the Ambassador's extensive effort to advance the Iraqi constitutional process, a building block for erecting a durable rule-of-law apparatus. In so doing, he positioned the United States as a concerned friend of Iraq that stands ready to offer suggestions about how best to curb the forces threatening to pull Iraq apart. Further, his approach tacitly responds to the view of some Iraqi political observers that the United States wants to dictate a constitutional draft.

In a sense, the Ambassador's position reflects a general commitment to rule of law writ large. He knows decisions need to be made by Iraqis and recognizes that the constitution and Iraq's approach to rule of law must reflect a synthesis between Islamic traditions and universal principles of democracy and human rights. The Ambassador's approach sets an appropriate tone as the United States moves towards a rule-of-law paradigm that is Iraqi-crafted and directed but that also hopefully has U.S. government buy-in. This is a departure from the past practice, a U.S.-directed process that sought Iraqi buy-in. There are risks, of course, because Iraqi society is replete with competing ethnicities and differing worldviews. Although an outcome that is attractive to the United States is not guaranteed, any other approach would likely be futile.

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Though the very nature of Iraq propels the Ambassador from crisis to crisis, he found time to establish the basic rule-of-law architecture almost immediately upon arrival. Central to this is his rule-of-law task force, one of a series of task forces set up by the Ambassador for each of his mission's key concerns. While observing a task force meeting, OIG heard the Ambassador tell team members of the need to keep overall goals in mind and to develop detailed, credible plans that will enable him to press Washington for resources. To this end, he anticipated OIG's recommendations that call for careful prioritizing and sequencing of U.S. actions to advance the elements in the rule-of-law chain. Further, here and elsewhere, the Ambassador stressed the desirability of including time lines and benchmarks throughout the planning process. And, once an agreed-upon plan is in place, the Ambassador views it as essential to have a tracking system.

Overall, the Ambassador supports a strategy designed to result in concrete actions but flexible enough to adapt to the fluid Iraqi political and security environment. He also wants his task force to set intermediate goals wherever possible, thus preparing the way for the United States' ultimate goals. OIG concurs with this approach, especially with its continued hands-on support from the Ambassador.

The Ambassador and deputy chief of mission have supported the rule-of-law coordinator position and the need for all U.S. agencies at post to work harmoniously under his direction. However, mission management could involve itself more directly in resolving the differences between INL and DOJ at post or empowering the rule-of-law coordinator to address these problems. In this regard, the Ambassador has underscored that he is not taking sides and is willing to think originally about involving agencies, such as DOD, which are not traditionally central to rule of law.

On the practical side, post management supports staffing increases and is acutely aware that key middle-grade staff is in short supply and that security and logistics considerations affect the efficient use of personnel at every juncture.

COORDINATION

Given the ambitiousness and rapid expansion of U.S. rule-of-law efforts, it is perhaps inevitable that there is less than optimal rule-of-law coordination within Washington, among U.S. elements in Iraq, between Washington and the field, and between the United States and coalition partners and potential donors or NGO implementers. This lack of coordination reflects the sheer size and complexity of this project, which would tax even a mature coordination process. Furthermore, coordination problems arise from Iraq's fluid political and military situation, which complicates efforts to craft a comprehensive policy plan that would anchor the U.S. rule-of-law account.

Difficult logistics, security, bureaucracy, and personnel problems are also hurdles to coordination. Some coordination missteps have arisen because of Embassy Baghdad's challenging environment, where some say that the only people around for the long haul are the bad guys and the contractors. Tours of duty are short, and most are interspersed with trips out of Iraq for rest and relaxation, Washington policy coordination, or to accompany Iraqi missions. Temporary duty assignments are common, and staffing gaps are frequent. In all, the embassy staff is overworked if not overwhelmed and there is, as a result, a scattershot institutional memory and a tendency to repeat mistakes or bounce from one crisis to another.

The palpable INL-DOJ rivalry in Washington and the field further complicates coordination efforts. OIG found that Washington officials see the overseas elements as sometimes at loggerheads and not always keeping each other informed. In Iraq, the mission sees Washington-based elements as sometimes at odds and not keeping each other informed.

As for security, it intrudes on the conception and execution of programs at multiple levels. For example, all parties acknowledge that the ideal model for rule-of-law implementation calls for synchronization of the individual programs to improve in tandem the key links within the judicial chain police, courts, and prisons, among others. Yet, this effort confronts the security realities that some see compelling a political mandate that would give immediacy to improving the police and prison functions.

EMBASSY RULE-OF-LAW COORDINATOR AND OTHER COORDINATING MECHANISMS

A key Embassy Baghdad element in coordinating and otherwise advancing U.S. programs is a former Ambassador who was recently designated the new rule-of-law coordinator. A neutral party with knowledge of the gamut of rule-of-law matters, this official is already spending much time brokering peace between INL and DOJ, whose disputes sometimes reach the desks of assistant secretaries and other high Washington officials.

At present, the new rule-of-law coordinator is also senior advisor to Iraq's Ministry of Interior, which is located outside of the International Zone. (His advisory role is an IRMO position with no line authority over any regular embassy position and whose duties may be transferred elsewhere as part of the Chief-of-Mission review now under way.) The responsibilities of these two functions have, at most, only modest synergies and either could easily justify full-time attention.

Recommendation 1: Embassy Baghdad, in coordination with the Bureaus of Human Resources, Near Eastern Affairs, and International Narcotics and Law Enforcement Affairs, should designate a senior officer to be the rule-of-law coordinator exclusively. (Action: Embassy Baghdad, in coordination with DGHR, NEA, and INL)

Rule-of-law activities under Chief of Mission authority (and accountability) are undertaken using a variety of funding mechanisms and the supervision or oversight of a number of entities. In addition to its rule-of-law task force and working group, the embassy needs a tracking system, coordinating mechanisms, and periodic status reports.

Recommendation 2: Embassy Baghdad should designate the rule-of-law coordinator as the clearinghouse for current developments in rule of law in Iraq, with responsibility for periodic reporting on the status of rule-of-law activities, including those undertaken by Coalition members, for use by the Chief of Mission and officials in Iraq and the United States. (Action: Embassy Baghdad)

Embassy Baghdad is an immense mission, and many elements have closely related, even overlapping, responsibilities and funding. These elements need access to a common database to be aware of what others are doing regarding their programs and activities and those of NGOs and international organizations in Iraq. Such a database would reduce overlapping efforts, which have occurred with programs for police software and forms development. In those cases, several different entities were working without coordination. Part of the jockeying and elbowing among mission elements also reflects a lack of communication and transparency, which a central database that tracks all rule-of-law activities could remedy. Such a database could also strengthen the hand of the rule-of-law coordinator. In addition, the coordinator could usefully work with the military deputy of his rule-of-law task force (see below) to update the database to include CERP activities wherever possible.

Recommendation 3: Embassy Baghdad should rewrite the job description for the rule-of-law coordinator position to reflect that officer's responsibility to create and maintain a central database and website or blog regarding rule-of-law activities in Iraq. (Action: Embassy Baghdad)

NEED FOR A STRATEGIC PLAN

An additional obstacle to Embassy Baghdad's efforts to tighten the coordinating structures lies in the absence of an overall strategic plan for rule-of-law activity. Washington has not provided such a plan, and the sole INL officer at the embassy who is dedicated to rule-of-law programs has been developing a framework document for rule-of-law activity since her arrival in October 2004, but she was soon to depart from post. Though operating almost single-handedly and unable to transform this document into a formal plan, this officer has gotten high-level attention to rule of law at the mission and in Washington.

While OIG was at post, the military distributed a rule-of-law "annex" to its operating elements, directing them to follow the Department's lead in supporting rule-of-law activities in Iraq. This annex echoes the language of the INL representative's draft framework document. In addition, the military is applying the "effects-based operations" methodology to its civilian actions. A major principle of this methodology is greater coordination with nonmilitary elements that have the requisite skills and resources to bring about the cultural changes implied by the U.S. rule-of-law objectives.

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All that is needed is for INL to convert the INL officer's framework document from a draft into a strategic plan that comprehensively expresses U.S. objectives and the proposed steps to attain them. As it stands, the document, which was informally blessed by previous embassy management, is not a fully coordinated policy statement approved by the Ambassador and Washington decisionmakers. In refining this draft, the following factors should be considered:

- The plan should provide a sense of the areas where assistance may be provided and describe measurable outcomes. Presently, the document says the Iraqi legal profession and Iraqi prison systems are "capable," a word lacking specificity. The stating of precise outcomes could be done in consultation with Iraqi and Washington interlocutors.
- The plan should not presume there is an adversarial relationship between undertaking some activities on a piecemeal basis and the overarching strategy of improving all components of the justice system. The United States expects to influence the development of rule of law in Iraq but cannot expect to control it. In that light, the best approach may be an opportunistic and forward-leaning one in which all participants move ahead with worthwhile activities as circumstances permit and hold back on other activities when circumstances do not permit, even if uneven progress results.
- The plan should consider the fact that there are limits on what the Congress is prepared to spend. Further, the plan should be realistically placed within a funding environment in which the IRRF is likely to be replaced by more conventional funding arrangements.
- Another factor to consider is that the government cannot always recruit enough people with the necessary skills when needed and for the length of time needed.
- The plan should take into account the difficulty of engaging Iraqi officials in project design and gaining their involvement in the implementation phase. The plan should be informed by strategic plans developed by Iraqi government ministries and the work of the Iraq government's own rule-of-law working group. Senior Iraqi officials and politicians told OIG it is reasonable to expect Iraqis will resist U.S. influence in some areas where help is offered. For example, OIG heard such problems could arise in producing curriculum, TV spots, and some forms of training for police and judges. It would make sense to anticipate Iraqi pushback and factor that into strategic planning.

- Needed security and short-term measures should not preclude development of strategies for the mid- or long-term focusing on institutional support and capacity building for the rule of law.

OIG believes all major stakeholders see a critical need for a fully integrated approach to the justice sector and that, whatever tactical gains arise from short-term easy victories, the rule of law effort would benefit greatly from a strategic plan. Such a plan would be based on an embassy draft, vetted at the top policy level, and harmonized with the key themes of U.S. transformational diplomacy. This plan would better shape U.S. long-term strategy, better husband U.S. resources, and smooth the inevitably bumpy transition from an American-run Iraq to conventional sovereignty. Further, the plan's authority would delineate more precisely the roles of the Departments of State, Justice, and Defense in advancing rule of law in Iraq, reducing implementation-level friction.

