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U.S. Policy and the Iraq Elections

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With Iraq's elections scheduled for April 30, the United States should be acutely aware of its reduced but remaining influence in the country. Even in 2006 and 2010, when more than 100,000 U.S. soldiers were present in Iraq, it was largely Iran that had the final say on the premierships, if not the exact shape of the cabinets that were formed after the elections. If the United States carefully calibrates its policies and its diplomacy, it can continue to play a certain, albeit limited, role in Iraq regarding at least the overarching principles for government formation if not the question of individuals suitable to fill key positions. In particular, the question of whether or not to have a power-sharing government is likely to come up, and it is important that the United States presents a considered opinion on this instead of simply reiterating its knee-jerk preference for a "big tent" as articulated during the years it had troops in Iraq.

RECOMMENDATIONS

- On election day and during the process of counting votes, the United States should be acutely aware of the close links between the current Iraqi prime minister, Nuri al-Maliki, and the Iraqi judiciary, and should comment critically on any moves to manipulate the election result through this channel.
- During seat distribution, the United States should voice support for the principle of legality and the inadmissibility of attempts to retroactively take votes away from seat winners through post-election disqualifications, as happened in 2010.
- During government formation, when regional players like Iran and Turkey are likely to push their own interests, the United States should focus on alternatives that put the territorial integrity of Iraq first.
- The United States should not necessarily insist on an all-inclusive power-sharing formula for government formation if other options exist.
- A third term for Maliki should not be rejected out of principle. There is nothing in the Iraqi constitution or in modern democratic theory that militates against a prime minister serving several terms. Instead, such a candidacy should be evaluated by considering the coalition backing Maliki and its likelihood of enduring and delivering stability.

Introduction

With the complete withdrawal of U.S. forces from Iraq at the end of 2011, many analysts recommend that the United States engage as little as possible in Iraq's upcoming elections. U.S. influence in Iraq has diminished considerably since the withdrawal, with larger roles for regional players like Iran and Turkey emerging in the power vacuum. Nonetheless, the United States continues to be the main Western interlocutor for Iraqi politicians, and there are indications that it is still being consulted on certain issues, such as oil negotiations between the central government in Baghdad and the Kurdish federal region. Also, its material assistance—particularly its military hardware—remains of interest to Iraqi politicians and provides leverage, albeit limited.

Possibilities for U.S. Engagement

There are three stages of an Iraqi election at which the U.S. government in the past has tended to articulate a policy. These stages are relevant in 2014 as well.

Candidate Approval

The first stage relates to the process of candidate approval, including screening candidates according to criteria of de-Ba'athification that are meant to keep top figures of the former regime out of key positions. This debate became particularly heated in 2010. In response to strong protests



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by Iraqiya, the secular-Sunni list of Ayad Allawi, regarding alleged exclusions by the hard-line de-Ba'athification committee—a quasi-judicial entity that operates outside the direct control of the judiciary—the United States and particularly its then-Ambassador to Iraq Christopher Hill rushed to the defense of the committee and its several Iran-leaning top figures, effectively ignoring the concerns of Iraqiya.

This year the process of candidate vetting has been comparatively peaceful. 2014 has even seen the Iraqi judiciary reverse some of the more controversial exclusions of politicians with alleged Ba'athist pasts who were shut out in 2010. To the extent that there has been conflict, it has centered on the clause in the Iraqi election law that states that all candidates must be of “good reputation.” Some Iraqi politicians complained that the elections commission used this concept too elastically when it decided to shut out several candidates who

had criminal charges filed against them but had not received a court verdict.

At one point, following an attempt by the Iraqi parliament to issue a decision with respect to what constitutes a “good reputation,” the election commission threatened to resign. The United States and several other Western governments immediately declared their support for the independence

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of the commission, implicitly challenging the moves of the Iraqi parliament. This U.S. action has generally been misinterpreted in the Western press as an anti-Maliki move. In fact, all of the MPs that the Iraqi parliament sought to reinstate are enemies of Maliki that had been targeted by the election commission. The commission is now seen as friendlier to Maliki than it was with a different group of commissioners in 2010. Thus the United States this year in many ways repeated what it had done in 2010 in terms of acquiescing to the active use of judicial and quasi-judicial instruments to bar individuals from even appearing on the ballot.

