

Focus-on-Trade is a regular electronic bulletin providing updates and analysis of trends in regional and world trade and finance, with an emphasis on analysis of these trends from an integrative, interdisciplinary viewpoint that is sensitive not only to economic issues, but also to ecological, political, gender and social issues. Your contributions and comments are welcome.

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THIS issue of Focus on Trade marks the meaningless "handover of sovereignty" by the US to their handpicked "interim government" in Baghdad. The Financial Times called the ceremony an "embarrassing last act by a departing US authority and an unfortunate reflection of the troubles it leaves behind." Far from being the last act, however, the handover simply marks another phase in the US' overall strategy to gain political and economic domination of Iraq and the whole region. The secrecy in which the ceremony took place was an inauspicious — but fitting — start to the new era sham sovereignty.

## THE OTHER RECONSTRUCTION: How private contractors are transforming Iraq's state and civil society

By Herbert Docena

After the transfer of 'sovereignty' in Iraq, among those staying behind - aside from 160,000 coalition troops - is a battalion of private contractors attempting to construct economic and political structures most conducive to US and transnational corporate interests even after direct occupation ends. Their mission is crucial for the "exit plan": these contractors are trying to make sure that the US still gets what it went to war for before it recedes from the scene. Working silently in the background, their impact on Iraq's future may be more significant than that of the more controversial reconstruction contractors such as Bechtel or Halliburton.

SHEIK MAJID AL-AZAWI was one proud and happy Iraqi. His office might look more like a military base than an administrative building, with sandbags, barbed wire, and tall concrete walls surrounding it. It might be pitch-black dark in the corridors most of the day. But that did not dampen the sheik. "We are very happy to be part of this council even if we have simple equipment," says Al-Azawi, one of the members of the Rusafa District Council in central Baghdad. "It's the first time for all the members of the government because it was impossible before." [1]

The Rusafa District Council is one of hundreds of local proto-governing political entities which the US military and the United States Agency for International Development (USAID) - through its private contractor Research Triangle Institute (RTI) - have been painstakingly setting up all over Iraq since the end of "major combat" last year. RTI's role in Iraq came to light in November last year when Coalition Provisional Authority (CPA) head L. Paul Bremer unveiled his original plan - since scrapped - for transferring "sovereignty" back to Iraqis: the interim government would be chosen through complex caucuses in local councils whose members were constituted and vetted by RTI. In effect, Iraq's government would have been chosen by an American contractor.

The incident drew attention to a battalion of private contractors hired by the US government for Iraq's other reconstruction: Side by side

with the US-led rebuilding of Iraq's bridges and power plants is the construction and transformation of the economic, political, and social institutions that will make up the new Iraqi state and civil society.

Assuming that the war on Iraq was waged for oil, for opening domestic markets, for maintaining military presence in a strategic region, or for promoting a certain ideology, then it would be safe to conclude that the United States would - given the choice - prefer not to "cut and run" without first getting what it invaded Iraq for.

The US could have ensured securing its objectives by keeping Iraq under direct occupation indefinitely through a colonial government run by the US, but this was out of the question from the outset. First, the US was fully aware that this arrangement would not be sustainable for the long-term because it would only fuel the resistance and it would most likely be resisted by the international community. Second, it would be unstable because such an exercise of power would rest only on coercion, not on consent. Finally, the US has no interest in running the affairs of government other than those in which it has a stake.

Hence, in order to secure what its soldiers are dying for, the US is trying something more subtle and more sophisticated: It is attempting to erect Iraq's legal, economic, political, and social institutions according to its own specifications in order to ensure that they will be conducive to US interests even after the occupation authority formally withdraws from the scene and hands over power to a new government. At the same time, the US is also recruiting, mobilizing, and building the capacity of Iraqis who will push for, implement, and defend its preferred policies - both within the state and in civil society - in the new sovereign Iraq. One of them was Sheik Azawi.

Contracted mostly by the USAID but also by the National Endowment for Democracy (NED), and the State Department, these contractors' efforts are funded as foreign aid - and, as the USAID is first to admit, "all aid is political." [2] It has been and will continue to be "a key instrument of foreign policy in the coming decades," declares its aptly titled report *Foreign Aid in the National Interest*. US foreign aid, says the USAID, will continue to have a two-fold purpose: "furthering America's foreign policy

interests in expanding democracy and free markets while improving the lives of citizens of the developing world.”[3]

Working quietly in the background - though not in secret, the role of each of these contractors in the division of labor in Iraq reveals the components of the US' comprehensive, systematic, and highly evolved strategy for an “exit plan.” The broad strokes may be coming from the higher-ups, but it is these private contractors working to achieve US foreign aid's larger objectives that are drawing the finer details.

As the would-be behind-the-scenes king-maker in Bremer's aborted plan, RTI's work in Iraq is illustrative.

Among the first batch of contractors to arrive after the invasion, RTI employees have been roaming around the country searching for what its contract with USAID calls, “the most appropriate ‘legitimate’ and functional leaders.”[4] (Quotes around ‘legitimate’ in original contract.) Aside from setting up a five-level system of local councils all over the country, RTI is also creating, funding, and supporting dozens of civil society organizations and NGOs that are sprouting-up across the country. How RTI - and its employer, the US government - defines “legitimate” is evident in the way it went about constituting these councils and determining what types of NGOs get supported. “What we are trying to do,” said Fritz Wenden of the USAID Office of Transition Initiatives, “is to identify those groups, those leaders that you can work with.”[5]

It was not a simple case of RTI knocking on the doors of all pro-occupation Iraqis willing to serve the occupiers. But RTI's process of establishing the councils ensured that it would be self-selecting and self-eliminating: only those who are willing to cooperate - or those who have other plans in mind - would be willing to sit in the councils. These councils were not directly elected by the locals in a one-person, one-vote system. “We didn't know anything about these elections. We just suddenly heard about them,” attested one tribe leader from Sadr City.[6] As RTI employee Christian Arandel, pointed out: “Let us be clear. These are not elections. There are all processes of selections.”[7] And in these selections, even as some local leaders were consulted and in some cases balloting actually took place, it was the military as guided by RTI - and not the Iraqis - that had

the final say.[8]

The military can kick out anyone for whatever unstated and unverified reason. In a number of cases, “Baathists,” “criminals,” or “terrorists” have been shown the door. Given how such terms have been loosely used to refer to anyone opposed to the occupation, it is difficult to ascertain whether or not those that have been kicked out simply did not meet RTI's criteria for “legitimate” leaders. At the Baghdad City Council, RTI instructed council members to kick out the “terrorists” through “democracy” by voting them out.[9]

Prior to RTI's selection process, the CPA actually abolished all councils that had been formed by the Iraqis after the war without any interference from RTI. “I'm not opposed to [elections], but I want to do it in a way that takes care of our concerns,” Bremer said. “In a situation like this, if you start holding elections, the people who are rejectionists tend to win,” he explained.[10] Another CPA official was more direct when asked why elections couldn't be held soon enough: “There's not enough time for the moderates to organize.”[11]

Under the plan, RTI's task is to make sure the “legitimate” leaders - and not the rejectionists and the non-moderates - prevail. Its mission is part of a bigger goal to build a social base of Iraqis that will stand up for the occupation - or at least passively bear with it - in order to offset those other bases that are hostile to or uncooperative with the occupation authorities and its plans. “Beneath the new interest of the United States in bringing democracy to the Middle East,” points out Thomas Carothers, director of the Democracy Project at the Carnegie Endowment for International Peace, “is the central dilemma that the most powerful, popular movements are the ones that we are deeply uncomfortable with.”[12]

In answer to its dilemma, the US is attempting to build up its own movement - one with which it would be more comfortable. If the way to make the occupation more acceptable is to put “Americans out back and more Iraqis out front,” as influential New York Times columnist Thomas Friedman counseled [13], then the US, through RTI, is on the look-out for Iraqis to put in front.