Recommendation 4: Embassy Baghdad, in coordination with the Bureaus of Near Eastern Affairs and International Narcotics and Law Enforcement Affairs, and the Senior Advisor to the Secretary and Coordinator for Iraq, should design and implement a strategic plan that includes outcomes, benchmarks, and measures and would serve as the basis for the rule-of-law section of the Mission Performance Plan. (Action: Embassy Baghdad, in coordination with NEA, INL, and S/I)

REDUCING BUREAUCRATIC RIVALRY

Jockeying between agencies in the field, chiefly between DOJ and INL, diverts motivated, talented employees from the tasks at hand and arises from genuine policy differences and the replaying of disputes that originate in Washington. The jockeying is also amplified by the strains of life in Baghdad and by personality clashes. At root is the DOJ's perception that it has the requisite judicial expertise and should be able to operate on its own; in fact, DOJ once informally suggested that INL close its rule-of-law shop in Iraq. More recently, DOJ/Baghdad sought to control access to Iraq's Chief Justice until dissuaded by embassy management. For its part, INL has the requisite congressional authority and overseas-project monitoring systems in place.

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Although this infighting calls for Washington action, Embassy Baghdad could also step into the breach. For example, DOJ attaché advocates giving DOJ a stronger formal role in the recently established rule-of-law task force, one equal to the role of DOD. Currently, the mission's rule-of-law coordinator chairs this task force, and a major general and the junior of the post's two INL officers serve as deputies. Given that DOJ, like DOD, has significant operational responsibilities for rule of law, removal of this anomaly could lessen tensions.

Recommendation 5: Embassy Baghdad should include the senior Department of Justice representative in Iraq in the executive structure of the mission's rule-of-law task force. (Action: Embassy Baghdad)

Another facet of the coordination effort involves the NGO and contractor communities, both of which can offer insights into the planning and strategy process but cannot appropriately be involved in U.S. government policymaking or decisionmaking. For example, one contractor with a significant role in the rule-of-law effort participates in the meetings of the mission's rule-of-law task force and has traveled up-country with an otherwise entirely official U.S. government party. It appears more appropriate to gain input from this contractor and the other nongovernmental elements outside of the formal task force. Mechanisms that do not stray into policy or provide insider advantages should be used to coordinate between the U.S. government and contractors.

Recommendation 6: Embassy Baghdad should limit participation in the mission's rule-of-law task force to U.S. government employees. (Action: Embassy Baghdad)

Recommendation 7: Embassy Baghdad should direct the rule-of-law coordinator to hold monthly coordinating sessions with non-U.S. government contractor partners and grantees to advance overall rule-of-law coordination and the flow of information, and invite representatives of the Bureau of International Narcotics and Law Enforcement Affairs, the Department of Justice, the Iraq Reconstruction Management Office, and the Department of Defense. (Action: Embassy Baghdad)

One group of American officials, the IRMO advisors, has regular access to high Iraqi officials. As of August 2005, there is a high ratio of IRMO advisors to Iraqi government ministries. Many advisors work with ministries and other entities having important rule-of-law responsibilities such as the Ministry of Justice, Ministry of Interior, Commission on Public Integrity, and the Iraqi Property Claims Commission. There is, however, no mechanism for imparting to U.S. officials at Embassy Baghdad their insights on the thinking of Iraqi policymaking officials; therefore, these briefings occur only episodically.

Recommendation 8: Embassy Baghdad should include Iraq Reconstruction Management Office employees who are working on rule-of-law matters in the embassy rule-of-law task force and should initiate contact between individual Iraq Reconstruction Management Office employees and officials from other U.S. agencies working in the same Iraqi government ministry. (Action: Embassy Baghdad)

WASHINGTON COORDINATION

The Iraq Steering Group is chaired by the NSC's Iraq Senior Advisor and S/I. The Rule-of-Law Working Group (one of six Iraq working groups) is, meanwhile, chaired by the NSC Director for Iraq Stability Operations. Both groups are well regarded and prevent policy drift while reducing INL-DOJ frictions. The groups, though, are less useful for aggressively promoting programs or managing the substantial informational flow. Some have questioned the rationale for having an NSC official chair the working group since the other five working groups are chaired by a representative of the lead agency. OIG understands this arrangement was imposed because neither operational party would yield to the other.

One limitation is that Embassy Baghdad does not participate in the working group via the secure videoconference service. This is due to the group's previous attempts to directly task the embassy. Some taskings from Washington even ran counter to the Chief of Mission's instructions. Without the embassy to provide on-the-ground truth, Washington measures sometimes were out of sync with reality. For its part, Washington is frustrated by its inability to hear directly from the implementers.

Recommendation 9: Embassy Baghdad, in coordination with the Bureau of Near Eastern Affairs and the Senior Advisor to the Secretary and Coordinator for Iraq, should use the secure videoconference service to resume participation in the twice-monthly working group meetings chaired by the National Security Council, provided that these meetings do not serve as a mechanism to task the embassy. (Action: Embassy Baghdad, in coordination with NEA and S/I)

Within the Department, a key official on rule of law is the deputy assistant secretary in NEA, who heads up the Iraq office. That office has one officer in the political unit who focuses on rule of law. Also central to Department involvement are the principal deputy assistant secretary in INL and several working-level officials in INL's Office of Crime Programs and Office of Policy, Planning, and Coordination. (INL is the chief funnel for rule-of-law-related assistance.) Having more peripheral but distinct roles are DRL and the Bureau of Population, Refugees and Migration, which is only involved in supporting the Iraqi Property Claims Commission.

Given the multiplicity of Washington elements involved in rule of law and the resources now being devoted to this matter worldwide, greater emphasis on coordination appears warranted. A number of organizations, including INL, DRL, and USAID say they need to be better informed on overall rule-of-law programs. Other agencies having rule-of-law elements in their portfolio want a senior rule-of-law coordinator chosen in the Department. This person, for example, could be an officer within NEA or S/I who might be doublehatted. Similarly, the embassy rule-of-law coordinator at Embassy Baghdad currently lacks a functional linkage to NEA or S/I and could benefit from having a Washington counterpart. Furthermore, designating a senior official - perhaps an officer with an existing ambassadorial title - would reflect the importance of rule-of-law to the Administration. The position need not be permanent but should be designed to shore up rule-of-law coordination as new U.S.-funded programs get underway.

Recommendation 10: The Bureau of Near Eastern Affairs, in coordination with the Senior Advisor to the Secretary and Coordinator for Iraq, the Bureau of Human Resources, and the Bureau of International Narcotics and Law Enforcement Affairs, should formally designate a senior official to serve as its point person for rule-of-law efforts in Iraq. (Action: NEA, in coordination with S/I, DGHR, and INL)

INL has not established the organizational structure to support its rule-of-law resources and program development responsibilities. The lack of structure complicates INL's working relationship with DOJ, which carries out a large portion of the rule-of-law program. During OIG's many discussions with representatives of INL and DOJ, officers from both organizations suggested that their protracted dispute over rule-of-law programs calls for measures that will routinize their daily contact. A senior DOJ official said a key problem is that interaction with INL all too often takes place during crises or disputes. OIG agrees that more routine association between the two organizations would encourage collegiality.

Recommendation 11: The Bureau of International Narcotics and Law Enforcement, in coordination with the Bureau of Human Resources, should designate a global rule-of-law coordinator at the office-director level to focus chiefly on nations in post-conflict situations such as Iraq and Afghanistan and identify a position on the coordinator's staff for at least one seconded Department of Justice officer. (Action: INL, in coordination with DGHR)

Another cause of friction within Washington has been the absence of a clear understanding of which programs fall under the rule-of-law rubric and thus which agencies or bureaus have primary action. Although this is unavoidable, given the wide-range of issues that fall within rule of law, an effort should be made to develop a rule-of-law inventory that distinguishes between those projects whose primary element is rule-of-law-related and those where this is secondary.

Recommendation 12: The Bureau of International Narcotics and Law Enforcement Affairs, in coordination with Embassy Baghdad, should direct its office director for rule of law in Washington to work closely with its office in Baghdad to develop a rule-of-law inventory that distinguishes between those projects whose primary element is rule-of-law-related and those where it is secondary in nature. (Action: INL, in coordination with Embassy Baghdad)

INL's leadership has reason to feel disadvantaged within the Iraq policy loop. This is evident, for example, with respect to the policing and other rule-of-law programs that INL manages in Iraq. In aggregate, these programs involve more than \$1 billion, but INL is not currently represented on the Iraq Steering Group. This anomaly should be resolved as soon as possible.

Recommendation 13: The Senior Advisor to the Secretary and Coordinator for Iraq should request that the Assistant Secretary of the Bureau of International Narcotics and Law Enforcement Affairs be included in the Iraq Steering Group. (Action: S/I)

WASHINGTON-BAGHDAD COORDINATION

Coordination between Washington and the mission regarding rule-of-law programs has been limited, and several implementers in the field said Washington provides little policy and a lot of process. Senior Iraq-based officials including those from the military said that, even when a policy document arrives from Washington, the document might contain so many qualifiers as to undercut its utility. Senior military and civilian officials also said excessive energy is being expended on bureaucratic prerogatives, chiefly by staff members rather than principals.

These problems have, in turn, caused a number of valuable projects to be suspended for months on end or to become something rather different than what was originally intended or justified by those experts in the field. In one instance, INL/Baghdad originally requested funding related to CCCI expansion or judicial training. Subsequently, INL responded to DOJ input, provided via the NSC, deciding the money would be used to support three more DOJ resident legal advisors. This was a worthy initiative, especially if these advisors could be colocated with U.S. military divisional headquarters, greatly reducing costs. Since then, the program has all but stalled as it awaits DOJ input and/or what may be a new decision by Washington. The new decision would supposedly apply the money towards a joint Federal Bureau of Investigation-run investigative task force, which itself has been under discussion for eight months.

A \$12 million bundle of justice reform projects has also not prospered in the Washington review process. INL/Baghdad drafted a statement of work in February for capacity building in Iraq's Ministry of Human Rights and the Higher Juridical Council and for training judicial investigators and strengthening capacity in criminal law. The interagency review was lengthy, and since July it has been with the NSC. All the while, the project has engendered interagency sniping at post, and this has landed on Washington policymakers' desks. The OIG recommendations in this section should alleviate some of these problems.

