



March 2006

CONTENTS

Introduction..... 1
 Coalition Positions.... 2
 Substantive Issues..... 4
 Conclusion..... 9

ABOUT PILPG

The Public International Law & Policy Group (PILPG) is a 501(c)(3) non-profit organization, which operates as a global *pro bono* law firm providing free legal assistance to developing states and states in transition involved in conflicts. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution. To date, PILPG has advised over a dozen countries on the legal aspects of peace negotiations and constitution drafting, and over fifteen countries in Europe, Asia and Africa concerning the protection of human rights, self-determination, and the prosecution of war crimes.

FOR ADDITIONAL RESOURCES ON IRAQ PLEASE VISIT THE IRAQ PROGRAM WEBSITE:

<http://www.pilpg.org/areas/peacebuilding/simulations/iraq/>

IRAQ: FEDERALISM AND THE FORMATION OF REGIONS

A Review of Lessons Learned from a Negotiation Simulation



INTRODUCTION

With the December 2005 elections concluded and the process of forming a government underway, the next major task for Iraq’s political leaders is a substantial program of possible legislation and constitutional amendments. Iraq’s newly elected Council of Representatives will be confronted with a number of obligations under the Iraq Constitution. One of the highest priorities is enacting, within six months, a law that defines the executive procedures to form regions as required by

Article 118. Iraqis must also address the structure of the state and division of powers between the federal, regional, governorate, and local governments. Furthermore, the Constitution provides for the establishment of several public commissions that will impact the administration of federalism in Iraq. The character of these commissions must also be defined.

As part of its series of roundtables on the “Next Steps for Implementing the Iraq Constitution,” the Public International Law & Policy Group (PILPG) held a negotiation simulation on January 31, 2006, to address these issues and others related to the formation of regions. The negotiation simulation, hosted at Chemonics International, brought together experts on Iraq from a variety of backgrounds, including academics, diplomats, attorneys, and policy analysts. The participants each applied their unique insight on Iraq to their assigned roles. The American University Center for Global Peace, the American Society of International Law (ASIL), Chemonics International, Creative Associates International, DLA Piper Rudnick Gray Cary LLP, IFES, Shearman & Sterling LLP, Sullivan & Cromwell LLP, and the United States Institute of Peace (USIP) co-sponsored this program. The co-sponsors do not necessarily endorse any statements made in this report. This report is solely the work product of PILPG. The program was supported in part by the Carnegie Corporation of New York, The Compton Foundation and the Ploughshares Fund.

The negotiation simulation included participants playing the roles of the major coalitions and parties from the December 2005 elections. Participants represented a number of Iraqi groups including the United Iraqi Alliance (Shiite), Iraqi Accordance Front (Sunni), Kurdistan Coalition List, Iraqi National List (secular), and the Iraqi Turkmen Front. Participants also served as delegates and facilitators from the United Nations and United States. Participants often took on specific roles within their assigned alliances or parties, such as Ayad Allawi within the Iraqi National List. This resulted in a variety of positions, which similarly occurred during the December elections.

The participants interacted through group planning sessions, inter-group meetings, multiparty issue-specific meetings, and a plenary session. These sessions were complemented by informal negotiations and alliance-building that occurred organically throughout the session. The simulation followed the methodology used by the U.S. Department of State's National Foreign Affairs Training Center to train American diplomats prior to negotiations.

LESSONS LEARNED: COALITION POSITIONS

The negotiation simulation participants represented the major electoral alliances from the December 2005 elections. The alliances were often strained, however, and their positions were far from monolithic. The difficulty in achieving a consistent internal position was clear, and may pose problems for the alliances as negotiations in Iraq continue. With the allocation of seats in the Council of Representatives nearly determined, the coalitions entered the negotiation simulation aware of the level of support that existed for each party as well as their likely allies. These numbers clearly had an impact on their negotiating strategies.

United Iraqi Alliance (Shiite)

The Shiite delegates represented the Dawa party, the Supreme Council for Islamic Revolution in Iraq (SCIRI), those loyal to Grand Ayatollah Sistani, as well as others in the United Iraqi Alliance. As a result of the various parties' positions, the members

of the delegation had different priorities and were occasionally at odds.