Complementing RTI's work is the quasi-governmental organization National Endowment for Democracy. "There is a lot of change taking place [in the Middle East]," NED President Carl Gershman remarked. "We know how to get to the right people." [14]

In Nicaragua in 1990, the right people were from the opposition party-led by conservative candidate Violeta Chamorro who ran against the Sandinista President Daniel Ortega and who was documented to have received campaign funding from the NED. [15] In Haiti last February, the right ones were those who were agitating against popularly elected Jean Bertrand Aristide. [16] In Venezuela, the NED felt it made the right choice by supporting those who organized the coup d'état against Hugo Chavez in April 2002. [17]

In Iraq, the NED is once again busy searching for the right people and making sure they get adequate support. While RTI recruits people at the grassroots, the NED and its affiliates have been going around Iraq developing the machinery for scores of newly emerging homegrown political formations expected to contest the planned national elections or crowd the scheduled Constitutional Assembly before that.

In Baghdad, scores of houses have been refitted and renovated to be the headquarters of new political parties - many of them furnished by the NED. But it's not just a simple case of the NED dispensing cash. Since the occupation began, the NED's affiliates, the International Republican Institute (IRI) and the National Democratic Institute (NDI), have been going around Iraq holding political party development workshops, seminars, and focus group discussions. As with USAID sponsored "political party development" programs, they train Iraqis on the techniques of strategic planning, building up the party's local and regional structures, recruiting members, fund-raising and media relations. More advanced levels take up electoral communication strategies, campaign planning, and candidate recruitment. [18]

The NDI has been holding sessions for assessing party strengths and weaknesses and evaluating their potential for participating in elections. [19] The IRI, for its part, has gone as far as producing a database of parties, with information on each group's characteristics, their regions of operations, and estimates of

their memberships. [20] At least one of the parties, the Free Republican Party, has openly packaged itself as the Iraqi version of the US' Republican Party. [21]

Meanwhile, the US government has allotted funding to the usual NED conduits — American Federation of Labor - Congress of Industrial Organizations (AFL-CIO) and the US Chamber of Commerce— to build employers' groups and trade unions in Iraq. The latter is clear about what sort of business associations it plans to set up in Iraq and what role they will have. "By serving as a platform to voice the business community's needs and interests to political decision-makers, business associations contribute to the growth of a participatory civil society and the development of a regulatory and policy environment conducive to private enterprise," reads its report. One of the organizations they are founding, the Iraqi American Chamber of Commerce and Industry, is bent on "promoting an open market economy and a democratic political system." [22]

For now, the Rusafa district council members hang out doing nothing much in their RTI-renovated offices - and for the coalition forces, they are doing an excellent job. With no real power at all - not over budgets and not even on their meeting schedules [23] — the local council's main use to the occupation forces is to deflect criticism, to transmit the CPA's policies to the communities, and to placate the population and channel their political energies towards non-threatening actions. In Sadr City, for instance, the neighborhood council was deployed to calm down the people after a military helicopter knocked down a religious flag. [24] In Abu Nawas neighborhood, the council members were tasked to go from door to door to collect guns from their neighbors. [25]

After - or if ever - the bombs stop exploding, however, the US would like to see the layer of Iraqis they are creating as a social base to be calling the shots in the future Iraq. The "Iraqis out front" are being trained and honed to understand, defend, and implement the policies that the US wants Iraq to put in place for the long-term. USAID has learned that "legitimate" leaders are not just found, they're made. Before the US withdraws from the scene, it first has to ensure that its Iraqis will know what to do.

For this, Iraq has become a massive country-wide teach-in where hundreds of conferences,

seminars, forums, and workshops are being conducted by the CPA to teach the Iraqis the different components that make up “democracy” - many of them organized by RTI and other contractors and attended by local council members and NGO leaders. In Najaf, there was a workshop on “Constitutional Democracy: Rebuilding Society in a Democratic Age.” [26] Across Iraq, “Tribal Democracy Centers” have been set up to encourage sheikhs and tribal leaders to take the required classes. [27] Even elementary and high school students are starting young: every week, after flag ceremonies in their schools, teachers of “democracy” are given five minutes to expound on various concepts. [28] In the northern city of Arbil, where the lessons are far more advanced, Iraqis from the government, civil society, media, and the business community are undergoing a six-part series of “economic development clinics” for diagnosing the “potential role of Arbil in the global economy.” [29]

Among the most important lessons that the Iraqi trainees have to master is that the kind of “democracy” that the US is giving them is distinctive. It is no coincidence that Larry Diamond, one of the leading theorists on this type of democracy and a co-director of the NED, was appointed a senior advisor to the CPA. At a lecture in Hilla University last January, Diamond told his audience that a basic element of “democracy” is a “market economy” and among the most fundamental rights is the right to own property [30] - a view affirmed and advanced by the USAID.

This, in turn, calls for a kind of democracy in which social equality is not a necessary aim and in which inequalities may in fact be necessary. As Samuel Huntington, another scholar who supports this view of “democracy,” puts it: “Political democracy is clearly compatible with inequality in both wealth and income, and in some measure, it may be dependent upon such inequality...Defining democracy in terms of goals such as economic well-being, social justice, and overall economic equity is not, we have argued, very useful.” [31]

While they imbibe these fundamental lessons about the kind of democracy that they’re expected to put in place in the “new Iraq”, Iraqis would then be taught the operational details. RTI, for its part, is required by contract to “identify, prepare, and disseminate best practices in local governance.” [32]

“We don’t present ourselves as we have advice to offer to you, or we don’t present ourselves as here’s the best way to do something... [W]e have experience in a lot of countries in doing similar kinds of work, and so we do try to say, ‘In our experience, here are some best practices’,” explains Johnson, as though the Iraqis are given choices. [33] RTI’s record in dozens of other countries, as gathered from various USAID and RTI documents, shows what’s best.

In Central and Eastern Europe, RTI was involved in administering “shock therapy” to former Soviet Bloc states, moving the local governments toward open market economies. In Russia, Ukraine, Kazakhstan, Kyrgyzstan, it took part in the massive privatization program of over 150,000 state-owned enterprises. In Ukraine, RTI set up regional offices for disseminating “best practices” and its “advisors” developed the policy for setting the prices of local services. In Romania, where it prides itself in securing the enactment of a new municipal finance law, RTI created an association of municipal civil servants and “guided” them in lobbying for a new national legislative structure for local governments by teaching them the “best practices.”

Providing what it described as “high impact assistance” to national ministries and municipal associations setting Bulgaria’s fiscal decentralization policies, RTI pushed for the passage of a “Municipal Budget Act” and a “Municipal Borrowing Act.” Claiming to be giving “objective non-partisan assistance,” RTI was proud to report that it worked - on a daily basis - with officials from the Bulgarian Ministry of Finance drafting two policy papers on decentralization. In pushing for the privatization of its educational system, it also claims to have helped set what standard of education each pupil will get given the maintenance costs. In Poland, it developed training programs on the management of water and wastewater utilities. In privatizing and restructuring the housing agency of one city, RTI went so far as to provide samples of company charters as well as procedures for the meeting of shareholders to the newly privatized company.

In Indonesia, RTI trained bureaucrats to “restructure local water utilities into profit making entities” [34] by obliging Indonesian city-dwellers to pay for urban services. In Pakistan, RTI was recently contracted by USAID to privatize the country’s educational sys-

tem.[35] In South Africa, RTI boasts of drafting the constitutional amendment signed by President Thabo Mbeki in 2001 allowing municipalities to make loans. The South African government claimed that the Municipal Infrastructure Investment Unit, which assisted municipalities in getting financing for their local infrastructure through public-private partnerships, was part of a government agency. It was, in fact, created, run, and staffed by people from RTI. [36] To show how it's actually done, RTI conducted pilot demonstrations of how to privatize solid waste management in Tunisia.