THE U.S. MILITARY AND RULE OF LAW

The U.S. military and other coalition forces, the Multinational Force Iraq (MNF-I), have assumed a major, albeit somewhat unorthodox, role in advancing rule of law. This reflects the fact that most U.S. government assets in Iraq are military, including soldiers doing tasks that might normally fall to civilians, and indicates the sheer numbers of those in uniform and the budgets available to them. CERP disbursements to date (\$325 million) well exceed the other funds available for non-bricks-and-mortar projects related to rule of law. Complicating coordination is the fact that the MNF-I operates outside the Chief of Mission's authority.

Although primarily engaged in conventional military operations in Iraq, coalition forces have also addressed broader U.S. policy objectives including those encompassed by rule of law. Divisional commanders in the field have had access to CERP funds since early in the post-conflict period. The generals and their subordinate commanders have then applied roughly ten percent of these funds to literally thousands of projects. The military has trained prison guards, constructed a 1,000-bed prison, and rebuilt a courthouse and the facilities of a bar association. In Mosul, the Army went directly to contractors to complete some small projects quickly and generate employment among potentially troublemaking Iraqi youth.

Beyond the CERP achievements, senior coalition military leaders told OIG of the continuing need to better formalize and standardize these local initiatives and acknowledged that their overall picture of CERP-related programs is not clear. One flag officer, for example, said he learned only belatedly that a corrections detachment was operating in Ninewa province. More broadly, senior military officers are disquieted by the prospect of undue military involvement in rule-of-law activities, especially regarding high-cost projects that call for extensive internal controls. As one flag officer observed, benevolent liberators can all too easily morph into occupiers no matter the public relations effort or how much CERP is spread around.

Concurrently, DOD officials have recognized the need to coordinate better its activities with those of civilian agencies. To this end, flag officers in Iraq have increasingly worked in partnership with the Ambassador and others at the embassy, particularly the INL rule-of-law officer, to ensure that military efforts are fully compatible with the longer-term strategic directions of the program. Besides daily phone conversations, the senior general meets at least four times a week with the Ambassador to discuss a range of issues including those related to rule of law. Another general actively participates in the mission's rule-of-law task force and earlier during a staffing gap stepped in as the de facto rule-of-law coordinator.

Officials of the Departments of State and Justice complimented these military efforts but voiced concerns over losing control to the military. Military officers, meanwhile, expressed frustration at the lack of planning expertise among the State and Justice officers.

A U.S. military general issued to MNF-I elements a rule-of-law "annex" while OIG's inspection was underway. That document, which draws directly from a draft INL framework document, directs military elements to support the embassy in undertaking rule-of-law activities. This is consistent with the military's "effects-based operations" methodology, which stresses the need to reach outside the military's areas of competence and to consider political, economic, public diplomacy, and other relevant factors in reaching programmatic decisions. At a rule-of-law briefing in Mosul, attended chiefly by military personnel and OIG representatives, the presiding general stressed that, if the Coalition doesn't get rule of law right, it won't leave anything worthwhile behind.

COORDINATION WITH OTHER DONORS

The United States has not been alone among international donors in focusing on strengthening rule of law in Iraq. In southern Iraq, the situation is promising. The British have overall military control of the area and have taken an active lead in all aspects of rule of law, providing police training and improving the functions and conditions of prisons and courthouses. Early in 2005, the United Kingdom appointed a judicial advisor to its regional embassy office in Basra. She is colocated with her compatriot police and prison advisors, and worked with the U.S. and Danish judicial advisors also assigned to Basra. The three colleagues routinely demarche local judicial officials jointly on rule-of-law issues and say they have a greater impact by operating jointly than they would alone. In August 2005, the British prison advisory team asked DOJ/ICITAP to send a team of its prison advisors to Basra to work together on prison reform in the south. This coordination was in its early stages when OIG visited Basra but had every sign of becoming a success story.

In Baghdad, OIG heard international donors praise the INL rule-of-law officer at the embassy for effectively mobilizing the international community. International donor group meetings aimed at ensuring a flow of knowledge and

information about what each party was doing have twice taken place in Amman in 2005. The input from donors other than the United States and the United Kingdom has been modest but appropriately targeted on training police, judicial, and prison personnel.

Most often, rule-of-law activity is embedded in wider approaches toward governance and human rights. The European Union has been active through its "jus lexis" program. The Danish program is entirely in the south of Iraq and has provided a resident legal advisor in Basra and a one-day conference on criminal justice. Sweden and the United Kingdom have funded training for judges, worked with the Iraqi Bar Association, and done mentoring and capacity building in the Iraq Correctional Service (ICS). Both the United Nations and the World Bank have come late to the arena because of their reluctance to station personnel in Iraq. The United Nations is funding a legal archiving program and may support a program to increase access to legal aid. In addition, the United Nations will take an ever more active role in donor coordination.

One positive outcome of the incipient efforts at international donor coordination has been an initiative by the Iraqi Minister of Planning, who oversees donor activity. The initiative would convene the first in a series of Iraqi-chaired donor meetings on rule-of-law programs. This meeting was scheduled for September 2005 and should receive U.S. government participation, support, and guidance. These commendable international donor efforts would benefit from a more formal approach.

Recommendation 14: Embassy Baghdad should formalize with UN personnel the coordination among international donors and provide active guidance and support to Iraqi initiatives to enhance donor coordination on rule of law. (Action: Embassy Baghdad)

The excellent coordination between the U.S., British, and Danish judicial advisors in Basra and their work with police and prison advisors underscore the value of placing judicial advisors in provincial centers. Aside from Basra, up-country areas of Iraq, even those enjoying better security than Baghdad, do not receive essential judicial advisors. In Mosul, for example, a Coalition priority is improved coordination between the judiciary and the police. However, a decision on moving forward with a valuable INL regional judicial advisors' project that will be implemented by DOJ has been stalled for months. This creates the perception of U.S. inattention to an area where progress may be achievable. With an evident need for judicial advisors in major urban areas and the DOD able to colocate these

advisors at divisional headquarters, reducing the security costs and logistics burdens, this program should move briskly forward. It can draw on the model of the six Department political officers who are currently embedded with the U.S. military in up-country Iraq.

Recommendation 15: The Bureau of International Narcotics and Law Enforcement Affairs, in coordination with the Senior Advisor to the Secretary and Coordinator for Iraq and the Bureau of Near Eastern Affairs, should formally contract for as soon as possible and implement the Judicial Advisors Program before the end of 2005. (Action: INL, in coordination with S/I and NEA)

PUBLIC DIPLOMACY

Several U.S. government elements in Iraq have their own outreach and public affairs operations, as does the Ambassador. As rule of law is now a mission priority and U.S. government activity in that area is missionwide, press releases and other official statements must be consistent with each other and with U.S. policy. This is not readily achievable because some elements are not under Chief of Mission authority. This includes the Central Command elements, such as the Army Corps of Engineers, and the U.S. Institute of Peace (USIP). Other agencies, such as USAID, are accustomed to operating with significant independence.

The appropriate coordination point for the public diplomacy aspect of rule of law is the Embassy's public affairs officer (PAO). The recently arrived PAO has, in fact, taken steps to keep all public diplomacy elements in the loop with one another. With the Ambassador's support, the PAO is also tightening the rules on granting background briefings to the media, requiring the embassy's prior concurrence through the PAO. He has also called on all public affairs elements to meet regularly, and he attends meetings of the rule-of-law working group. As these constructive steps are already underway, no recommendation along these lines is needed.

PROGRAMS

THE LONG TERM

The broad objectives of rule of law can only be realized over years, if not decades. For one, they imply a wholesale transformation of the Iraqi justice system and even of Iraqis' attitudes. Iraqis, for example, will have to want an evidence-based judicial system, rather than a confession-based one, and will need to value the rights of defendants, rules for police investigations, and minimal standards for the treatment of convicts. All this, in turn, demands a broad approach focused on long-term cooperation between international aid-givers and Iraqi beneficiaries. This will be essential in instituting such bedrock changes as improved law school or secondary school curricula. In this context, INL/Baghdad is correct in developing a rule-of-law framework and a long-term strategy that looks at the entire justice system and seeks to manage the U.S. government effort in a nuanced manner.

SHORT-TERM NEEDS

Short-term exigencies also drive policy and may not be entirely compatible with longer-term objectives. For instance, a pressing issue during the onsite inspection was the transfer to Iraqi jurisdiction of some 11,000 Iraqis detained by coalition forces. One step to address this daunting, complex problem was to assist the Iraqis in drafting and adopting a law that legalized detention of these prisoners within the Iraqi legal system. Americans engaging in this effort were aware of the irony: some of the Iraqis they were working with had been victims of the prior regime's extra-legal detention and had mixed feelings about legalizing the practice in a democratic Iraq. Yet, the necessity of transferring the detainees, including the hard-core insurgents, forced the rule-of-law strategy to accommodate this short-term requirement.

The ideal, of course, is to address the short-term pressure in a way that also advances the longer-term plan. In the example above, that might be achieved by placing proposed detention legislation within a larger context of securing related civil liberties.

TANGIBLE AND INTANGIBLE ASSISTANCE

Among rule-of-law programs, there is a difference between activities that consist largely of "bricks and mortar" or equipment and those that involve less-visible, hands-on transformative activities such as establishing a new judicial protective service, training prison guards in humane techniques, reforming law school curriculum, or bringing together Iraqi officials and their counterparts from other countries that have recently gone through similar processes. Both types of efforts are necessary, but their effectiveness must be measured by different criteria. High-cost items like construction of new prisons fill an important need but do not per se constitute advances in rule of law. By contrast, giving micro-grants to grassroots Iraqi organizations to establish an inspector general system could yield far-reaching, permanent rule-of-law gains. These two types of projects should be treated separately when cataloging rule-of-law activities and their impact.

REACTIVE VS. STRATEGIZED PROGRAMS

There is a clear understanding among those on the ground of the need for both strategized and reactive programs. INL/Baghdad, in particular, has focused on the need to develop a rule-of-law framework and a long-term strategy that looks at the entire justice system and seeks to manage the U.S. effort in a nuanced, rational manner. This endeavor has been usefully echoed by coalition military who, adopting the basic INL template in August of 2005, are now trying to strategize what had been largely reactive military efforts regarding rule of law.

Although the military's emphasis on rule-of-law strategy is comparatively recent, its reactive efforts have long been considerable - and under-noticed by official Washington. Coalition commanders have already applied some \$26 million to some 5,700 projects in the field that they categorized as rule-of-law-related. The vast majority of the projects have been small. A handful, chiefly courthouse and prison refurbishment, have involved from \$500,000 to \$1 million in spending, although senior military leaders discourage such large projects, believing them to require contracting and oversight systems for which USAID and others are better suited.