The delegation split over the distribution of national resources. Representatives of Grand Ayatollah Sistani sought equitable distribution of government revenue, while the SCIRI party argued for a greater-than-proportional share of revenue as a means of compensation for past injustice. The delegation also split over national identity. Representatives of Al Sistani supported a strong national Iraqi identity, and sought common ground with the Sunnis on this point. The Dawa party, however, displayed closer ties to Iran in its negotiations.



Kurdistan Coalition List

The Kurdistan Coalition List (composed primarily of the Patriotic Union of Kurdistan and the Kurdish Democratic Party) was the most cohesive of the delegations in the simulation. Protecting autonomy and influence in the North was a priority, particularly on the issue of Kirkuk. The Kurdish delegates also sought control over the oil resources in the North, but were willing to allocate an agreed upon percentage of regional oil revenue to the federal government for national use as well as "permit" the federal collection of an agreed upon tax on certain oil revenues. The Kurdish delegation felt strongly about their superior authority with respect to the promotion and enforcement of human rights within their borders.

Iraqi Accordance Front (Sunni)

Though the Sunni coalition contained parties with varying viewpoints on some issues, the delegation decided that it would be prudent to preserve the

coalition in order to maximize political power. The Sunni delegation's priorities were federal control and equal distribution of oil and gas revenue; gradual rather than immediate devolution of power to regions; and federal control of security forces to prevent abuse of Sunnis by other groups.

Other delegations and individuals sought Sunni support on several issues. The secularists sought a broad coalition with the Sunni delegation. Representatives of Al Sistani of the Shiite alliance sought common ground with the Sunnis on distribution of resources. Though aggrieved over its new, weaker position since the fall of Saddam Hussein, the Sunnis in the negotiation simulation possessed considerable leverage in the bargaining. This may in part be attributed to its perceived ties to the insurgency. The insurgency cast a shadow over the Sunni negotiations with other delegations. Combating the insurgency was alternatively a precondition or obstacle to concessions from other parties and leverage to be used in achieving goals. At one point a Shiite delegate suggested that it would be more flexible with respect to the issues regarding the militia, security forces and the phasing out of requests for compensatory oil revenues if the Sunni delegation did more to influence the insurgency and denounce its attacks.



Iraqi National List (secular)

Participants in the secular delegation represented different parties with different interests. Shiite Arabs, Sunni Arabs and women were represented by the secular coalition. The secular delegation's priorities were the prevention and if not possible, the

delay of the creation of regions in Iraq (especially a Shiite region in the South), and if none of this was possible, the establishment of a secular state in the Baghdad region. The protection of human rights and opportunities for women was also stressed by this delegation. A constitutional amendment establishing the supremacy of federal law over regional law was considered as a means of ensuring against the violation of women and minority rights in the different regions and governorates. Additionally, the secular delegation considered it necessary to ensure equitable distribution of oil revenue throughout the nation and central control over the management and distribution of these revenues.

Following the December elections, the Iraqi National List aligned with Sunni groups to protest the election results. This previous cooperation provided the foundation for an alliance during the negotiation simulation. The secularists compared platforms with the Sunnis and noted considerable common ground. Toward the end of the negotiation the Kurds delegation formed a tentative pact with the Sunnis and the secularists. It was agreed that the oil revenues from throughout the country would be managed and distributed by the center with certain concessions made to the Kurds for greater autonomy with respect to their existing oil revenues given their historic circumstances.

Iraqi Turkmen Front

The Iraqi Turkmen Front was the smallest of the groups represented in the negotiation simulation. As a result it frequently had to prioritize and limit itself to the most pressing issues. Protecting Turkmen interests in Kirkuk was a priority. The general protection of human rights was another goal of the Turkmen Front. Establishing a Turkmen majority administrative district was also pursued, and though nothing was settled, the other parties did not completely object to the formation of some kind of autonomous Turkmen community (either through some redistricting or simply a recognized designation within a larger region or governorate).

United Nations

The United Nations representative acted as an intermediary and delicately sought to achieve agreement among the parties while not expressing

any particular opinions or leanings on any specific matter. The United Nations sought to portray the negotiations as a positive step regardless of the progress made on the issues and offered whatever expert assistance would be needed. The parties indicated that they had little confidence in receiving any tangible or helpful assistance from the UN in the negotiation process.