RTI performed similar work throughout the Caribbean and Central America, including Guatemala and El Salvador, as well as in Ghana, Haiti, Honduras, Swaziland, Korea, and Portugal. This long and broad range of experience has given RTI reason to advertise its market niche. "We have particular expertise in helping prepare short- and long-term public-private partnerships for the financing and management of municipal services such as water supply, sanitation, waste management, energy, and transportation," RTI's website proudly notes.[37]

Given its background, its track record, and its self-avowed expertise, what constitutes RTI's "best practices" is obvious. Paid by the USAID, RTI has no choice but to follow the directives which USAID itself has made clear: "The safeguarding and protection of economic freedom lies at the heart of USAID's legal and institutional reform activities." [38] In its contracts with the USAID, RTI invariably works towards overhauling local governments in order to make them more market-oriented and friendlier to the private sector.

In Iraq, if the pieces fall into place, the council members and the NGOs will soon be sitting through lessons on the "best practices" of local governance and directed, as RTI's previous students from other countries have been, to reading materials such as The World Bank Tool for Private Sector Participation in Water and Sanitation.[39] If its previous use is any indication, even the financial spreadsheet software they will be tasked to master will fill a specific purpose: that of assessing the creditworthiness of their municipality. Already in Kerbala, local council members and bureaucrats have taken workshops in "Management Accounting and Reporting for Efficient and Effective Service Delivery." [40]

When the Iraqis eventually begin to roll up their sleeves and work on the nuts and bolts of their political system, RTI will be there every single step of the way - providing "technical assistance" in drafting the necessary laws, helping ministries understand and relay complex regulations to their constituencies, supplying them with "model" constitutional provisions, giving them access to the advice of "consultants" free of charge, handing them "technical" studies and background papers, doing PR work, etc. - all as part of an effort to "promote techniques for 'reinventing' local government," as the USAID puts it.[41]

"As the CPA and the Iraqi Governing Council advance in their efforts to strengthen national institutions, adopt and implement national policies, and design a political system for a future Iraq," notes the contractor, "RTI and our partners are working to ensure that the knowledge base generated by our field activities informs key decisions." [42] RTI's contract specifically spells out that they will "strengthen the capacities of NGOs...to advocate on behalf of preferred local policies." [43] The use of the passive tense is instructive because even as the contract avoids the question, it reveals who made the choice.

While RTI is out in the streets rounding up "legitimate" leaders, Bearing Point is working inside the offices of the Ministry of Finance or the Central Bank erecting Iraq's economic infrastructure - as designed and envisioned by the occupiers. It has taken to heart another important lesson USAID has learned: if reform is susceptible to being blocked by politicians and organized labor, then the solution is to keep key ministries like that of Finance and the Central Bank insulated.[44]

"We are now overhauling the functions of and building the institutional capacity of the entire ministry," Iraq's US-appointed Finance Ministry Kamal Gailani announced last February.[45] One of his first public appearances was to unveil possibly the most investor-friendly investment laws ever conjured. The CPA enacted Order 39 gives foreign investors rights equal to Iraqis in exploiting Iraq's domestic market and allows them full repatriation of profits.[46] The Economist heralded this a "capitalist dream" and a wire agency called it a "free market manifesto." [47] Not even the interim government, according to the US-IGC written transitional constitution, can overturn this order.

By “we,” Gailani would have included all the “technical advisors” hired by Bearing Point, another USAID contractor, who report to the “macroeconomic analysis unit” in his ministry. Bearing Point’s contract is very detailed - complete with schedules and benchmarks, and leaves no doubt as to what the US intends to do. It is chilling in its comprehensiveness and brazen in its wording. “The new government will seek to open up its trade and investment linkages and to put into place the institutions promoting democracy, free enterprise and reliance on a market-driven private sector as the engine of economic recovery and growth,” the contract reads, preempting anything the new government might want or not want to do.[48]

Instructed to coordinate with the US Treasury Department, the World Bank, the IMF and other donors, Bearing Point is mandated to ensure that Iraq’s investment policies conform to the over-all economic thrust put forward by the CPA as well as with all the WTO requirements and other multilateral financial institutions. With the help of Bearing Point, an offshoot of KPMG, one of the Big Five auditing firms, Iraq had granted “observer” status in the WTO - the first non-sovereign country to be admitted as such in the organization. The CPA-enacted Central Bank Law as well as its Company Law, which eliminates the previous requirement to have trade union representatives on the board of private companies, had been penned - or lifted from existing templates - by Bearing Point as though they were Iraq’s unelected legislators.

On the massive privatization program, over which Bearing Point is in charge, the contractor is told that “if changes to legislation are required, contractor will assist legislative reform specifically to allow for the privatization of State-owned industries and firms and/or establishing a privatization entity.” Not only will Bearing Point decide which state owned enterprises (SOEs) are up for bidding, it will also determine their prices and set up the secondary trading system for re-selling these companies. It is at this secondary market that the windfall profits would be made when the SOEs, having been bought at dirt-cheap prices, are re-sold. The profiles of the SOEs to be put on the bidding block have already been compiled and posted in the CPA website. It is an inventory of what The Economist calls a “yard sale.”[49]

So unsparing is USAID’s plan for Iraq that even the educational system is being geared towards the global marketplace by another contractor, Creative Associates. Its task is to “coordinate” with other agencies in supervising textbook production, training teachers, and school kits. Among its targets, as listed in its \$62 million-contract, is “enhanced public-private partnerships for education service delivery.”[50] While Bearing Point acts as Iraq’s unseen de facto legislature, Creative Associates acts as its thought police in determining what Iraqi students should and should not learn. In a telling sign of who will set Iraq’s educational policy - and possibly shape the minds of generations of students and re-write Iraqi history — the contract explicitly states that “USAID shall review the contents of all teaching materials before they are published.”[51]

In assessing these teaching materials, USAID will be guided by its own pedagogical philosophy. According to its report, educational policies must respond to the shift in global markets from low-cost labor to high-end manufacturing. USAID administrator Andrew Natsios thereby recommends that “education systems in developing countries must broaden their sights - and US foreign assistance must offer more support for secondary education for the global marketplace.”[52] Learning must be based on demand so they can meet the needs of the global market. It’s no longer enough to count on primary education to prepare young people for employment. Hence, “[s]econdary education and skills-based learning must now be considered as essential elements in tapping into the global economy - and in building democratic institutions.”[53]

The USAID takes pains to convince Iraqis that all these measures are in their best interests because they supposedly ensure that the new Iraq succeeds in the global economy. “Globalization and regional integration have benefited countries regardless of their stage of development,” the USAID maintains.[54] At the same time, USAID is quick to point out, this success will also rebound to the US. “Successful development abroad generates diffuse benefits. It opens new, more dynamic markets for US goods and services. It generates more secure and promising environments for US investment.”[55]

If Iraq is “today’s California Gold Rush,” as former CPA director of private sector Tom Foley

calls it,[56] then the silent battalion of private contractors exemplified by RTI, Bearing Point, and Creative Associates, is erecting the legal and institutional structures for ensuring that the occupiers get the most gold in that rush. “Business conditions are improving everyday in Iraq, creating a greater opportunity for US business to explore virtually an untapped market,” cheerfully noted US Commerce Secretary Don Evans. From laying the foundations through to choosing the colour scheme, the US is attempting to transform Iraq along free market lines and to install one of the most radical sets of neo-liberal economic policies ever dreamed up.[57]

If Iraq is to be the “capitalist dream,” then these private contractors are the ones making these dreams come true.

In this complex and ambitious plan, RTI, Bearing Point, and Creative Associates, and the other contractors in Iraq are applying what the US government has learned from decades of using foreign aid to push for “policy reforms” in scores of countries around the world.[58] According to USAID, the successful adoption of US-backed policies requires “political will” which can come from three sources: from the state, the ruling elites, or government bureaucrats; from civil society; and from foreign governments and civil society.