Vote Counting

The second stage for the articulation of a U.S. policy relates to election conduct. Whereas some ugly episodes of ballot-stuffing

occurred in 2005, the second parliamentary elections of 2010 were generally considered clean. With a relatively unison international observer corps, there was little need for a U.S. policy as far as the conduct of the elections was concerned.

The process of counting the votes is another matter. Whereas vote counting would seem to be a technical and hence uncontroversial matter not calling for any foreign input, it is worth noting that 2010 saw a manual Baghdad recount that had effectively been ordered by Maliki and made possible by his informal influence with the Iraqi judiciary. Maliki also attempted to use the judiciary to retroactively exclude seat winners after they had been cleared. In 2014, such conflicts may transpire again, given the continued close ties between the executive and the judiciary, as symbolized not least in the close relationship between Maliki and leading judge Midhat al-Mahmoud. In any such conflict, the United States should take a firm stance on the unacceptability of retroactively removing valid votes cast on election day.

Government Formation

In 2006 and 2010, Iraq’s government formation lasted months and offered significant junctures for the U.S. government to form a distinct policy. In 2006, thanks to special rules in the Iraqi constitution regarding the first parliamentary term of the new democracy, the rough outcome of government formation had been decided in advance. Due to a super-majority requirement for elect-

ing the Iraqi president, it was almost pre-ordained that all the largest winning blocs would join a government of national unity. The main question concerned the choice of prime minister, and a Shi'i alliance formally made this key decision, with heavy influence from Iran. Maliki became the surprise nominee after the Kurds objected to the Shi'i front-runner Ibrahim al-Jaafari, who had defeated the U.S.-friendly Adel Abdul Mahdi in an internal vote. The United States did play a certain role in rejecting Jaafari, but clearly it did not prevail with respect to its preference for Abdul Mahdi. It has been suggested that Washington may have played a role in pushing Maliki to the forefront after the rejection of Jaafari, but there is little doubt that the decision of the Shi'i alliance in this matter was subject to Iranian approval.

The U.S. role in the 2010 government formation process was particularly prominent with respect to the eventual inclusion of the Sunni-secular Iraqiya bloc in the coalition government under Maliki, perhaps a reflection of sentimentality for a politically correct alternative that it had failed to support during the de-Ba'athification struggle before the elections. Yet the principal move came from Iran, who secured Sadrist support for Maliki in the fall of 2010, which helped assure him reelection. At that point, the formation of a Shi'i-Kurdish government was mostly a foregone conclusion, but the addition of Iraqiya to the mix brought in more Sunni and secular elements. The United States attempted to give Iraqiya a

larger place in the government by proposing an arrangement that would amount to a rewrite of the Iraqi constitution if implemented. The proposed arrangement, whereby Allawi would head a strategic pol-

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icy council in lieu of occupying the premier position, had no basis in the constitution. The arrangement's prospects for success were low, and it was in fact subsequently aborted. On the surface, the arrangement might have looked plausible enough, but the flaws were so wide-ranging that a more thorough analysis should have prompted warnings about its lack of viability.

There was a second, critical, and overarching dimension to U.S. involvement in 2010. Following the expiration of the transitional first parliamentary cycle, the Iraqi constitution no longer contained anything that prevented the formation of a smaller government based on an absolute majority in parliament. The United States played a key role in insisting on an oversized, power-sharing government even though other alternatives, such as a potential alliance between Maliki and the Sunni-secular Iraqiya list, were floated.