United States

The United States acted as a facilitator and generally limited its role, but also quietly worked towards its strategic goals. The United States did not want to see Iraq fragmented nor see a strong Iranian influence in Southern Iraq. The United States worked through informal conversations with the participants to determine positions and priorities. The United States also played a role in mediating meetings and bargaining sessions. The United States had some success in getting the parties closer together on the issue of the allocation of responsibilities regarding human rights and the necessity for a representative national commission to determine a suitable revenue allocation formula.

LESSONS LEARNED: SUBSTANTIVE ISSUES

The negotiation simulation addressed three primary issues related to the formation of regions: the mechanisms and structure of the formation of regions and regional and local elections; the distribution of powers and resources between the federal, regional, governorate, and local governments; and the role of the public commissions in representing regional and local interests.

State Structure

The federal state broadly sketched by the Constitution leaves many structural and procedural issues unresolved. The requirements for processes for creating regions were contentious issues among the parties.

Creating Regions

The negotiation simulation primarily focused on the formation of new regions. The Shiite delegation favored the creation of four regions – one Kurdish,

one Sunni, and two Shiite. The Sunnis, while acknowledging that new regions may be inevitable, sought to slow their creation and vest decisions on regional autonomy in federal commissions.

One issue that was raised but not settled was who would vote in the referenda on the formation of regions authorized in Article 119 of the Constitution, and more importantly, who would manage, supervise, and certify these referenda. The issue was also raised as to whether the vote would only occur at the governorate level or whether a regional or national level referenda would also be necessary. The Shiite delegation was clear that it wanted only local control over the referenda and various delegates indicated some distrust or lack of confidence in the capacity of the Independent Electoral Commission of Iraq to occupy a role with respect to the referenda. Also, some interpreted Article 119 narrowly and said that once a favorable local referendum was achieved, regional status should be granted automatically. Others interpreted the article more broadly and as merely calling for a referendum that would serve to initiate the regional and national discussion and processes related to forming a new region.

“The Shiite delegation favored the creation of four regions – one Kurdish, one Sunni, and two Shiite. The Sunnis, while acknowledging that new regions may be inevitable, sought to slow their creation and vest decisions on regional autonomy in federal commissions.”

The boundaries of governorates and regions were also an issue during the negotiation simulation. The Turkmen delegation raised the issue of redrawing local administrative lines to create a Turkmen-majority administrative unit. The Kurds also expressed a desire to establish borders in the North that would create a more homogenous region.

Kirkuk

The future status of Kirkuk was important to many of the delegations. The delay on settling the issue as it is enshrined in the Constitution did not stop the parties from debating the issue. The Turkmen

expressed concern over policies of the Kurds that displaced them from Kirkuk and diminished their power in the region. The Kurds advanced policies to secure Kirkuk as a Kurdish city. Many of the representatives from the non-Kurdish parties sought to prevent Kirkuk from becoming a Kurdish city. The negotiation simulation demonstrated that though the settlement of the Kirkuk question has been postponed until 2007, the issue has not subsided.

Resources Allocation

In defining federalism in Iraq, the political leaders must continue the division of competencies between federal and regional governments that begins with Articles 110, 114, and 115 of the Constitution. Article 110 lists the exclusive competencies of the federal government, while Article 114 lists the powers shared by the federal and regional authorities. Article 115 states that powers not exclusively granted to the federal government are the domain of the regions and governorates, and that priority should be given to the law of regions and governorates. Control over natural resources and authority over human rights protection and enforcement were the most contentious government powers.

As to the first issue, predictably, the control over oil production and the resulting distribution of revenue was the most significant issue to the participants. Discussions included debate over revenue sharing and control over currently undeveloped oil fields. The delegations also addressed control and access to water sources and electricity.