Focusing on only either the state or the ruling elites, USAID learned, is not enough. “Even if state elites propose reforms - for example, to privatize state industries, improve the tax system, or crack down on smuggling and bribery - these reforms may not be sustainable unless society is educated about the need for them and mobilized to support them,” the report Foreign Policy in the National Interest points out. This explains why the US - as seen by the proliferation of USAID-funded NGOs and other organizations - is also very hot on “civil society.” “Organized pressure from below, in civil society, plays an essential role in persuading ruling elites of the need for institutional reforms to improve governance,” the report notes.[59]

In Iraq, the US-sponsored civil society is intended to function as a back-up in case the subsequent government - despite all the safeguards to retain influence that the US is attempting to lock-in - still refuses to pursue “reforms” after the US leaves. “What we are

hoping is... that there will be this moderating influence that will have an effect on the way that people at the national level choose to behave,” a USAID official said. “Now we know... that we stand a better-than-even chance of moderating some of the extreme behavior at the top.”[60] Controlling the \$18.4 billion dollar reconstruction fund as a lever of power, the US is blunt about what it should do in case the future government does not take up its recommended reforms: “If there is no political commitment to democratic and governance reforms, the United States should suspend government assistance and work only with non-government actors.”[61] USAID calls this “tough love.”[62]

According to the USAID’s review, “reforms” don’t succeed because of the failure to organize wider constituencies among “stakeholders.” This is where foreign aid comes in. “Where political will for systemic reform is lacking,” says the report, “the main thing that foreign assistance can do is to strengthen the constituencies for reform in civil society...”[63] Foreign aid will be used to educate them about the preferred policies and learn about the experience of other countries, improve their coordination with each other, enhance their ability to lobby and to project themselves as experts, and campaign for support from more people. Interest groups such as trade unions, chambers of commerce, think tanks and the mass media should be specifically targeted.

A crucial element for the “reforms” to succeed, the USAID points out, is the perception of “ownership.” The adoption of “reforms” must not be seen as externally imposed, the way the IMF’s structural adjustment policies were or those of a direct colonial authority would be, for example. It is important that the “best practices” that the RTI is teaching Iraqis will, in the end, be seen as proposed by the Iraqis themselves - and not rammed down the Iraqis’ throats by RTI.

#### ‘POLICY CHAMPIONS’

Guided by these realizations, USAID has developed a step-by-step list of tasks to improve the likelihood of “reforms” being successfully embraced.

The first among these tasks is what USAID calls “legitimation” or the means for getting “buy-in” from the people who should be seen as owning the policies. In this stage, USAID should single out what it calls “policy champi-



ons” who could be relied on to act as the main proponents of the policy. Drawing from its “Policy Implementation Toolkit,” USAID contractors are expected to carry out “stakeholder analysis” because this “helps managers to identify individuals and groups that have an interest, or stake, in the outcome of a policy decision.”[64]

To carry out this analysis, USAID contractors must create and maintain a catalog of stakeholders and classify them either as “supporters,” “opponents” or “neutral parties. They should also be able to prioritize “which groups are the most important ones for managers to seek to influence.”[65] A more advanced version of the analysis is what USAID calls “political mapping” which should provide a graphic guide to the political landscape facing a certain policy. This tool “permits a finer grained assessment of the support and opposition facing policy implementation and allows implementers to track how various implementation strategies might rearrange coalitions of supporters and opponents.”[66]

Somewhere at the USAID headquarters in Baghdad’s heavily fortified Green Zone presumably hang these political maps. What better way to gather data for “stakeholder analysis” and for “political mapping” than to sit through all of the local council meetings or be planted in the ministries, observe the members and bureaucrats, and take notes? RTI is incidentally under contract to “develop a body of knowledge that is essential to effective program implementation” by making reports on various aspects of Iraqi society, including “appropriate and legitimate leadership” and the “status of local governance.”[67] At a time when Iraq’s governors are selected by “screening committees” rather than the people at large, the information that RTI gathers on the ground should be useful not only for getting the pulse of the people but also for identifying “policy champions” to be endorsed to higher ranking positions in government or “opponents” to be marginalized and countered. No need for deep penetration agents; RTI’s immersion in the local communities is a perfect method for surveillance.

The second task is “Constituency Building” or “gaining active support from groups that see the proposed reform as desirable or beneficial” and which is intended to “reduce or deflect the opposition of groups who consider the proposed reform measure to be harmful or threatening.”[68] Here, the plethora of workshops

and conferences that the USAID is organizing become useful not just as educational sessions but also for building consensus and developing common plans of actions among “policy champions.” “It is of vital importance to set up groups of activists in every locality,” RTI noted from its experience in Ukraine.[69] Building consensus is key because, as USAID points out, “The broader and more sustained elite consensus in favor of governance reforms, the greater the impact of democracy and governance programs tend to have.”[70]

In a sense, the USAID and its contractors are having it easier in Iraq. In most of the other countries where it has projects in, USAID has no choice but to work through existing institutions and work with people that are already in power to implement its “reform” programs. Confronting circumstances that are often beyond its control, USAID had to seize on opportunities such as constitutional reforms, the passage of bills or the implementation of administrative regulations to push for its preferred policies. In the jargon of USAID, these are the “entry points”.[71] To increase its chances of succeeding, USAID contractors are instructed to look for “sympathetic” ministers in the national administration or a chairperson of a strategic parliamentary commission in the legislature, as well as to set up and support associations of elected officials or bureaucrats. USAID calls this “capitalizing on national opening.”[72]

In Iraq, the “entry point” was the invasion. The “national opening” was the collapsed state left in its wake. There are no existing institutions to work through; the US is attempting to create them from the ground up. From the rubble of the bombed-out ministry buildings scattered all over Baghdad new government agencies are rising, designed and constructed by the occupation authorities from the bottom-up. The “legitimate leaders” are not to be identified and co-opted, they have to be groomed and primed. In other countries, USAID operators have to cajole, intimidate, threaten, or effectively coerce governments to submit to its “reforms”. In Iraq, they are the government. There is no need to tweak or tinker with Iraq’s laws because they are being written on a blank slate. All this is possible because of the rare opportunity offered by the war. In Iraq, the first step was not “legitimation” or “constituency-building.” It was dropping bombs.

Because of the size of their contracts and the allegations of corruption involved, other reconstruction contractors like Halliburton and Bechtel have been more controversial. In their attempt to fundamentally alter Iraq's economic, political and social landscape, the impact of less well-known contractors such as RTI, Bearing Pont and Creative Associates, may be more profound, more far-reaching, and more lasting. Halliburton is merely repairing the oil wells; Bechtel is merely building schools. In a way, Bearing Point is going to determine the future of Iraq's oil industry; Creative Associates is going to decide what will be taught inside the schools that Bechtel is building.

By having the power to plan Iraq's economic institutions, Bearing Point's success or failure will affect the fortunes not just of Bearing Point but of all the corporate interests who hope to benefit from Iraq's new economic policies. The amount of money spent on these efforts may be small relative to other aspects of the war. But as the USAID noted, in the long run, the "influence potential" of the kind of work it is doing in Iraq is much more important than its "resource contribution." [73] The NED may not be killing Iraqis but, as Heritage Foundation analyst said, it is "an important weapon in the war of ideas." [74]

A few weeks after the interview at the Rusafa district council, one of its members, al-Azawi, the one who was very happy to see the end of the dictatorship and who was very eager to be part of RTI's "new Iraq," was killed by the resistance. Ironically, despite the relative ease with which USAID's programs are being implemented in Iraq, Sheik al-Azawi's death underscore why it may not all be that easy.