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On closer scrutiny, the CERP projects characterized as "rule-of-law" endeavors involve 26 projects valued at \$200,000 or more, amounting to \$9.9 million in aggregate. All fall within three basic subcategories: education/refugees, security/law enforcement, and justice/public safety. All are essentially described in short-hand fashion. For example, \$673,000 in one Mosul CERP project is termed as for "security," two \$500,000 projects are for solar powered radios, and a \$500,000 project is for radios. Two further grants for \$500,000 went to renovating unspecified provincial buildings, and the Al Hillah Housing Estate received \$1.1 million. Another \$436,000 went to the Dahuk governate for winterization kits.

A review of selected smaller grants found a similar range of activities that, while being listed as rule-of-law-related, are similarly difficult to assess using official CERP summary records alone. (The CERP funds expended to date in Iraq amount to roughly \$325 million dollars, and OIG did not examine the records for categories other than rule of law.) Items funded by CERP range from socks and tee shirts for "specialized special forces" to support for the Iraqi Governance Center VIP Food Service, job support programs, and digital cameras.

Although this rough bookkeeping reflects the essence of CERP - quick, in-the-field fixes to boost local morale and programmatic momentum - the rule-of-law coordinator could usefully review these records in conjunction with military elements at Embassy Baghdad. Thereafter, the coordinator could integrate these records into his clearinghouse efforts, the subject of a formal recommendation earlier in this report. Doing so would allow for a better sense of whether duplicative or overlapping actions are occurring.

Nonetheless, coalition military activities on rule of law are impressive, as is the willingness of military leadership to coordinate with the Departments of State and Justice and to subordinate their efforts to the Department's leadership. The sums available to those in uniform and their outreach within Iraq make the Coalition military's contribution that much more significant. CERP funds can be committed quickly and flexibly as opportunities arise.

USAID, through its Office of Transition Initiatives, has similarly directed funds to urgent projects that USAID identified. USAID has supported the strengthening of the Iraq Special Tribunal, contributed to the rejuvenation of two provincial court systems through the use of electronic document archiving and exchange, and provided some assistance to the Iraqi Bar Association and legal assistance organizations through the provision of equipment, facilities renovation, and human rights training.

This reactive, opportunistic approach should be encouraged, but it underlines the necessity for a strong and effective rule-of-law coordinator to guide and monitor the activities of the major U.S. participants.

IRAQIS OUT IN FRONT

Iraqi leaders in the justice sector have their own ideas on what rule of law means and what they have to do to ensure a credible and sustainable justice sector. Increasingly they will be making the decisions for themselves, and this is appropriate. This shift in approach is consistent with the views of those managing Iraqi reconstruction, but it does not necessarily come naturally to project managers on the ground. They must learn to accrue satisfaction when they see that they have effectively laid the groundwork to ensure that Iraqi institutions take root and progress continues, funded in part by international assistance but primarily by Iraqi funds. To achieve this, project managers must begin handing over design and control of their projects to Iraqi professionals and others trained in the norms and practices of rule of law. No longer will it suffice to seek Iraqi buy-in to U.S. thinking and planning. There must be an Iraqi plan.

Problems inevitably challenge such a significant change in direction. Although rule-of-law projects such as training, supply of equipment, and construction can largely proceed in the current unstable security environment, that same instability and danger make it difficult and resource-intensive for personnel from the embassy, contractors, or grantees to engage routinely with senior Iraqi officials, keep well-informed, and gain input on the future rule-of-law approaches that will need U.S. government support. Nonetheless, in developing, amending, and executing a strategic plan for rule of law, Iraqis increasingly must be involved at every stage. Their participation should be clearly built into the design and approval process for future U.S.-funded activities.

Recommendation 16: Embassy Baghdad should incorporate in its standard operating procedures for rule-of-law activities a requirement that designated Iraqi authorities participate in project development with designated Americans from an early stage and throughout the process. (Action: Embassy Baghdad)

OVERARCHING PROGRAM CONSTRAINTS

SECURITY

Security looms over every project, drives up project costs exponentially, and skews project designs. Estimates vary, but, overall, security appears to have drained as much as 40 percent from the \$18 billion IRRF budget.

The security environment also limits a project's potential. For example, security concerns discourage potential good Samaritans or good bidders, slow the process, and hamper delivery of promised goals. A proposed project to position judicial advisors in areas outside of Baghdad stalled initially because DOJ officials projected that 80 percent of the \$15 million budget would go for security. As described in connection with Recommendation 15 above, it should be possible to reduce discrete security costs for that project by embedding the judicial advisors in secure military facilities and to proceed with the activity. Security has also resulted in training Iraqi police and anticorruption investigators in Jordan or Egypt, respectively, rather than in Iraq. This is costly and pulls key officials away from their Iraqi desks. Overall, the situation reinforces the current practice of locating most programs exclusively in Baghdad, which perpetuates the sense among many Iraqis that the U.S. rule-of-law effort is unilateral or focuses only on a capital-to-capital basis.

FINANCIAL COSTS

Individual agencies report security costs ranging from 80 or even 90 percent of a project's cost. For instance, the cost of security is 60 percent for the Bearing Point's Iraqi Justice Integration Project. Sources with some projects having apparently lower security costs told OIG that their low figures reflected special circumstances. The construction firm Parsons, for example, opted to work with local

leaders to subcontract-out the security work to Iraqis. USIP has an office in the International Zone and its support is provided by the U.S. military, itself a cost. Others have creatively turned to local Iraqi leaders who effectively buy protection, a cost-cutting method in the Iraqi cultural context but a U.S. auditor's nightmare.

Another cost-effective strategy has been to hire Iraqi-Americans wherever possible, since these employees blend in better and function with minimal security. Indeed, some Iraqi-American contractors report that the presence of security, especially of security workers who were not locally engaged, actually raises the threat level by calling attention to these workers' status. More broadly, OIG several times heard implementers say that security errors are inevitable if the Iraqis are not carefully consulted - and that there is a tendency to ignore Iraqis' advice entirely rather than separate good from unworkable suggestions.

THE HUMAN TOLL

There are human costs for those working with the United States on rule of law. Inevitably, people in Iraq have died while furthering these programs. Two U.S. government contractors were killed in Baghdad in the line of duty; just after OIG's visit, four security professionals were killed in Basra while supporting a U.S. diplomatic convoy. The embassy's locally employed staff has been targeted, and at least two were assassinated.

Intimidation has become a way of life for Iraqi partners. The Deputy Minister of Justice was targeted in an insurgent attack during the OIG visit. One minister with significant rule-of-law responsibilities literally lives in his office. Moreover, he has visited his main ministerial headquarters just four times in four months because of security concerns. He has justification for this: his ministry was once attacked by insurgents. OIG saw instances of Iraqi-Americans intent on hiding their affiliation with the U.S. government from the populace, fearing retribution. For example, most Iraqi court-security personnel live double lives; overtly advertising what they do could get them killed.

Judges are particularly at risk - 29 were killed this year, a substantial increase over earlier years. Twenty-two judges are moving into the relative safety of international zone housing. Judges outside of Baghdad are loath to proceed on cases against the most dangerous insurgents - hardly surprising but also a subject of unwarranted criticism by U.S. advisors, who enjoy far more security.

HUMAN RESOURCES SHORTFALL

Security considerations vex mission operations across the board. They will likely continue for several years, but it creates rippling inefficiencies, including rapid turnover, staffing gaps, frequent trips abroad, and an inability to attract staff. Not surprisingly, this issue is on the minds of Embassy Baghdad officials and was the subject of a recent OIG review (*Review of Staffing at U.S. Embassy Baghdad*, ISP-IQO-05-57). These officials say Washington is holding at least four sessions a week over the secure videoconference service - all late in the evening, Baghdad time.

However many employees are under Chief of Mission authority (approximately 6,300), the embassy's traditional program assets are modest. Many key sections are ultra-lean, especially in an environment where inefficiencies are rife. These limitations run the gamut from a general shortage of vehicles, innumerable checkpoints, sprawling facilities, creaky phone systems, open-ended departure times (for security reasons), and the elaborate advance work required for any trip out of the International Zone or via Baghdad's airport. (It took OIG two full days to arrange a trip to Basra and then another 14 hours to get there, although actual flight time was an hour or so.)

The three-person INL section, where one officer is under a personal services contract and another position has been unfilled for months, is understaffed to serve this billion-dollar program. The contractor has been the rule-of-law officer. She has accomplished an enormous amount in one year, but her authority has been limited. Despite her dedication to the task and very long hours, the program has lacked clear direction. In addition, communication and transparency among rule-of-law participants has not always been adequate. Other mission sections, such as political or political/military, have portfolios related to rule of law but are not positioned to backstop INL. A stark example is that the PAO arrived at post to find none of the seven authorized American staff positions filled. The recent designation of a mission rule-of-law coordinator recognizes the need to bring additional human resources to this program, but it is only one part of an effective solution. (Relevant INL rule-of-law assets on the Washington end are also inadequate - as documented in OIG's inspection report, ISP-I-05-14.) Appropriately, the INL director at post projects the need for an additional two full-time officers and one local-hire at INL/Baghdad no later than May 2006. This augmentation is proposed and justified by the mission's current Mission Performance Plan.

Recommendation 17: The Bureau of International Narcotics and Law Enforcement Affairs, in coordination with the Bureau of Near Eastern Affairs and Bureau of Human Resources, should adhere to its current project staffing levels wherein Baghdad staff will be increased by two officers to an authorized complement of four. (Action: INL, in coordination with NEA and DGHR)

The normal tour of duty in Iraq is 12 months. The work is highly demanding, the post dangerous, and living conditions Spartan. Thus, quality and levels of staffing are a never-ending problem. This situation, for which there may not be any fully satisfactory solution, has implications for designing and executing rule-of-law programs. The mission and Washington have ambitious plans, but these do not always consider the limits on what can be accomplished through the available human resources under the conditions of service in Iraq. The Bureau of Human Resource's on-going review of staffing incentives is helpful in this regard. In addition, NEA and Embassy Baghdad should aggressively review the impact of new taskings on human resources. If qualified staff cannot be found for a proposed activity, it may be necessary to modify the objectives of that activity or extend the timeline. Alternatively, staff efforts can be shifted from an activity of lower priority to the proposed new activity.