Method and Formula for Division of Oil Revenue

The delegations entered the negotiation simulation with established positions on control of the oil industry. The Sunni coalition supported federal control of oil resources, stressing that the Constitution provided that oil was owned by all the people of Iraq in all the regions and governorates. The Shiite delegation pursued regional control of oil and other resources and proposed a percentage distribution formula that was closely tied to the population percentages of the principle negotiating groups. Related to control of the field is the method and formula for distributing oil revenue. The Kurdish delegation suggested that revenue be

distributed to the regions and governorates based on population, with some agreed upon percentage going to the federal government such that it could carry out its functions and apply the funds based on need. The Sunni argued that the resources should go where the need is greatest. The Shiites argued for compensatory distribution based on past injustice. When pressed on this matter, they agreed that this compensatory distribution could be phased out over time. Overall, the delegations could not reach agreement on the use of resource revenue to remedy past deprivations as provided for in Article 112. However, the discussion of past abuses in the context of negotiations on oil revenue revealed a broad interpretation of this article. As proposed, the compensatory distributions were not just about allocating resources to areas previously deprived of these resources, but allocating resources as a form of compensating victims and entire communities for particular human rights abuses. In all of the discussions there was a call for national reconciliation about the human rights violations that were perpetrated against various sectors of the population.

Interestingly, the Shiite and Sunni did reach agreement that there should be direct payments to Iraqi citizens, perhaps based on the Alaskan model for oil revenue sharing, or by some other method. The Kurds raised the Canadian model as well. In Canada, provinces collect and allocate oil revenue from their territories, but the federal government has tax and regulatory powers over certain aspects of the oil industry.



Distrust over cash allocations of oil revenue was evident in the smaller parties. The Turkmen delegation suggested funding of public works rather than disbursements. There was more than one call for a mechanism to ensure transparency in revenue collection and distribution. Whether through independent legislation or through the further elaboration of the functions and mandates of one or more of the public commissions established by the Constitution.

The Shiites proposed a formula for distribution of oil revenue: 65% to Shiites, 20% to Kurds, and 15% to the Sunnis. The Turkmen asked why they were not represented. The secularists thought that the Shiite share was too high given that they did not earn even half of the seats in the Council of Representatives. The Shiites responded by pointing to their history of deprivation under Saddam Hussein and pointed out that population figures are generally uncertain in Iraq.



This prompted another call for a more accurate population census as it related both to referendum voting, the issue of relocated and displaced individuals, as well as fair and equitable revenue distribution. The parties generally agreed on the need for a national census. It was suggested that perhaps a national census will be a prerequisite to a final agreement on distribution of resources among the federal government, regions, governorates, and local administrations. The parties could not reach agreement on the details of the census.

Future Oil Production

Significantly, the parties disagreed over control of non-present oil fields. The Kurdish delegation read the Constitution to support regional control over new oil fields, interpreting the ambiguity or silence on this matter as triggering their reserved rights over all that is not stipulated as an exclusive authority of the federal government. They were not persuaded by arguments that Article 112(2) does not expressly provide for control over new oil fields, that Article 121(3) ensures that all regions and governorates must receive an equitable share of the national revenues sufficient to discharge their responsibilities, or that Article 115 actually provides that reserved powers go both to the regions and the governorates. The Kurds, however, did support allocating a given percentage of revenues from those fields to the federal government. The Shiites supported the Kurdish reading of a distinction between present and future oil fields. They added that existing fields that require substantial rehabilitation should be considered new fields for the purposes of governmental control. The secular delegation did not support the distinction between present and future oil fields. They argued that the Constitution is silent on future production and therefore Article 111, guaranteeing ownership of oil and gas by all Iraqis, should govern. The Sunni delegation supported the central control over all oil and gas production.

The parties appeared deadlocked over this issue, though some space was opened at the end for a secular, Sunni and Kurdish agreement on oil management and control of revenues whereby a distinction might be made between “ownership” and “management” as well as the Kurdish region versus other regions. For example, some emphasis was placed on a continued recognition that natural resources are owned by all Iraqis, but that producing regions should be expected to play a larger role in their management as long as ultimate control over the distribution of the derived revenues was placed with the federal government. It was proposed and tentatively agreed upon by this loose secular, Sunni, Kurdish alliance that some exceptions to this formula could be worked out for the Kurds as a result of their historical circumstances. This would create a federal structure with some asymmetrical characteristics when it came to the powers exercised by the Kurdish region and any future regions.

Water

The negotiation simulation also addressed control over other resources, such as water and electricity. The Sunni and secular parties appeared to agree that the federal government should be responsible for control of all water resources – those originating from within and outside of Iraq. This position is in accord with Article 110(8), granting exclusive authority to the federal government for water policy for sources from outside of Iraq. However, it would likely require a constitutional amendment or clarifying legislation with respect to Article 114(7) addressing shared responsibilities between the regions and federal government over water sources. The Kurdish representatives added that it will be necessary for the federal government to work with Turkey and other neighbors to protect Iraqi water rights.