[1] Interview, 27 March 2004  
 [2] United States Agency for International Development, *Foreign Aid in the National Interest*, 23  
 [3] USAID website, [www.usaid.gov](http://www.usaid.gov)  
 [4] USAID contract with RTI, C-1.  
 [5] USAID Local Governance Consultation transcript, 30 September 2004, USAID website  
 [6] Interview, 29 March 2004  
 [7] Chris Kromm, Rania Masri, and Tara Purohit, "Why No Democracy in Iraq?," *Counterpunch*, February 23, 2004  
 [8] Ariana Eunjung Cha, "Iraq Has Lessons in Democracy," *Asian Wall Street Journal*, November 25, 2003  
 [9] Interview, 23 March 2004.  
 [10] William Booth and Rajiv Chandrasekaran, "Occupation Forces Halt Elections Throughout Iraq," *Washington Post*, June 28, 2003  
 [11] Edward Wong, "US tries to give moderates an edge in Iraqi elections," *New York Times*, January 18, 2004  
 [12] Alissa Rubin, "Suging Shiite Demands Put US in a Bind," *Los Angeles Times*, January 18, 2004  
 [13] Thomas Friedman, "More Americans Out Back, More

Iraqis Out Front," *International Herald Tribune*, August 21, 2003

[14] See William Robinson, *A Faustian Bargain: US Intervention in the Nicaraguan Elections and American Foreign Policy in the Post-Cold War Era* (Boulder: Westview, 1992)  
 [15] John Stauber and Sheldon Rampton, *Toxic Sludge is Good for You*, (Monroe, Maine: Common Courage Press, 1995), 166.  
 [16] Thomas Monnay, "Anti-Aristide Groups Split Threat to Future," *Sun-Sentinel.com*, February 14, 2004  
 [17] Duncan Campbell, "American Navy 'helped Venezuelan coup'," *Guardian*, April 22, 2002,  
 [18] Ronald Shaiko, "Political Party Development and USAID," *Democracy Dialogue*, December 1999.  
 [19] CPA Administrators Weekly Governance Report, March 13-19, 2004.  
 [20] CPA Administrators Weekly Governance Report, February 7-13, 2004  
 [21] CPA Administrators Weekly Governance Report, various dates.  
 [22] Raad Ommar and Sabah Khesbak, "Conditions and Expectation for Private Enterprise in Iraq," Iraqi American Chamber of Commerce and Industry, undated report; Nick Nadal and Zaid Abdul Hamid Abdul Moneim, "Iraq Trip Report," Center for International Private Enterprise, internal memo, August 23-31, 2003.  
 [23] Baghdad Citizen Advisory Council Handbook.  
 [24] USAID Local Governance Consultation transcript, September 30, 2003, USAID website.  
 [25] Interview, 29 March 2004.  
 [26] CPA Administrators' Weekly Governance Report, January 31- February 6, 2004.  
 [27] "Democracy Building in South Central Iraq," CPA Press release, January 21, 2004.  
 [28] Coalition Provisional Authority Administrators Weekly Governance Report, February 28- March 5 2004.  
 [29] CPA Administrator's Weekly Governance Report, March 6 - 12, 2004.  
 30 "Democracy Building in South Central Iraq," CPA Press Release, January 21, 2004.  
 [31] Samuel P. Huntington, "The Modest Meaning of Democracy," in Robert A. Pastor, *Democracy in the Americas: Stopping the Pendulum*, New York: Holmes and Meier, 1989, p. 12-13, cited in Robinson, 55.  
 [32] USAID contract with RTI, C-2.  
 [33] USAID Local Governance Consultation transcript, September 30, 2003, USAID website  
 [34] USAID data sheet.  
 [35] "USAID allocates \$60 million for educational reforms in Pakistan," *Daily Times*, February 19, 2004.  
 [36] Public Services International, August 20, 2002.  
 [37] RTI website, [www.rti.org](http://www.rti.org)  
 [38] USAID website.  
 [39] USAID Making Cities Work website.  
 [40] CPA Administrator's Weekly Governance Report, January 31- February 6, 2004, CPA website.  
 [41] Center for Democracy and Governance, *Decentralization and Democratic Local Governance Programming Handbook*, (Washington: USAID, 2000) 45, 49.  
 [42] "The Local Governance Project in Iraq," RTI website, [www.rti.org](http://www.rti.org).  
 [43] USAID contract with RTI, C-2.  
 [44] David Sogge, *Give and Take: What's the Matter with Foreign Aid*, (London: Zed Books, 2002), 189.  
 [45] Kamal Gailani, opening statement during press conference, February 6, 2004.  
 [46] Coalition Provisional Authority Order Number 39  
 [47] "Let's All Go to the Yard Sale," *Economist*, September 25, 2003; Reuters, September 21, 2003

[48] USAID contract with Bearing Point, 77  
 [49] "Let's All Go to the Yard Sale," *Economist*, September 25, 2003  
 [50] USAID contract with Creative Associates, 4  
 [51] USAID contract with Creative Associates, 3  
 [52] *Foreign Aid in the National Interest*, iii  
 [53] *Foreign Aid in the National Interest*, 18  
 [54] *Foreign Aid in the National Interest*, 13  
 [55] *Foreign Aid in the National Interest*, 2  
 [56] CPA Press Release, "Commerce Secretary Evans Urges US Business to Deal with Iraq," February 12, 2004  
 [57] Iraq is only the jump-off point, however. Bush has struggled to launch the Broader Middle East and North Africa Initiative as a "forward strategy of freedom" for promoting "democratization" and "free markets" in the strategic region. Among the components of this initiative include the launch of the Middle East Free Trade Area shortly after the invasion last year, the accession of the various "reformed" countries to the World Trade Organization, and the signing of Status-of-Forces type military agreements with the US (Robin Wright and Glen Kessler, "Bush Aims for 'Greater Mideast Plan,'" *Washington Post*, February 9, 2004).  
 USAID, the NED, and their private contractors - backed by the US military housed in the planned permanent bases in Iraq - are expected to take the lead. NED has already requested for a budget increase while USAID has singled out the region for having "strongest obstacles to democracy and the greatest near term dangers for US national security." (*Foreign Aid in the National Interest*, 38) By obstacles, it meant not only the presence of authoritarian regimes but of encumbrances to trade. "A recent survey of nine ME countries concluded that a lack of trade openness and significant barriers to private sector development limit potential for foreign trade," the USAID took note. (*Foreign Aid in the National Interest*, 62)  
 [58] For more on this, see William Robinson, *Promoting Polyarchy: Globalization, US Intervention, and Hegemony*, (Cambridge: Cambridge University Press, 1996), pp. 48-56.  
 [59] *Foreign Aid in the National Interest*, 48  
 [60] USAID Local Governance Consultation transcript, June 19, 2003  
 [61] *Foreign Aid in the National Interest*, 10  
 [62] *Foreign Aid in the National Interest*, 50, 51  
 [63] *Foreign Aid in the National Interest*, 48  
 [64] *Policy Implementation: What USAID has Learned*, 11.  
 [65] USAID Center for Democracy and Governance, *Policy Implementation: What USAID has Learned*, (Washington D.C. USAID, 2001), 11.  
 [66] *Policy Implementation: What USAID has Learned*, 12.  
 [67] USAID contract with RTI, C-1.  
 [68] *Policy Implementation: What USAID has Learned*, 5  
 [69] RTI Ukraine project website.  
 [70] *Foreign Aid in the National Interest*, 48  
 [71] *Decentralization and Democratic Local Governance Programming Handbook*, 35.  
 [72] *Decentralization and Democratic Local Governance Programming Handbook*, 33.  
 [73] Nelson, J. and G. Ranis, "Measures to ensure the effective use of aid," USAID discussion paper, 1966, quoted in Wood, R.E., *From Marshall Plan to Debt Crisis: Foreign Aid and Development Choices in the World Economy*, Berkeley: University of California Press, 1986  
 [74] cited in Barbara Conry, "Loose Cannon: the National Endowment for Democracy," *Cato Foreign Policy Briefing* No. 27, November 8, 1993

## WHAT TO EXPECT FROM US "DEMOCRACY PROMOTION" IN IRAQ\*

By William I. Robinson\*

The US plan for "promoting democracy" in Iraq is an integral component of its overall interventionist project in the Middle East. US rulers are deeply divided over the invasion and occupation of Iraq and they face an expanding foreign policy crisis. Nonetheless, there is consensus among them, and among transnational elites more generally, on political intervention under the rubric of "democracy promotion." Such political intervention is not just a Republican, much less a Bush regime policy, and as such it plays a key legitimating function.