Recommendation 18: The Bureau of Near Eastern Affairs, in coordination with Embassy Baghdad and the Bureau of International Narcotics and Law Enforcement Affairs, should systematically examine the human resource implications of any significant new taskings and certify, before final approval, whether a National Security Decision Directive-38 demand for additional staff is warranted and whether Embassy Baghdad supports this additional staff. (Action: NEA, in coordination with Embassy Baghdad and INL)

THE CONTINUITY PROBLEM

The crying need for greater continuity of U.S. personnel will probably not be met. Because of constant turnover and staffing gaps, there is a spotty institutional memory and a tendency to repeat mistakes. Moreover, there is a strong need for continuity in contact work, given that such work is important in the Iraqi cultural context and that there are discontinuities among Iraqi policy-level personnel as well. Furthermore, with personnel processing itself taking months, the situation

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can perhaps be best encapsulated by another Baghdad saying - the day someone arrives, you better have someone else in the pipeline. This is particularly true since Department officers, unlike the military, can leave before their replacement arrives.

Regarding IRMO staffing, OIG was told that the so-called "3161 hiring process" is broken and that recruitment procedures are protracted and subject to frequent revision. As a result, there have been wild fluctuations in staffing and staff competence. Sometimes, pink slips have been issued and hiring halls held on the same day. Overall, OIG believes continuity is a definite management concern at Embassy Baghdad.

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MAJOR PROGRAM AREAS - STATUS REVIEW

U.S. rule-of-law activity centers on prisons, courts, the judiciary, justice integration, and the police. With INL in the lead, programs to advance these areas are underway, sometimes with great difficulty just to get started. Among the complications have been funding uncertainties, project reprioritizations, and changes in contract management and recruitment procedures. Another complication has been the absence of contracting authority for some U.S. elements, such as NEA, and the sometimes-elaborate funding chains. OIG identified approximately \$400 million being spent by multiple federal agencies for rule-of-law programs other than police training. Approximately \$300 million has gone into "bricks and mortar" endeavors, and the remaining \$100 million provides for a variety of capacity-building programs.

PRISONS AND DETENTION CENTERS

The ICS prisons have a capacity of 10,700 beds and are at roughly 90 percent occupancy. A U.S.-funded, 500-bed prison opened in Baghdad in August 2005, and Parsons is building two high-quality prisons that will provide an additional 2,600 beds by 2006. A fourth penitentiary, a 1,200-bed facility in the north, is also slated for completion in 2006. The British, meanwhile, have refurbished a prison in Basra. Despite this 50 percent expansion in prison capacity, those on the ground view it as inadequate for the inmate population, given the likely influx of Coalition detainees and some of the roughly 100,000 convicts who were set free by Hussein just before his fall.

Other detention facilities, such as those operated by Iraq's Ministry of the Interior (MOI) and Ministry of Defense, are markedly below international standards because of overcrowding, inadequate services, and official inattention. The number of inmates in detention facilities ranges from 2,000 to 10,000, not including the 11,000 or so held by Coalition forces. To properly handle these detainees, the ICS will need more guards and trained supervisors. DOJ, which provides instructors to the ICS Academy, believes these additional resources can be developed over the next two years.

JUDICIARY

The Iraqi court system consists of the Supreme Court, Court of Cassation (appeal), provincial courts, and the Central Criminal Court of Iraq, a Coalition-created entity that tries insurgents and those accused of major crimes against Iraqi and Coalition members. The system as a whole suffers from systemic shortcomings including an inefficient administrative system that inhibits prosecution of cases, poor physical facilities, and, in the provinces, inadequate capacity. A short-term problem is that the Baghdad CCCI has an overload of cases involving detainees, and this affects its ability to handle traditional Iraqi cases. Security also affects the courts through the intimidation of judges. In Mosul, for instance, judges ordered the release of defendants, only to see the police disobey their orders. In Al Anbar province, meanwhile, no criminal courts are functioning.

Created by the Coalition using the United States' independent judicial branch of government as a model, the Higher Juridical Council (HJC) is gradually establishing itself but faces several obstacles. First, HJC has received little U.S. government attention. Second, judicial insecurity remains a primary obstacle to effective criminal prosecutions. Judges and their families are assassinated, attacked, or otherwise intimidated, often with scant protection by the police. Renovation of a 27-unit apartment building in the International Zone is underway to house 22 of the 28 judges involved in sensitive CCCI cases. In addition, the U.S. Marshals Service is training personal security details for judges and improving court security.

INL is or will soon be addressing the judicial shortcomings on several fronts. With INL funding, the U.S. Marshals Service is leading the effort to build an equivalent Iraqi service that provides court security and witness protection. INL's \$5.6 million Judicial Integrity Project will facilitate strategic planning for the HJC as it seeks to build a strong, independent judiciary. A related building block, the training of judges in practical skills related to due process, rule of law, and court administration, will be addressed by this project. INL has also developed a project to bring in experts to build the HJC's institutional capacity and has designed a project to strengthen Iraq's criminal law capacity, a project awaiting interagency approval in Washington.

JUSTICE INTEGRATION

The Iraqi criminal justice system suffers from distrust and lack of cooperation among police, courts, and prisons. There are several reasons for this problem. They include the ongoing insurgency, where judges potentially can be "sold out" to insurgents by corrupt police; class and cultural distinctions between police and judges; historical antipathy from the Saddam Hussein era, when judges perceived the police as the tool of the regime; the current relative disarray among the police; and the fact that judges and police now come under two independent branches of the Iraqi government. There is no quick-fix solution for the historic disconnect of these two elements of the justice sector.

Over the longer term, however, any effective system must better integrate these key components and build the capacity to process the accused through the entire judicial system, from arrest to trial and, possibly, detention. However, the endemic lack of cooperation between police investigators and investigative judges limits the ability of Iraqis to build prosecutable cases. In Iraq, the investigative judge is judge, lead criminal investigator, and performs some prosecutorial functions. The investigative judge's evidence serves as the foundation of the case during trial, comprising most, if not all, of the evidence for the trial judge.

To help the police, courts, and prisons better integrate their policies and procedures and improve working relationships, INL has developed a \$20 million Iraqi Justice Integration Project, which has supported the formation of an Iraqi interministerial commission to increase coordination among the HJC, Ministry of Justice (MOJ), and MOI. At present, this body is bringing the disparate elements of the justice sector together to explore policy issues. One of its components is a pilot criminal justice information system that can process and share information on the accused, from arrest through trial and detention. To support this, INL is providing computers and other information technology equipment as well as equipment training.

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EXEMPLAR PROGRAMS AND SUCCESS STORIES: CASE STUDIES

Well-designed, paradigm-changing activities that require only modest budgets may be able to transform the Iraqi political and justice systems. For example, the low-cost consultation and advice provided in connection with the constitution drafting efforts, the revision of school texts, or the training of defense attorneys on the rights of defendants can have a multiplier impact in advancing rule of law. In short, leverage is a cost effective tool.

The following success stories, though modest and tentative in nature, demonstrate that significant achievement is possible for a well-designed and executed program - provided that the security emergency abates and the Iraqi center holds through the transition to Iraqi self-government. However, OIG's evaluation of these projects does not involve direct observation of these activities, nor has OIG interviewed the beneficiaries. For information in these case studies, OIG relied on the donor organizations.

Apart from the case studies below, there are several important rule-of-law-related areas that are receiving virtually no U.S. attention and that could result in important gaps in Iraq's democratic development. The two most important are the private legal profession, including continuing legal education, and access to justice. The DePaul International Human Rights Law Institute's legal education project was geared at the introductory legal education environment, but there has been almost no work done with Iraq's private attorneys. In part, that reflects the donor community's distrust of the Iraqi Bar Association, which continues to be controlled by those who had been close to the Saddam Hussein government and has shown little interest in adapting Iraq's legal practices to international standards. However, studies done on the profession by groups such as the International Legal Assistance Consortium show that changes need to be made to the training and licensing process. Several U.S. NGOs told OIG of their interest in working in this area, if the Iraqi Bar alters its attitude. Elections for Iraqi Bar Association directors will take place in September or October 2005, providing an opening for such programs.

The new Iraqi constitution is said to codify legal protections for Iraqi citizens. Once that constitution is in place there will be an immediate need for the donor community to translate some of the efforts and techniques used to inform Iraqis

about the constitution to their more specific new legal protections. This would help Iraqis understand the broad concepts of rule of law and how those concepts can limit government's abuse of authority.

CASE STUDY: U.S. INSTITUTE OF PEACE

USIP, chartered and funded by Congress, is uniquely able to benefit from having both a U.S. government identity and an NGO-like appearance. It has been described as a wholly owned subsidiary of Congress and can move fast, albeit with relatively small sums. USIP operates in Iraq with \$10 million directly from Congress, plus \$2.85 million from DRL. USIP brought Iraqis involved in drafting the Constitution together with ranking officials from other newly democratic countries. This allowed them to exchange ideas on organizing the process and to discuss such sensitive issues as how to induce Sunni Moslems to participate in the drafting process although the Sunnis had not qualified by winning election to the National Assembly.

In getting started, USIP provided support to enable nascent civil-society organizations of Iraqi interest groups while effectively collaborating with other U.S. recipients of USAID funding. When an opportunity manifested itself, USIP within one day used its solid presence on the ground and a \$10,000 grant to help found the Iraqi Council of Minorities, comprised of smaller minorities throughout Iraq. All of this "below the radar" activity has contributed to increased public participation in the constitution drafting process. The Constitution Drafting Committee received nearly 500,000 public comments in the lead-up to completing the draft.

Some mission elements have suggested that USIP's encouragement of the interest group process complicates constitution drafting, but this criticism appears shortsighted. Coalition members and Iraqis alike understand that Iraqi society is complex and heterogeneous, and democratic institutions will not take hold in Iraq if they fail to consider the realities of Iraqi society.

CASE STUDY: U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT - LEGAL EDUCATION REFORM

USAID conducts its efforts in this area through a contract with the DePaul University's International Human Rights Law Institute. At three Iraqi law schools, DePaul's advisors have promoted greater understanding of rule of law, constitutionalism, and international legal norms via a series of seminars, external training for law professors, specialist training, moot courts, and by promoting greater involvement by law professors in the formation and advancement of the law. Key to the program has been the restoration of the law libraries at these three law schools that were damaged or destroyed in the war. USAID said Iraqi institutions have enthusiastically embraced the program, which was very skillfully conducted and has in just one year had a significant impact on law school curricula.

The legal education reform program was designed to run for three years and cover nine law schools, but USAID funding priorities have shifted and the contract will not be renewed beyond the first year. The funding cutoff risks losing much that was gained, as the Iraqi law schools do not yet have the resources to sustain the DePaul changes. Moreover, although international donors may address this need, the DePaul program stands out and already has the essential Arabic-language materials and other assets in place.