The discussion of water rights highlighted the importance of small nuances in Constitutional language. This discussion also highlighted the need for delegates to distinguish and strategize with respect to those objectives which could be, and perhaps should be, addressed through constitutional amendments versus the greater number of issues that could probably be dealt with through implementing legislation.

Public Commissions

The Iraq Constitution created a number of independent commissions to work alongside the government on a variety of issues. Some of these commissions will directly affect the relations among the federal government, regions, governorates, and local administrations. Two of the commissions in particular — the Public Commission on Regions and Governorates not Organized in Regions (Article 105) and the Public Commission to Audit and Appropriate Federal Revenues (Article 106) — will likely play a large role in policy creation and implementation of federalism in Iraq. As a result, the delegations specifically focused upon them in the simulation. The public commissions are also seen as an alternative means by which alliance goals could be achieved. The U.S. facilitator, in seeking greater cooperation from the Iraqi Accordance Front, depicted the public commissions as a means of

representing minority interests separate from the Council of Representatives.

In the negotiations on public commissions, the major issues to settle included the powers of the commissions and the membership of the commissions. These issues are universal and will affect each of the new public commissions. Representation on the commissions was a contentious issue. The minority groups in particular raised concerns about being excluded from the public commissions, and, therefore, from the decision-making process. The Turkmen delegation was especially interested in representation on any local or regional commissions. The delegation argued that full and effective participation might require representation that exceeded merely a number of seats proportionate to their percentage in the population. This concern was particularly acute in discussions on Kirkuk, where the Turkmen felt they were underrepresented based on relocation policies. This came up in the context of a brief discussion on the representative composition of the special legislative body that will be established to review and propose amendments to the Constitution.



The delegates believed that the Public Commission to Audit and Appropriate Federal Revenues will exercise control and oversight over distribution of oil revenue. There was general agreement that this governmental body responsible for oil revenue must be transparent. Towards this end, the Kurdish delegation suggested the use of the principles established by the Extractive Industries Transparency Initiative (EITI). This new international system for accountability and transparency in resource-rich nations would require

the publication of payments to the government for extraction of natural resources. The Initiative would involve multiple layers of government, international organizations, energy and mining corporations, and non-profit organizations. In principle, the Shiite delegation agreed with the use of these EITI standards, but overall, while there was support for the principles embodied in the system, consensus could not be reached on adoption of the EITI standards. Most importantly, in the end, all delegations seemed to support the use of mechanisms for transparency, but little was discussed in terms of how this would be practically implemented at all levels of government and where ultimate authority for such monitoring would reside.

The Public Commission on Regions and Governorates not Organized in Regions was seen by the delegations as a potential advocate for their positions. The Turkmen delegation sought a commission composed of delegates from minority groups that could set standards and benchmarks for creating a region. The Turkmen and secularists also supported giving the commission some control over the creation of regions or, at a minimum, a role in the process. The proposed role was unclear as to whether the commission would be responsible for the certification of referendum results or the determination of a governorate's capacity to exercise the powers of a region. The secularists and Sunnis believed that such Commissions would strengthen the federal government, a key goal of their parties. Whether these powers over region creation are vested in the Public Commission on Regions and Governorates not Organized in Regions or another commission remains to be seen. The Shiites were not interested in such obstacles to the formation of regions.

In addition to these constitutionally mandated commissions, the alliances discussed the need for additional commissions. The Shiites proposed a commission to protect the environment. They

considered this an important issue, citing their location in the South as the recipient of much of the nation's pollution. The Kurds agreed that this was an important issue. Though the parties admitted that the environment was not a high priority, considerable time was spent on environmental issues.

There were a few points of agreement among the delegations on the public commissions. All parties recognized the need for transparency in the operation of the public commissions, particularly those responsible for distribution of revenue. The parties also stated the need for full and effective participation of all ethnic and religious groups, and in general, all components of Iraqi society. Though the exact powers could not be agreed upon, there was consensus on principle that a public commission should have some role in the establishment of new regions.