The June 30 "restoration" of Iraqi sovereignty will presumably be followed by elections in early 2005 or thereabouts. The US government has already allocated \$458 million dollars for a program to "promote democracy" in Iraq. The contours of this program are not yet clear. But judging by the general pattern of US "democracy promotion" around the world, we can expect that this program will involve funding by Washington through numerous channels – both overt and covert – of political parties and other elite forums in Iraq, as well as a series of organizations in Iraqi civil society, among them, trade unions, business councils, media outlets, student groups, and professional associations.

These "democracy promotion programs" are part of a larger "four step" plan for the entire Middle East, announced by Washington in 2003, using its occupation of Iraq as leverage. First was a resolution of the Palestinian-Israeli conflict (the "road map" has, of course, since collapsed). Second was a "Middle East Partnership" to "build a civil society" in the region. Such "civil society" programs typically attempt to groom new transnationally-oriented elites, and in this case, to incorporate the Arab masses into a civil society under the hegemony of these elites. Third was the region's further integration into the global economy through liberalization and structural adjustment. And fourth was preventing the rise of any regional military challenge to the emerging US/transnational domination. The overall objective was to force on the region a more complete integration into global capitalism.

The US has three goals for the political system it will attempt to put into place in Iraq. The

first is to cultivate transnationally-oriented elites who share Washington's interest in integrated Iraq into the global capitalist system and who can administer the local state being constructed under the tutelage of the occupation force. The second is to isolate those counter-elites who are not amenable to the US project, such as nationally (as opposed to transnationally) oriented elites and others in a position of leadership, authority and influence, who do not share US goals. The third is establish the hegemony of this elite over the Iraqi masses, to prevent the mass of Iraqis from becoming politicized and mobilized on their own independent of or in opposition to the US project, by incorporating them "consensually" into the political order the US wishes to establish.

The type of political system Washington will attempt to establish in Iraq has little to do with democracy and should not be referred to as such, as the terminology itself is ideological and intended to give an aura of legitimacy to US intervention. It does not involve power (cratos) of the people (demos), much less an end to class and foreign domination or to substantive inequality. This political system is more accurately termed polyarchy - a system in which a small group actually rules on behalf of (transnational) capital and mass participation in decision-making is limited to choosing among competing elites in tightly controlled electoral processes.

US policymakers began to abandon the dictatorships that they had relied on in the post-World War 2 period to assure social control and political influence in the former colonial world. It began instead to promote polyarchy in the 1980s and 1990s through novel mechanisms of political intervention, in the context of globalization and in response to the crisis of elite rule that had developed in much of the Third World in the 1970s. The change in policy was an effort to hijack and redirect mass democratization struggles, to undercut popular demands for more fundamental change in the social order, and to help emerging transnationally-oriented elites secure state power through highly-contested transitions, and to use that power to integrate (or reintegrate) their countries into the new global capitalism.

The policy shift represents an effort by transnational elites to reconstitute hegemony through a change in the mode of political domination, from the coercive systems of social

control exercised by authoritarian and dictatorial regimes to more consensually-based systems of based on polyarchy. Transnational elites hope that the demands, grievances and aspirations of the popular classes will become neutralized less through direct repression than through ideological mechanisms, political cooptation and disorganization, and the limits imposed by the global economy. Polyarchy has been promoted by the transnational elite as the political counterpart to the promotion of neo-liberalism, structural adjustment, and unfettered transnational corporate plunder. US "democracy promotion" intervention, in this regard, generally facilitates a shift in power from locally and regionally-oriented elites to new groups more favorable to the transnational agenda.

The countries most often targeting for US political intervention under the rubric of "democracy promotion" are:

1) Those Washington wishes to destabilize, such as, in recent years, Venezuela and Haiti, and earlier in Nicaragua. The groups and individuals that participated in the destabilization of the Aristide government and that are now in power were precisely those groomed and cultivated by US "democracy promotion" programs dating back to the late 1980s and undertaken continuously right up to the March 2004 US coup d'etat. And in Venezuela, the opposition to the government of Hugo Chavez has been working closely with the US "democracy promotion" network.

2) Those where popular, nationalist, revolutionary and other progressive forces pose a threat to the rule of local pro-US elites or neo-liberal regimes. These elites are bolstered through political intervention programs, such as those conducted in El Salvador, where the ARENA party was supported and the FMLN marginalized through "democracy promotion" leading up to the March 20, 2004 elections. These types of programs have been conducted in dozens of countries.

3) Those targeted for a "transition," that is, a US supported and often orchestrated changeover in government and state structures. South Africa and Eastern European countries fell into this category, as does currently Iraq.

It is worth noting that the US and other Western powers since the 1980s have been promoting polyarchy in Latin America (the original testing ground for the strategy), Eastern

Europe, Africa and some of Asia, but until now have preferred to see the sheiks, monarchies and authoritarian regimes remain in power in much of the Middle East.

“Democracy promotion” programs involve several tiers of policy design, funding, operational activity, and influence. The first involves the highest levels of the US state apparatus - the White House, the State Department, the Pentagon, the CIA, and certain other state branches. It is at this level that the overall need to undertake political intervention through “democracy promotion” in particular countries and regions is identified as one component of overall policy towards the country or region in question. Such “democracy promotion” programs never stand on their own; they are always just one aspect of larger US foreign policy operations, and are synchronized with military, economic, and other dimensions.

In the second tier, the US Agency for International Development (USAID) is allocated hundreds of millions of dollars, which it doles out, either directly or via the National Endowment for Democracy (NED), and occasionally other agencies such as the US Institute for Peace (USIP), to a series of ostensibly “private” US organizations that are in reality closely tied to the policymaking establishment and aligned with US foreign policy. The NED was created in 1983 as a central organ, or clearinghouse, for new forms of “democratic” political intervention abroad. Prior to the creation of the NED, the CIA had routinely provided funding and guidance for political parties, business councils, trade unions, student and civic groups in the countries in which the US intervened. In the 1980s a significant portion of these programs were shifted from the CIA to the AID and the NED and made many times more sophisticated than the often-crude operations of the CIA.

The organizations that receive AID and NED funds include, among others (the list is extensive): the National Republican Institute for International Affairs (NRI, also known as the International Republican Institute, or IRI) and the National Democratic Institute for International Affairs (NDI), which are officially the “foreign policy arms” of the US Republican and the Democratic parties, respectively; the International Federation for Electoral Systems (IFES); the Center for Democracy (CFD), the Center for International Private Enterprise (CIPE); and the Free Trade Union Institute (FTUI). US universities, private contractors,

and organic intellectuals may also be tapped. For instance, the Los Angeles Times of March 20, 2004, reported that Larry Diamond of Stanford University, a leading intellectual associated with the new political intervention, was brought into Iraq in January to lecture on “democracy” to “700 Iraqi tribal leaders, many of them wearing Western business suits underneath their robes.” While these “private” organizations are likely to become involved in Iraq, the Pentagon will surely continue its own political operations inside the country, such as its sponsorship of the Iraqi Media Network, launched by Pentagon contractors with some \$200 million.