Recommendation 19: The Bureau of International Narcotics and Law Enforcement Affairs, in coordination with Embassy Baghdad, should review the U.S. Agency for International Development-funded legal education reform project begun by DePaul University with the aim of funding the project for the additional two years for which it was originally designed. (Action: INL, in coordination with Embassy Baghdad)

CASE STUDY: THREE ANTICORRUPTION ENTITIES IN IMPERFECT COLLABORATION

The Coalition established the Commission on Public Integrity (CPI) and a system of inspectors general in each of 29 Iraqi government ministries and government agencies. Along with the Board of Supreme Audit, which has existed since 1927 without independence or effect, these entities make up Iraq's anticorruption infrastructure. While still in its infancy, this trio of watchdogs seems to be taking

hold. Although their collaboration is still imperfect and they often appear to compete, they could provide meaningful accountability to government personnel and institutions in a way that has not previously existed in Iraq.

The CPI now has 500 employees, an able commissioner, and 1,200 cases before it. ICITAP has worked effectively with funding from INL to train criminal investigators. CPI and the inspector general system also benefit from IRMO consultants who are assisting in organizational development.

Besides criminal investigations, the anticorruption institutions seek to prevent corruption and educate the public on its right to ethical behavior from government officials. The CPI, for example, is working on a code of conduct for government employees and a financial disclosure procedure. Its education department targets the Iraqi public (including establishment of a hotline), the Iraqi government, and the school curriculum. USAID has also funded a program designed by the America's Development Foundation to increase awareness among media and civil society organizations of the anticorruption initiatives of the Iraqi government. Greater integration of the DOJ and USAID projects will benefit both.

Those supporting Iraq's new anticorruption architecture also want to see the establishment of a training facility to assure a continuously high standard of performance by all three institutions and to have outreach occur to the broader community about the principles of ethical government service. The curriculum at such a facility must emphasize programs for personnel from all three branches of Iraq's anticorruption infrastructure. The need for such a facility is urgent and should occur as soon as possible but not later than the second quarter of FY 2006.

Recommendation 20: Embassy Baghdad, in coordination with the Bureau of International Narcotics and Law Enforcement Affairs, should seek and support Iraqi efforts to design and establish a training facility for anticorruption personnel from, and with the support of, all three institutions of the Iraqi anticorruption structure. (Action: Embassy Baghdad, in coordination with INL)

CASE STUDY: UNITED STATES MARSHALS SERVICE - COURT SECURITY

Ensuring Iraqis the right to a fair trial is the most fundamental rule of law principle, but it requires security for judges, prosecutors, witnesses, and defendants. Should there be intimidation and retaliation, the judicial system cannot do what it is supposed to do. Until early 2004, Iraq lacked a specialized court-security service. Since then, however, the United States Marshals Service has, with deputy U.S. marshals from its Special Operations Group, managed a court-security training program. Deputy U.S. marshals, who rotate every six months, provide project oversight and day-to-day monitoring and supervision of Iraqi MOJ guards for Iraq's newly established Central Criminal Court and the Iraq Special Tribunal. ArmorGroup Iraq, a subsidiary of ArmorGroup International, provides most of the training at a site in Hilla.

OIG saw deputy U.S. marshals working with the new Iraqi security specialists at the courts and ArmorGroup Iraq personnel training Iraqis in court security skills and believes this program is essential and effective in working with Iraqis on facilities protection and personal protection. Recently, bodyguards thwarted an assassination attempt against a senior judge. The main problem for deputies and ArmorGroup Iraq personnel is cultural differences between the Iraqis and their trainers. For example, the court-security guards are initially hesitant to subject lawyers and judges to scrutiny and to confront them if they are unwilling to pass through metal detectors or undergo security screening. (Many members of the professional class are dismissive when confronted by court-security guards.) The training aims to overcome these cultural patterns.

The training program consists of a four-week basic course that was recently supplemented by a two-week advanced training course for supervisors. (Only two sessions of the advanced training were scheduled at the time of the inspection.) Rank-and-file court security personnel can perform at an acceptable level with strong leadership, but their performance rapidly diminishes whenever the deputy U.S. marshals are not present. The existing training is insufficient to assure a strong cadre of supervisors who can become the backbone of the new Iraqi marshals service, and these supervisors must be exposed to the same level of training as their American counterparts. The deputy U.S. marshals believe the most promising Iraqi supervisors would benefit from going to the Federal Law Enforcement Training Center in Georgia and taking the same basic courses as new deputy U.S. marshals. OIG agrees.

Recommendation 21: Embassy Baghdad, in coordination with the Bureau of International Narcotics and Law Enforcement Affairs, should support the request by the Iraqi Ministry of Justice and the U.S. Marshals Service for intensive basic training for court-security supervisors at the Federal Law Enforcement Training Center in Glynco, Georgia. (Action: Embassy Baghdad, in coordination with INL)

CASE STUDY: PARSONS' PRISONS

Other than police training, the largest U.S. direct assistance to rule-of-law activities in Iraq has been in the construction of prisons and courthouses. The largest single projects have been those of Parsons, which is building prisons at Nasiriyah and Khan Bani Sa'ad (just north of Baghdad). The former site has a contract price of \$73 million and will have a bed capacity of 1,800; the latter has a price of \$46 million for 800 beds. Both facilities are being built with oversized air conditioning and other systems, so that modular additions can be inexpensively and quickly added to double their capacity. This, however, simply represents a workaround for the fundamental problem: The projected prison capacity for the two Parsons' projects has been reduced from 8,000 beds and a cost of \$180 million to the current 2,600 beds.

Both prisons are being built to U.S. standards, which are higher than international standards, and include the air conditioning (a luxury for most Iraqis) that has sharply pushed up costs. The inclusion of air conditioning also reflects the seeming absence of coordination in the planning process with Iraqis. For example, a senior official said these air conditioners stand a good chance of being unplugged once the Americans leave. Iraqi prisoners rarely come from the air-conditioned classes and Iraqi penal theory calls for prisons to be less comfortable than the inmate's home.

Coordination with DOD, which funded the Parsons project through the Projects and Contracting Office, has not been without acrimony. Parsons alleges that the U.S. government has several times changed the contract's rules. Initially, the contractor was instructed to begin work quickly, but it was later ordered to emphasize quality construction. Parsons said DOD signed off on its initial concept, in which Parsons planned to minimize the American personnel presence and

maximize the employment of Iraqis. Parsons said, however, that DOD then changed its mind and has for months been pushing for more American presence at site, sharply driving up costs. Reflecting these and other difficulties, Parsons has gone through eight contracting officers in 18 months.

CASE STUDY: INTERNATIONAL CRIMINAL INVESTIGATIVE TRAINING ASSISTANCE PROGRAM CORRECTIONS PROJECT

The ICITAP corrections project is based on a June 2003 assessment of the Iraqi corrections system prepared for the Coalition. ICITAP advisors (contract employees of Military Professional Resources Incorporated) have been in Iraq since October 2003 and assumed program control in May 2004.

At the start of the war, there were more than 100,000 individuals in the Iraqi prison system. All were released by Saddam Hussein, except for those in prisons in the north that were administered by the Kurds. Once the prisons were empty, many records were systematically destroyed, and the buildings were looted or destroyed. Employees of the correction service completely abandoned their positions, fearing reprisals from former prisoners and American troops.

Rebuilding the corrections system was an immediate priority. The U.S. military began the process of rehabilitating and rebuilding prisons, and recruiting and training ICS personnel. When the ICITAP corrections consultants took over the prisons program, there was a two-week training session for corrections officers being conducted in Baghdad.

The basic training program has now been extended to six weeks and more than 2,500 corrections officers have graduated. ICS has taken control of all of the prisons, except those in the north. ICITAP advisors are resident in two prisons, and teams are deployed in the Kurdish area and in Basra. Advanced management courses and specialized courses for corrections officers have begun. There is an ICS training facility in Baghdad, and there are plans to open another in Basra. There is also an agreement with Kurdish authorities to open an academy in Sulaymaniya.

The program has also identified and provided basic training for prison administrators and ICS headquarters staff. Within the prisons, advisors have helped create work programs for inmates, a concept unknown under the previous government. One of the biggest challenges has been to infuse the ICS with an understanding

that prisoners have rights and that the blatant abuse that characterized the previous regime's penal apparatus is not to be emulated. Here too, there has been success. The number of abuse cases within ICS facilities has plummeted.

The detention facilities under the MOI control present a different picture, and they are where arrestees stay while awaiting action by the courts. Prisoners have arrived at ICS prisons from these detention centers with injuries clearly caused by police abuse. ICS personnel document these injuries and provide reports directly to the MOI. The advisors meet with MOI and U.S. military officials to help improve conditions in their detention facilities and work with MOJ officials to craft plans to take control of the detainee population and develop training for prison facilities under construction. They continue to encourage the MOJ to adopt written policies and procedures for the corrections service.

While ongoing, this project has already been a success: prisons are operating, corrections officers are performing well and improving, and prisoner abuse is way down. Two prisons are running well enough that the ICITAP advisors no longer regard them as needing everyday visits. Meanwhile, parts of the training program are being turned over to Iraqi ICS staff, and limited rehabilitation programming is underway in at least one women's prison. The ICS director is eager to duplicate this rehabilitation effort in other facilities.

This success is due in part to its limited, albeit large, nature. The running of a prison system is a clearly defined task. The individuals working on this project have all had extensive experience in all components of corrections systems in the United States, and their understanding of corrections has eased identification of problems and opportunities. Mixing individuals from different corrections systems has prevented a fixation on one solution. Although comparisons to U.S.-style corrections practices remain common, there is an impressive understanding of the Iraqi bureaucracy and cultural inhibitors.

The project is far from complete and there are serious challenges facing the ICS in the next six to 15 months. Many of those problems, such as prison capacity and the status of the MOI detention facilities, are beyond the scope of the project, but training and capacity-building issues can be addressed by a continuation of the project. Shifting many of the Coalition detainees to ICS control will require a significant expansion of training. The addition of hundreds of entry-level corrections officers will require additional supervisory training and an expansion of the mentoring role of ICITAP advisors. The introduction of an infinitely more dangerous type of inmate into the ICS system - the detainees now held by Coalition forces

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- will also require additional training in the control and management of crises. The launch of three or four new facilities will require special training in facilities management. Although ICS procedures have been drafted, they will, once adopted, require another level of mentoring.