In 2014, questions concern which premier candidate the United States will support and to what extent the United

States will continue to encourage an all-inclusive, oversized power-sharing formula. Maliki is loudly arguing against this formula, saying that he prefers a smaller “political majority” government that only needs the support of an absolute majority in the Iraqi parliament to be seated (165 out of 328 votes in the next assembly). In theory, this could consist of an electorally successful Maliki list supported by smaller Sunni and possibly Kurdish lists, instead of the major parties representing those communities. In practice, it is unclear whether the election result will even allow Maliki to think in such terms. In his past projections of the viability of a “political majority” government Maliki has consistently overestimated both the strength of his own parliamentary bloc as well as his ability to build bridges to dissident Sunni and Kurdish factions. Further, the recent agreement between the leading Kurdish party, the KDP, and the previous Kurdish opposition movement, Goran, to jointly rule the Kurdish regional entity may render Goran a less likely prospective partner for Maliki—though Maliki may try to partner with the weakened Kurdish PUK Party. As a consequence, to achieve his “political majority,” Maliki may have to rely even more strongly on Sunni votes than he had considered in his past calculations.

An alternative scenario is that the coalition comprised of Maliki’s enemies, who almost succeeded in ousting him by a no confidence vote in the first half of 2012, will finally manage to produce a firm par-

liamentary majority through the ballot. It is noteworthy, though, that thanks to the general fragmentation in all three main ethno-sectarian camps and hence the multiplication of potential players, negotiations along these lines are likely to be even more complex than they were in 2010.

For the United States, either of the two main scenarios would present challenges. With respect to Maliki’s “political majority,” it faces the question of whether to support a narrower—but potentially more coherent and possibly “stronger”—Iraqi government. Perhaps the best indicator of the viability of any such government would be to look at its composition. If the “political majority” almost exclusively consists of Shi‘i Islamists with only a symbolic sprinkling of Sunnis, secularists, and Kurds, it will likely be a chauvinist, sectarian Shi‘i government that will be unable to repair relations with the western, Sunni-dominated parts of the country currently in turmoil. Conversely, if Maliki should succeed in obtaining a large majority across the Shi‘i-dominated provinces and there is at least one substantial Sunni-secular group ready to cooperate with him, this more narrow government should not be dismissed out of hand. His most likely coalition partners among the Sunnis and the secularists would be the mostly Sunni list of Deputy Prime Minister Saleh al-Mutlaq or the less known, non-sectarian coalition list called 262, which features relatively prominent politicians of both Sunni and Shi‘i backgrounds.

In regard to supporting an anti-Maliki coalition alternative, its potential front-runners for the premiership might present a dilemma for the United States. In the past, Washington has tended to support Adel Abdul Mahdi, who is not a candidate in this election, over Ibrahim al-Jaafari, who is fielding his own list and is considered by the United States as too close to Iran. Another name that repeatedly comes up in the discussion of the anti-Maliki scenario is that of Ahmad Chalabi, who played a key role in instigating the U.S. invasion of Iraq in 2003 as head of a nominally pan-Iraqi coalition only to reorient himself to a more pro-Iranian and Shi'i sectarian position in subsequent years. If Chalabi should

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emerge as the definitive challenger to Maliki, the United States would need to make a sober assessment of his ability to reach out to Sunni leaders in the tumultuous western parts of Iraq. Many of these leaders consider him an Iranian stooge to an even greater degree than they do Maliki. While Maliki has at times attempted to carve out a semi-independent niche for himself in the face of Iranian influence, Chalabi has more

consistently been in the pro-Iranian camp. It was Chalabi, for instance, who played a key role in the Iranian-sponsored attempt to recreate the original 2005 pan-Shi'i alliance ahead of the 2010 elections, with Maliki strongly rejecting the attempt. Chalabi has also played a preeminent part in the de-Ba'athification process that lies at the core of at least some of the lingering problems between Sunni Arab Iraqis and the central government.

It is doubtless in this third phase of the Iraqi election that the United States has the greatest opportunity to make a contribution. The U.S. government must make a levelheaded assessment of its priorities in Iraq and their implications regionally. There is currently uncertainty regarding the attachment to Baghdad of Sunni Arabs and Kurds alike, but it can be argued that the position of the Sunnis is more precarious because of the tumultuous situation in Syria. Conversely, the Kurdish situation will unfold within the parameters of Turkish regional policy, which is unlikely to favor sudden regional turmoil and instability. By putting Iraqi territorial integrity foremost in its evaluation of various Iraq government alternatives, the United States can also make a contribution toward a defusion of regional and sectarian tensions currently affecting the entire Middle East.

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