In the third tier, these US organizations provide “grants” – that is funding, guidance and political sponsorship – to a host of organizations in the intervened country itself. These organizations may have previously existing and are penetrated through “democracy promotion” programs in new ways into US foreign policy designs, or they may be created entirely from scratch. These organizations include local political parties and coalitions, trade unions, business councils, media outlets, professional and civic associations, student groups, peasant leagues, and so on. Many of these groups may tout themselves as “non-partisan.” They may well be with regard to local political currents but not with regard to the overall objectives of US policy. When elections are held the interventionist network invariably funds or creates electoral monitoring and “get out the vote” groups that appear as local “non-partisan” democratic civic groups but in practice play a central facilitating and legitimating role in the program.

We may see in Iraq another modus operandi of US political intervention, in which US operatives chose for strategic reasons to work through third-country groups. For instance, in its extensive political intervention activities in Nicaragua in the 1980s the US “democracy promotion” apparatus worked through a number of Venezuelan political and civic organizations. Proxy Venezuelan operatives actually conducted programs on the ground in Nicaragua. As Spanish-speaking Latin Americans, these operatives were able to achieve a level of legitimacy, penetration and influence impossible for gringos. In Iraq, therefore, the US may choose at some point to mount political intervention programs via Jordanian, Egyptian, and other Middle Eastern-based groups. Those

monitoring political intervention in Iraq will want to look out for the creation of NGOs in the country (we are likely to see a dramatic NGO-ization). While many of these may be authentic Iraqi and foreign groups, others will undoubtedly be part of the US-mounted political intervention network.

Washington hopes to create through its “democracy promotion” programs “agents of influence” - local political and civic leaders who are expected to generate ideological conformity with the elite social order under construction, to promote the neo-liberal outlook, and to advocate for policies that integrate the intervened country into global capitalism. These agents are further expected to compete with, and eclipse, more popular-oriented, independent, progressive or radical groups and individuals who may have a distinct agenda for their country.

The US goal is to make the conquest of Iraq a Janus-faced project of consent and coercion, or more aptly, consent backed up by coercion. “Democracy promotion” programs are not intended, as a matter of course, to replace military intervention but to complement it. US and international operatives hope that political intervention will lead to the establishment of internal consensual mechanisms of domination as the flip side of direct coercive domination by US armed force. The operation of local paramilitary forces and even death squads is not necessarily anathema to US-sponsored political transitions in intervened countries. Such forces may well develop in Iraq in some sort of a synergic relation with the civic and political network that US political intervention will cultivate.

It is important to emphasize that many individuals brought into US “democracy promotion” programs are not simple puppets of US policy and their organizations are not necessarily “fronts” (or in CIA jargon, “cut-outs”). Very often they involve genuine local leaders seeking to further their own interests and projects in the context of internal political competition and conflict and of heavy US influence over the local scene. Moreover, old and new middle classes, professional and bureaucratic strata may identify their interests with the integration or reintegration of their countries into global capitalism under a US canopy. These classes may be politically disorganized or under the sway of counter-elites and of nationalist, popular, or radical ideologies. They often

become the most immediate targets of “democracy promotion,” to be won over and converted into a social base for the transnational elite agenda.

Hence, promoting polyarchy in Iraq, as elsewhere, will be more than just theatrical activity to gain international legitimacy for a regime brought into being by foreign occupation. Washington hopes it can bring together a national elite that can act as effective intermediaries between the Iraqi masses and the US/transnational project for the country. This elite is expected to establish its effective control over the political society between created by the US occupation force and its ideological hegemony over the country’s fragmented and unruly civil society. The objective is to bring about a political order that can achieve internal stability as the necessary condition for the country to function as a reliable supplier of oil, an investment outlet for transnational capital, and a platform for further transnational economic and political penetration of the Middle East.

The US program will likely seek to privatise everything as it integrates Iraq into global capitalism and opens up the country’s resources and labor force to transnational corporations. But here it must count on local political, business, and civic intermediaries that will be cultivated by US “democracy promotion” programs and brought together into a functioning network attuned to the US/transnational program. These elites will pursue their own interests within the broader project and as a matter of course there will be multiple points of friction among them, and between them and their US overlords.

The “democracy promotion” program in Iraq will involve the older generation of “jackals” (the Chalabis, Pachachis, and so on) and their organizations – indeed, they are already deeply implicated in the US occupation - but it will also attempt to identify new leaders and prominent figures among diverse sectors and communities, and to bring them into the dominant project. Washington knows that it cannot count alone on the old class of exiles and assorted jackals as internal representatives of the transnational project. It must be able to identify and cultivate leaders that can garner a minimum of legitimacy among the country’s diverse and fractious ethnic and religious communities and social sectors.

To this end, Washington will sponsor numerous

consensus-building processes and forums in and outside of Iraq, with the participation of a broad range of groups and individuals from Iraq and from third countries. These forums will include Iraq-wide and international conferences on “promoting democracy.” US operatives will identify hundreds, perhaps thousands, of individuals it believes can be brought into the program. They will be invited to these conferences and to numerous gatherings in and outside of Iraq for “democracy training.” Local media outlets funding by the program will give constant coverage and propaganda to those organizations and individuals drawn into the “democracy promotion” network, and will ignore, sideline, or malign independent organizations that compete with the US/transnational agenda.

What is crucial to reiterate is that weaving together a pro-Western elite capable of assuming the reigns of local power (no matter how limited, fragmented and controlled by Washington) is only half the US strategy. The other half is to try to control and suppress alternative political initiatives within civil society and prevent popular or independent political voices from emerging. As the US moves forward with plans to turn over “sovereignty” to a hand-picked and unrepresentative body “democracy promotion” programs will have the twin objectives of: 1) fostering political and civic organizations in civil society that can build a social base for a new Iraqi government; 2) suppressing and isolating those organizations and social movements that oppose the US program and put forward an alternative. In this regard, “democracy promotion” will seek to politically incorporate mass resistance by safely channeling it into formal, sanitized, and bureaucratized “politics” managed by the string of political, business, and civic organizations propped up by political intervention. This is how polyarchy is supposed to function: to absorb threats and to reproduce the social order.

The Bush regime (along with other US and transnational elites) hopes a “transition to democracy” will provide a viable “exit” strategy. But this is close to impossible, a veritable imperial pipedream. Establishing a functioning polyarchy is a near impossibility, given the rivalries, petty ambitions, and struggles for the spoils of local power among the jackals, the political, ethnic and religious splits among them, the rise of counter-elites, the expanding resistance, and the dim prospects of pacifying a

colonized and restive population. If the Iraq invasion and occupation is the most massive US intervention since Vietnam, it is also the most stunning – indeed, insurmountable – chasm that we have seen since Washington’s Indochina quagmire between US intent, on the one hand, and the actual US ability, on the other hand, to control events and outcomes.

\* For more detailed history and analysis on US “democracy promotion,” see two earlier books on the subject by William I. Robinson: “Promoting Polyarchy: Globalization, US Intervention, and Hegemony” (Cambridge University Press, 1996), and “A Faustian Bargain: US Intervention in the Nicaraguan Elections and American Foreign Policy in the Post-Cold War Era” (Westview Press, 1992). [wirobins@soc.ucsb.edu](mailto:wirobins@soc.ucsb.edu). Bill Robinson ...

## NICARAGUA'S AND LATIN AMERICA'S "LESSONS" FOR IRAQ

By Alejandro Bendaña\*

An analytical distinction should be made between US political interventions employing primarily economic weapons in order to destabilize a popular or nationalistic government, AND a US military intervention employing (subsequently) political and economic means in order to "stabilize" an implanted regime. Most interventions US interventions in Latin America took the form of the first, albeit indirect proxy military pressure was placed on Nicaragua. However, the 2004 intervention in Haiti, as with Iraq and Afghanistan, belong to the second category. The strategies and the stakes are different, but the end goal is the same: control.