Human Rights

Many parties prioritized the need for institutions to protect human rights and investigate past human rights violations. The parties were able to agree on federal responsibility for human rights protection, but not on the powers of the federal government to ensure that regions, governorates and local administrations complied with the human rights and fundamental freedoms articulated in the Constitution. Considerable concern was expressed over the protection the regions would provide for certain minority rights in Kurdistan as well as women and religious minority rights in the South. The parties also discussed both a commission under the Ministry of Human Rights and an independent body that would ensure the documentation and preservation of evidence, and investigation of past injustices.

Though the need for federal protection of human rights was accepted by the delegations, the role of regional governments in protecting human rights was controversial. The Sunni and Turkmen delegations

proposed that new regions should guarantee federal human rights standards. The secular delegation supported federal enforcement of human rights protections, and proposed that there be some form of statement or assurance (whether enshrined in the Constitution, enabling legislation or other form) that affirms the federal government's supreme authority to ensure human rights protections throughout the entire region.

The parties also disagreed over which courts would enforce human rights. The Shiite and Sunni delegations debated federal versus regional court powers. The Al Sistani representative broke with the Shiite alliance and sided with the Sunnis that federal courts should enforce human rights.

Security

Though not on the agenda, the issue of security pervaded the negotiations. Control over security forces in the nation was one of the most important issues to the Sunnis. They are concerned over persecution of Sunnis by Shiites in the police force of the Ministry of Interior. During their internal strategy discussions, the Sunni delegation made appointing a Sunni to the Ministry of Interior a priority. Alternatively they sought a system of review of allegations of abuse and a well-integrated federal rather than regional police and military forces.

The Shiite delegation called on the Sunni delegation for a five-day cease fire of insurgent activity. The Sunni delegation responded with a call for end of abusive police practices by Shiites in the South. The insurgency was a major obstacle to progress among the delegations.

CONCLUSIONS

The delegations that had formed alliances for purposes of the elections frequently experienced internal disagreement over positions and priorities. This put into question the durability of these alliances while also presenting opportunities for new alliances, to develop on issues such as distribution of resources and federal competencies. Though the Constitution sets aside the future of Kirkuk, it was clearly important to the parties and

they did not treat it as an issue that was absolutely off the table.

There was a demonstrated need for a comprehensive census in Iraq. There was disagreement over the true populations represented by the delegations, and it hindered discussions on the distribution of resources. The Turkmen were concerned over policies altering demographics in the Kirkuk area and wanted these concerns addressed in a census.

The control over underdeveloped oil fields remains one of the most contentious issues in negotiations. The Kurds and Shiites read the Constitution to grant regions control over new fields, while the secularists and Sunnis support central control over all oil and gas resources. The ambiguity of the Constitution on this issue could be remedied by amendment, but it may be easier through enabling legislation.

“The control over underdeveloped oil fields remains one of the most contentious issues in negotiations.”

The method and formula for distributing revenue from oil and other natural resources remains unresolved. Whether past injustice and suffering should be considered in dividing revenue between the groups and regions is an important issue. Distrust among parties is not quantifiable, but palpable when discussing this issue as with others. The parties agreed on the necessity of transparency in the public commissions, particularly in those with responsibility for overseeing federal and regional revenue. The parties recognized that corruption was in no one's interests. The Kurdish delegation proposed adoption of the Extractive Industries Transparency Initiative (EITI). There was agreement in principle.

The composition of the public commissions is important to the delegations. The minority groups view the commissions as a means to protect their interests and limit majoritarianism. The Turkmen for example sought greater-than-proportional representation on commissions, especially those concerning the status of the North and Kirkuk. There was general agreement that a public

commission concerned with environmental matters should be created. The delegations acknowledged however that this is not one of the highest priorities.

The parties were unable to agree on the division of responsibilities between the federal, regional, and governorate governments with respect to protecting and enforcing human rights. Issues of women and minority rights figured prominently in this discussion as did the desire for greater local autonomy.

While control over oil revenues receives great attention, the delegates are also greatly concerned about control over water, electricity, and other natural resources. A keen understanding of the exclusive and shared powers of the federal government and regions regarding these issues will determine the cooperative mechanisms that enabling legislation will need to articulate and/or illustrate the necessity of constitutional amendments.

The continuing insurgency was an obstacle to trust and agreement among the parties, particularly the Shiite and Sunni delegations. The Shiite required the Sunni to take actions to quell the insurgency prior to further negotiations on some points. The Sunni demanded a stop of abusive practices by Shiite police and military personnel.