Several ICITAP advisors said that the program should continue for at least another 18 months. The continued need for a program at the current level beyond that time will primarily depend on the state of the detainee integration into the ICS system. Absent significant incidents of detainee escape or a prison takeover during that time, the program could be drastically scaled back and essentially limited to a minor mentoring of wardens and ICS headquarters staff.

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INVENTORY OF RULE-OF-LAW PROGRAMS IN IRAQ

INL has begun an inventory of all U.S. government rule-of-law activity in Iraq. OIG, using this input, found that many implementers are linked in multiple ways to parallel funding. Many of the projects are nascent or still working their way through the Washington review process. Others, such as the 5,730 small local projects funded by DOD with \$26 million from the CERP, are only generally known to INL or DOJ. With two supplemental appropriations and the nonallocation of 2005 funding, the financial picture is sometimes murky even to key implementers. Expenditures on construction projects in support of rule of law are more than three times as great as funds directed toward supporting capacity building in rule of law.

CONSTRUCTION PROJECTS IN SUPPORT OF RULE OF LAW

Parsons - Construction of two prisons at Nasiriyah and Khan Bani Sa'ad, near Baghdad and refurbishment of several other prison facilities around the country with funding from the Projects and Contracting Office. The cost of the two prisons amounted to \$119 million. Parsons has authorization to spend up to \$180 million.

Corps of Engineers - Reconstruction of courthouses throughout Iraq with funding from the Projects and Contracting Office and a cost of \$62.8 million.

U.S. Marshals Service - Strengthening security at courthouses throughout Iraq, including at the Iraq Special Tribunal and the Central Criminal Court of Iraq. These construction funds came through INL and are part of a larger project that includes money for training and witness protection. The cost of the construction component of this security project is \$69 million.

CAPACITY-BUILDING PROJECTS IN SUPPORT OF RULE OF LAW

American Bar Association - Support for the Constitution Drafting Committee as it relates to legal systems and human rights. The project is completed at a cost of \$1 million and was funded by INL.

U.S. Institute of Peace - Support for the Constitution Drafting Committee, primarily focused on public outreach and education. USIP also supported the creation of a Council of Minorities. The project activity was funded at \$12.85 million. Of these funds, \$10 million was appropriated directly to USIP from Congress, and \$2.85 million came from DRL.

National Democratic Institute, International Republic Institute, and International Foundation for Electoral Systems - Support for the Constitution Drafting Committee, primarily focused on voter education, gender issues, and awareness of the constitutional process among civil society-organizations as well as technical assistance to the committee. These organizations worked with DePaul University in implementing their projects. These project activities were funded as part of USAID's democracy and governance program, and actual amounts expended cannot readily be disaggregated.

Department of Justice/International Criminal Investigative Training Assistance Program - Support for the work of the CPI, primarily focused on training corruption investigators. This project activity was funded at \$4.5 million and funds came through INL. The IRMO has had a U.S. consultant attached to the CPI since its inception.

America's Development Foundation - Support for anticorruption activity focused primarily on media outreach and public awareness of the Iraqi government's anticorruption structure and initiatives. These project activities were funded as part of USAID's democracy and governance program, and actual amounts expended cannot readily be disaggregated.

Department of Justice/Office of Overseas Prosecutorial Development Assistance and Training

- Support for the Central Criminal Court of Iraq as it expands and responds to the requirements to stem the insurgency and terrorism. This project activity was funded at \$2.5 million, and the funds came from INL.

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- Deployment of three resident legal advisors to support capacity building in the Higher Juridical Council, the Central Criminal Court of Iraq, and other courts. This project activity has initially been confined to Baghdad and was funded at \$1.9 million. The funds came from INL.

Bearing Point - Support for the integration of the Iraqi justice sector with the establishment of an inter-ministerial commission to harmonize criminal justice policies and procedures and establish coordination between the Ministry of Interior, the Ministry of Justice and the Higher Juridical Council. This project was funded by INL for \$20 million over three years. The first year's funding of \$6 million to \$7 million has been obligated.

American Bar Association

- Support for the creation of a prime-ministerial Rule of Law Advisory Committee for strategic planning and encouraging the participation of all stakeholders in the process - ministries, the Bar Association, NGOs, and human-rights advocates. This activity is funded at \$2 million by INL.
- Support for judicial integrity and capacity building through training programs for judges, and developing continuing legal education for judges. The project activity was funded at \$5.6 million by INL.

DePaul University - Support for legal-education reform. This project was funded initially for three years to restore law libraries at those Iraqi universities with faculties of law and support legal-education reform. Work was completed at three universities before the project lost its out-year funding. The project is funded at \$3.8 million by USAID.

Department of Justice/International Criminal Investigative Training Assistance Program - Support for prison reform with the deployment of prison advisors to all prisons throughout Iraq and the in-service training of corrections staff and pre-service training at a corrections training facility. This project was funded at \$26 million by INL. The IRMO has had a U.S. government consultant attached to the MOJ for most of the ICITAP program's tenure.

U.S. Marshals Service

- Support for the training and equipping of court-security personnel to manage all security-related issues at courthouse facilities throughout Iraq, in addition to the security construction outlined elsewhere in this report. This project was funded at \$51 million by INL.

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- Support for the development of a witness protection program. This project was funded at \$35 million by INL.

Bearing Point - Support for commercial legislative policy reform. In addition to assessing existing legislation and drafting proposed legislation on subjects that will attract foreign investment and strengthen Iraqi economic activity, this project will reactivate the Gazette as the basis for legal archiving. These activities were funded at \$15 million by USAID as part of its Economic Growth II program.

Bureau of International Narcotics and Law Enforcement Affairs, Office of Crime Programs - Support for anti-money laundering in Iraq, due to Iraq's designation as a terrorist finance priority country. This project proposes training, equipment, and support for legislation provided by multiple U.S. agencies, including the Department of Homeland Security's Customs and Border Patrol and Bureau of Immigration and Customs Enforcement, DOJ's OPDAT and Federal Bureau of Investigation, and the Internal Revenue Service. The project is funded at approximately \$2.5 million by INL.

National Strategic Information Center - Support for developing a "culture of lawfulness" through development of educational curricula for Iraqi schools that support these values. This project is funded at \$1 million by INL.

International Organization of Migration - Support for the establishment and operation of the Iraqi Property Claims Commission. This project activity is funded via a \$10 million grant from the Bureau of Population, Refugees and Migration. The IRMO has had a U.S. government consultant attached to the Iraqi Property Claims Commission since its inception.

UN Development Program - Support for this program's Bureau of Arab Affairs efforts to reintegrate Iraq into the legal framework of the Middle East/North Africa region. This project activity was funded via a \$3.4 million grant from INL.

Commander's Emergency Response Program - Support for multiple rule-of-law projects carried out by military personnel across Iraq as ancillary to their military duties. This project's activity is difficult to assess. From the overall CERP account of \$325 million in DOD funding, some \$26 million was devoted to 5,730 local projects, most of them quick fixes such as sprucing up courthouses, but some involving seven-figure projects.

U.S. Agency for International Development, Office of Transition Initiatives - Support for multiple rule-of-law projects carried out by USAID staff. Projects included training for two provincial court systems to use electronic document archiving and support for the Iraqi Bar Association and legal assistance organizations through the provision of equipment, renovation of facilities, and human rights training. The Office of Transition Initiatives program has spent \$277 million in USAID funds on more than 3,750 projects, but actual spending on rule-of-law activities cannot be readily disaggregated.

CAPACITY-BUILDING PROJECTS NOT YET FUNDED

Support for Expanding the Central Criminal Court of Iraq/Resident Legal Advisors - IRMO and INL have identified \$15 million to expand the work of the Central Criminal Court of Iraq, located outside of Baghdad, to provincial centers. DOJ, in turn, hopes to station an additional small number of resident legal advisors to these provincial locations.

Joint U.S.-Iraqi Investigative Task Force - The Federal Bureau of Investigation has the lead to develop this task force for investigating the most politically sensitive crimes of the former regime and to strengthen the Sensitive Crimes Unit. The proposed funding is \$11 million.

Capacity Building in the Judicial Sector - Four separate projects, designed individually but now bunched together, involve strengthening criminal law capacity, enhancing the capacity of the Higher Juridical Council, building capacity at the Ministry of Human Rights, training judicial investigators, and modernizing criminal law. Proposed funding is \$13.5 million.

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FORMAL RECOMMENDATIONS

Recommendation 1: Embassy Baghdad, in coordination with the Bureaus of Human Resources, Near Eastern Affairs, and International Narcotics and Law Enforcement Affairs, should designate a senior officer to be the rule-of-law coordinator exclusively. (Action: Embassy Baghdad, in coordination with DGHR, NEA, and INL)

Recommendation 2: Embassy Baghdad should designate the rule-of-law coordinator as the clearinghouse for current developments in rule of law in Iraq, with responsibility for periodic reporting on the status of rule-of-law activities, including those undertaken by Coalition members, for use by the Chief of Mission and officials in Iraq and the United States. (Action: Embassy Baghdad)

Recommendation 3: Embassy Baghdad should rewrite the job description for the rule-of-law coordinator position to reflect that officer's responsibility to create and maintain a central database and website or blog regarding rule-of-law activities in Iraq. (Action: Embassy Baghdad)

Recommendation 4: Embassy Baghdad, in coordination with the Bureaus of Near Eastern Affairs and International Narcotics and Law Enforcement Affairs, and the Senior Advisor to the Secretary and Coordinator for Iraq, should design and implement a strategic plan that includes outcomes, benchmarks, and measures and would serve as the basis for the rule-of-law section of the Mission Performance Plan. (Action: Embassy Baghdad, in coordination with NEA, INL, and S/I)

Recommendation 5: Embassy Baghdad should include the senior Department of Justice representative in Iraq in the executive structure of the mission's rule-of-law task force. (Action: Embassy Baghdad)

Recommendation 6: Embassy Baghdad should limit participation in the mission's rule-of-law task force to U.S. government employees. (Action: Embassy Baghdad)

Recommendation 7: Embassy Baghdad should direct the rule-of-law coordinator to hold monthly coordinating sessions with non-U.S. government contractor partners and grantees to advance overall rule-of-law coordination and the flow of information, and invite representatives of the Bureau of International Narcotics and Law Enforcement Affairs, the Department of Justice, the Iraq Reconstruction Management Office, and the Department of Defense. (Action: Embassy Baghdad)

Recommendation 8: Embassy Baghdad should include Iraq Reconstruction Management Office employees who are working on rule-of-law matters in the embassy rule-of-law task force and should initiate contact between individual Iraq Reconstruction Management Office employees and officials from other U.S. agencies working in the same Iraqi government ministry. (Action: Embassy Baghdad)