The constitutional language provided leeway for differing interpretations by the various parties. Though this could cause conflict, the language could also accommodate an array of solutions and compromises in enabling legislation. Clarifying legislation may be more expedient politically.

The negotiations were most effective when grounded in discussion of the constitutional provisions. The parties developed more creative solutions and compromises when considering the Constitution. Emotions and rhetoric pervaded the more abstract discussions that lacked a constitutional foundation. This lesson from the negotiation supports the need for the dedication of resources to increased capacity building for Iraqi legislators, party leaders, and their staff.

PILPG NEGOTIATION SIMULATIONS:

Indonesia/Aceh:

<http://www.publicinternationallaw.org/programs/peace/diplomacy/#Aceh>

Democratic Republic of Congo:

<http://www.publicinternationallaw.org/programs/peace/diplomacy/#Congo>

Georgia/Abkhazia:

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Georgia>

Iraq Constitutional Negotiations:

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Iraq>

Kashmir:

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Kashmir>

Kosovo Final Status:

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Kosovo>

Nepal:

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Nepal>

Sudan:

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Sudan>

Tigris/Euphrates River Basin:

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Tigris>

IRAQ POST-CONFLICT CONSTITUTION PROGRAM

Over the course of the past two years the Public International Law & Policy Group (PILPG) has provided assistance with preparations for and the drafting of the new Constitution for Iraq. This page includes links to many of the documents prepared by PILPG for this purpose. Most of the documents are also available on the website of the Iraqi Constitution Drafting Committee www.iraqconstitution.org.

In the spring of 2005, American University's Center for Global Peace, at the request of the Chairman of the Iraqi Constitution Drafting Committee, arranged for PILPG to provide assistance to the Drafting Committee. In July, the Center and PILPG, as part of a USAID program operated by one of its major international contractors, deployed a team of experts to Iraq. The Chairman called upon the team to provide legal and other expert assistance with matters ranging from state structure and electoral systems to resource allocation and the protection of human and minority rights.

Prior to and during the negotiations PILPG prepared a series of legal briefs on Iraq's post-conflict constitutional and nation-building issues, such as structuring an executive branch; promoting judicial independence; protecting human rights; resolving property claims; and repatriating refugees and internally displaced persons. These memoranda were prepared with the *pro bono* assistance of major international law firms, including Covington & Burling; DLA Piper Rudnick Gray Cary; Shearman & Sterling; Steptoe & Johnson; and Sutherland Asbill & Brennan. This work was sponsored by the Ploughshares Fund and the Compton Foundation. During 2004, PILPG, in cooperation with American University and sponsored by the Carnegie Corporation of New York, conducted a series of diplomacy simulation exercises on negotiating a permanent constitution for Iraq and on constructing formulas for allocating oil revenue. The diplomacy simulation exercises were run with participants from various Iraqi constituencies, the U.S. government, academia and foreign policy NGOs.

In May 2003, PILPG, in collaboration with The Century Foundation, convened a roundtable of experts, including some who would play a role in new Iraqi governing bodies, under the Chairmanship of Ambassador Morton Abramowitz and Judge Abraham Sofaer to discuss issues that would likely arise during the anticipated constitutional negotiations. The roundtable produced a report which was designed to help navigate the complexities of the constitution-building process by providing analysis and recommendations on the various state structures and processes post-conflict states have adopted in order to achieve both stability and democracy when faced with a diversity of ethnic and religious interests.

ROUNDTABLE REPORTS

PILPG occasionally hosts roundtables on timely topics, often in collaboration with other institutions. To facilitate the process of constitutional implementation, the PILPG, along with nine co-sponsoring organizations in Washington, DC, hosted a series of roundtable discussions to address the key issues relating to this constitutional process. These events brought together over 50 international and Iraqi experts involved with post-conflict development and constitutional law to identify the core elements of implementing legislation, potential amendments, and best-practices from other countries that have sought to create effective governmental frameworks for democratic societies.

This program was co-sponsored by the American University Center for Global Peace, the American Society of International Law (ASIL), Chemonics International, Creative Associates International, DLA Piper Rudnick Gray Cary LLP, IFES, Shearman & Sterling LLP, Sullivan & Cromwell LLP, and the United States Institute of Peace (USIP).