Recommendation 9: Embassy Baghdad, in coordination with the Bureau of Near Eastern Affairs and the Senior Advisor to the Secretary and Coordinator for Iraq, should use the secure videoconference service to resume participation in the twice-monthly working group meetings chaired by the National Security Council, provided that these meetings do not serve as a mechanism to task the embassy. (Action: Embassy Baghdad, in coordination with NEA and S/I)

Recommendation 10: The Bureau of Near Eastern Affairs, in coordination with the Senior Advisor to the Secretary and Coordinator for Iraq, the Bureau of Human Resources, and the Bureau of International Narcotics and Law Enforcement Affairs, should formally designate a senior official to serve as its point person for rule-of-law efforts in Iraq. (Action: NEA, in coordination with S/I, DGHR, and INL)

Recommendation 11: The Bureau of International Narcotics and Law Enforcement, in coordination with the Bureau of Human Resources, should designate a global rule-of-law coordinator at the office-director level to focus chiefly on nations in post-conflict situations such as Iraq and Afghanistan and identify a position on the coordinator's staff for at least one seconded Department of Justice officer. (Action: INL, in coordination with DGHR)

Recommendation 12: The Bureau of International Narcotics and Law Enforcement Affairs, in coordination with Embassy Baghdad, should direct its office director for rule of law in Washington to work closely with its office in Baghdad to develop a rule-of-law inventory that distinguishes between those projects whose primary element is rule-of-law-related and those where it is secondary in nature. (Action: INL, in coordination with Embassy Baghdad)

Recommendation 13: The Senior Advisor to the Secretary and Coordinator for Iraq should request that the Assistant Secretary of the Bureau of International Narcotics and Law Enforcement Affairs be included in the Iraq Steering Group. (Action: S/I)

Recommendation 14: Embassy Baghdad should formalize with UN personnel the coordination among international donors and provide active guidance and support to Iraqi initiatives to enhance donor coordination on rule of law. (Action: Embassy Baghdad)

Recommendation 15: The Bureau of International Narcotics and Law Enforcement Affairs, in coordination with the Senior Advisor to the Secretary and Coordinator for Iraq and the Bureau of Near Eastern Affairs, should formally contract for as soon as possible and implement the Judicial Advisors Program before the end of 2005. (Action: INL, in coordination with S/I and NEA)

Recommendation 16: Embassy Baghdad should incorporate in its standard operating procedures for rule-of-law activities a requirement that designated Iraqi authorities participate in project development with designated Americans from an early stage and throughout the process. (Action: Embassy Baghdad)

Recommendation 17: The Bureau of International Narcotics and Law Enforcement Affairs, in coordination with the Bureau of Near Eastern Affairs and Bureau of Human Resources, should adhere to its current project staffing levels wherein Baghdad staff will be increased by two officers to an authorized complement of four. (Action: INL, in coordination with NEA and DGHR)

Recommendation 18: The Bureau of Near Eastern Affairs, in coordination with Embassy Baghdad and the Bureau of International Narcotics and Law Enforcement Affairs, should systematically examine the human resource implications of any significant new taskings and certify, before final approval, whether a National Security Decision Directive-38 demand for additional staff is warranted and whether Embassy Baghdad supports this additional staff. (Action: NEA, in coordination with Embassy Baghdad and INL)

Recommendation 19: The Bureau of International Narcotics and Law Enforcement Affairs, in coordination with Embassy Baghdad, should review the U.S. Agency for International Development-funded legal education reform project begun by DePaul University with the aim of funding the project for the additional two years for which it was originally designed. (Action: INL, in coordination with Embassy Baghdad)

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Recommendation 20: Embassy Baghdad, in coordination with the Bureau of International Narcotics and Law Enforcement Affairs, should seek and support Iraqi efforts to design and establish a training facility for anticorruption personnel from, and with the support of, all three institutions of the Iraqi anticorruption structure. (Action: Embassy Baghdad, in coordination with INL)

Recommendation 21: Embassy Baghdad, in coordination with the Bureau of International Narcotics and Law Enforcement Affairs, should support the request by the Iraqi Ministry of Justice and the U.S. Marshals Service for intensive basic training for court-security supervisors at the Federal Law Enforcement Training Center in Glynco, Georgia. (Action: Embassy Baghdad, in coordination with INL)

ABBREVIATIONS

CCCI	Central Criminal Court of Iraq
CERP	Commanders Emergency Response Program
CPI	Iraqi Commission on Public Integrity
DOD	Department of Defense
DOJ	Department of Justice
DRL	Bureau of Democracy, Human Rights and Labor
HJC	Higher Juridical Council
ICITAP	International Criminal Investigative Training Assistance Program
ICS	Iraqi Corrections Service
INL	Bureau of International Narcotics and Law Enforcement Affairs
IRMO	Iraq Reconstruction Management Office
IRRF	Iraq Relief and Reconstruction Fund
MNF-I	Multi-National Forces - Iraq
MOI	Ministry of Interior
MOJ	Ministry of Justice
NEA	Bureau of Near Eastern Affairs
NGO	Nongovernmental organization
NSC	National Security Council
OIG	Office of Inspector General
OPDAT	Office of Overseas Prosecutorial Development, Assistance, and Training

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PAO	Public affairs officer
PCO	Project and Contracting Office
S/I	Senior Advisor to the Secretary and Coordinator for Iraq
USAID	U.S. Agency for International Development
USIP	U.S. Institute of Peace

APPENDIX

NATIONAL SECURITY POLICY DIRECTIVE 36

**THE WHITE HOUSE
WASHINGTON
May 11, 2004**

**NATIONAL SECURITY PRESIDENTIAL DIRECTIVE/NSPD
MEMORANDUM- FOR THE VICE PRESIDENT**

**THE SECRETARY OF STATE
THE-SECRETARY OF THE TREASURY
THE-SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF INTERIOR
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE SECRETARY OF LABOR
THE SECRETARY OF HEALTH & HUMAN SERVICES
THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY OF TRANSPORTATION
THE SECRETARY OF ENERGY
THE SECRETARY OF EDUCATION
THE SECRETARY OF VETERAN AFFAIRS
THE SECRETARY OF HOMELAND SECURITY
CHIEF OF STAFF TO THE PRESIDENT
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS
ASSISTANT TO THE PRESIDENT FOR
ECONOMIC POLICY
DIRECTOR OF CENTRAL INTELLIGENCE
CHAIRMAN, JOINT CHIEFS OF STAFF**

SUBJECT: United States Government Operations in Iraq.

We have seen a period of significant advancement in Iraq, as the yoke of Saddam Hussein's tyranny has been thrown off and democracy and economic reform have begun to take root. With the termination of the Coalition Provisional Authority (CPA) not later than June 30, 2004, and the re-establishment of diplomatic relations between the United States and a sovereign Iraqi government, our efforts in Iraq will take on new and formidable challenges that must be met successfully.

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During these critical times, we must organize to advance these gains and establish and sustain a strong bilateral relationship. When the CPA is terminated, the United States will be represented in Iraq by a Chief of Mission, who on my behalf and under the guidance of the Secretary of State, shall be responsible for the direction, coordination and supervision of all United States Government employees, policies, and activities in country, except those under the command of an area military commander, and employees seconded to an International Organization.

Commander, USCENTCOM, under the authority, direction, and control of the Secretary of Defense, shall continue to be responsible for U.S. efforts with respect to security and military operations in Iraq. In all activities, the Chief of Mission and Commander, USCENTCOM, shall ensure the closest cooperation and mutual support.

The Secretary of State shall be responsible for the continuous supervision and general direction of all assistance for Iraq. Commander, USCENTCOM, with the policy guidance of the Chief of Mission, shall direct all United States Government efforts and coordinate international efforts in support of organizing, equipping, and training all Iraqi security forces. At the appropriate time, the Secretary of State and the Secretary of Defense shall Jointly decide when these functions shall transfer to a security assistance organization and other appropriate organizations under the authority of the Secretary of State and the Chief of Mission that will be staffed in accordance with NSDD-38 of June 2, 1982.

The U.S. Mission in Baghdad and an office in the Department of State will assume from the CPA those authorities and responsibilities that continue after CPA termination.

I establish, in accordance with Title 5, United States Code, section 3361, a temporary organization within the Department of State and, if the Secretary of State so designates, within the U.S. Mission in Baghdad, called the Iraq Reconstruction Management Office (IRMO) co facilitate the transition in Iraq. The IRMO will be headed by a Director selected by the Secretary of State and its staff may include, as determined by the Secretary: (1) personnel with relevant expertise detailed on a non-reimbursable basis from other United States Government agencies; (2) senior and other technical advisors; (3) personnel from other Coalition partner governments; and (4) such other personnel as the Secretary may direct to support that effort.

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The Secretary shall regularly evaluate the staffing requirements of this organization. I also establish, in accordance with Title 5, United States Code, section 3161, a temporary organization within the Department of Defense to be called the Project and Contracting office (PCO) to provide acquisition and project management support with respect to activities in Iraq, as requested by the Secretary of State and heads of other Departments and agencies. The Secretary of Defense in consultation with the Secretary of State shall select a Director for PCO. PCO personnel in Iraq shall be permanently or temporarily assigned under Chief of Mission authority. PCO shall provide acquisition and project management support to the Chief of Mission. PCO's services may include engineering, auditing, and other contract-related services.

The effort to build a strong bilateral relationship with the Government of Iraq and support Iraq as it makes the transition to democracy must have the full commitment of all agencies. To accomplish our mission, I direct the heads of U.S. departments and agencies to provide, on a non-reimbursable basis, assistance, services and other support, to include security, medical, logistical and administrative support and details of personnel, with respect to U.S. activities in Iraq. To the maximum extent possible, the Secretary of State shall identify for the heads of relevant departments and agencies the expected requirements for non-reimbursable support for their use in preparing future budget requests. The Director of the Office of Management and Budget shall ensure that future budget submissions request the funding and authorities I determine necessary to support the U.S. Mission in Iraq.

This NSPD shall be effective immediately, shall constitute an Executive order solely for purposes of 5 U.S.C. 3161, and shall not be subject to Executive order 31030 of June 19, 1962, as amended. The CPA shall terminate not later than June 30, 2004. Upon the termination of the CPA, this NSPD supersedes NSPD-24, dated January 20, 2003.

A handwritten signature in black ink, appearing to be 'R. M. L.', written in a cursive style.

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