Traditionally the US will act against elected governments in Latin America that show inclinations to redistribute wealth and challenge imperial/corporate hegemony. Aside from destabilization as was the case against the Allende government in Chile in 1973 utilizing covert operations. Additionally, in recent times, interventions make use of political and electoral mechanisms to help insure the victory of pro-US candidates and/or denying legitimacy to independently elected official, particularly those that refuse to undergo privatization and liberalization. In Venezuela, the United States is making use, through the pro-US opposition, of the Electoral Council and the Judiciary, along with the principal press organs, to force President Chávez out of office. Coup makers one year ago proved to be funded by the National Endowment for Democracy, whose mandate in general is to "strengthen" democracy.

In Nicaragua and elsewhere, the National Democratic Institute and especially the International Republican Institute—congressionally funded foreign policy wings of the Democratic and Republican parties respectively—engage directly with pro-US oppositions, including media and labor unions. At the same time the US government and the international financial institutions will cut off loans, credits and aid pushing third country donors to freeze cooperation, as was the case in Haiti and Nicaragua. The political interventions do not shy away from violence, fomenting provocation and confrontations with authorities: All in the name of democracy.

Oil wealth makes it difficult for the US to employ economic intervention as effectively in Venezuela, as it has in the cases of Nicaragua and Haiti. Washington exploits and expands existing social-cultural contradictions in order to further its interests, creating, if need be, its own social base.

During the 1980s the Sandinista Government resisted US military pressure and an economic embargo. The government overcame the military (contra) pressure, but lost control of the economy. In 1990, the government was forced to call elections in which the Sandinista Party (FSLN) lost to a US-organized and financed legal opposition coalition, while holding the contra army in reserve in case the FSLN won at the polls as was expected. The US would support the results of a "free" election only if its own side won. The US and the right wing in Central America have made extensive use of scare tactics to influence the electoral results, most recently in El Salvador in the March 21, 2004 elections.

Regime imposition as the product of military intervention introduces new variables, although other elements remain constant. The objective is sustaining a regime created by the US and which it must uphold at almost any cost. Haiti (following the overthrow of Aristide), Kosovo, Afghanistan and Iraq may be examples.

What the imperialist's call "nation-building" or "peace-building" refers to the need to construct and uphold a political and social regime in the "post-war" or, more accurately, post-military intervention scenario. It entails a qualitatively more intensive modality of engagement characterized by acute micro-management of the proxy government. According to the influential right wing think tank Rand Corporation's best practices study, "nation-building" is not primarily about rebuilding a country's economy, but about transforming its political institutions.

Washington assigns some of the task to the European Union or NATO in the case of the Balkans and Afghanistan, but this has not been the case so far in Iraq. East Timor represents a different situation where the UN was told to re-assume trusteeships of the new nation. It is with Afghanistan and particularly Iraq that the United States has assumed the full-fledged responsibility for "nation-building" (absent in



Somalia and experimented with in Bosnia and Kosovo) and with it a long term commitment to maintain its presence in all forms.

Massive US occupation carries its dynamics extending far and deep into the post-war “reconstruction” and characterized by an enduring US military presence including permanent bases. The historical precedents are Germany and Japan following the Second World War. As in Iraq, the goal was to eradicate a regime, including the dismantling of its military, ensuring the re-orientation of its politics and educational systems. Direct assumption of police and security by US troops is a crucial differentiation where the emphasis is on “stabilization” not de-stabilization.

An influential Rand Corporation study insists this is the essential policy and historical framework that is—or should be—the one guiding present US policy and planning for the period following the alleged military withdrawal. Robert Brenner has referred glowingly to the report and its recommendations. According to that study, “early elections [Bosnia] driven by a desire to fulfil departure deadlines and exit strategies, can entrench spoilers and impede the process of democratization.”

Lagging far behind the US in terms of military capacity, the Europeans and the multilateral institutions including the UN and the World Bank, are more focused on insuring the economic “fundamentals” and the involvement of “aid” agencies in reconstruction and “nation-building”. Rationalizations abound: some would highlight the advantages of a division of reconstruction labor while others try to put on the best face on submission, particularly after the invasion of Iraq. In Kosovo the US called the shots but paid only 16% of the reconstruction costs and fielding only 16% of the peacekeeping troops. In effect, the ousting of Hussein gave new impetus to the debate over the role of the United Nations in “post-conflict” countries. According to the Rand Corporation study, similar successes depended on “the ability of the US and its principal allies to attain a common vision of the enterprise’s objectives and then to shape the response of the relevant institutions, principally NATO, the EU and the UN, to the agreed purposes.”

Political intervention in post-Sandinista proved massive and open. Nicaragua received the highest per-capita assistance of any country in the world. The strategy was to prevent the

Sandinistas from coming back to power and reducing its influence in political institutions and societal organizations. USAID went to work in creating parallel non-Sandinista civil society (unions, farmers, NGOs, community-based organisations) that could rival the strong Sandinista influence of the established organizations. Particular pressures—through the new President— were placed on the Army and Police to strip themselves of Sandinista influence. A series of NGOs came into being with a “pro-democracy” agenda.

Where the two interventionary processes meet is at the level of “democracy building” also termed the promotion of “good governance”. The United States and its myriad entities, including NGOs and contractors, work directly with civil society to create new structures in a way that will reinforce macro-level stability and above all does not challenge the Western political and security presence, nor the fundamentals of neoliberal economics. Priority is giving to the establishment of a legal framework protecting property and capital rights.

From contemporary Nicaragua (but also in the South and East) we find the United States requires not only an “enabling government” but also an “enabling civil society”, even if it has to be created, divorcing popular movements from the possibilities of democratic local and national political participation. Providing the semblance of “democracy” is crucial to assure that the “free market” prevails and upholds the reality of a legal and ideological regime subservient to corporate capital, the international financial institutions along with the strategic needs of the US military. Hence the political necessity of ensuring the appearance of “consultation”, “participation” and even “national ownership”.

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## THE FINAL UN RESOLUTION ON IRAQ'S INTERIM GOVERNMENT

by Phyllis Bennis\*

The new US-UK draft resolution endorses Iraq's interim government as "sovereign" and credentials the US-dominated occupation forces as a UN-mandated "multinational force." It is designed to provide international legitimacy for the continuation of the US occupation and control of Iraq, while stating that "the occupation will end" by June 30, 2004.

In fact, Iraq remains an occupied country and will continue to be occupied on and after June 30th. The new Security Council resolution does nothing to change the reality of 138,000 US and 20,000+ "coalition" troops occupying the country and US economic and political forces maintaining control of Iraq's economic and political life.

The interim government recognized by the UN, like the Governing Council before it, is a creature of the United States, not the United Nations. By giving a UN "bluewash" imprimatur, the Security Council has undermined the credibility and legitimacy of the United Nations as a whole. It will be difficult to reclaim that credibility after such abject submission to US power.

The resolution states that the "sovereign Interim Government of Iraq" will assume "full responsibility and authority by 30 June 2004." But in the same article it adds (new in the final draft) the restriction that it will have authority "while refraining from taking any actions affecting Iraq's destiny beyond the limited interim period until an elected Transitional Government of Iraq assumes office" - which, according to article 4(a), will only happen "by 31 December 2005."

There had been a sharp dispute between the US and several Council members regarding whether the Iraqi military or government would have any control over operations by the US occupation forces. France, China and Algeria wanted Iraq to be able to block major military missions. But Washington rejected that out of hand. Secretary of State Colin Powell said, "You can't use the word 'veto.' There could be a situation where we have to act and there may be a disagreement and we have to act to protect ourselves or to accomplish a mission." In the final resolution (Article 10), the US-

controlled multinational force is given "the authority to take all necessary measures" in carrying out the military occupation.

The resolution "welcomes" the letters from Colin Powell and interim Iraqi Prime Minister Ayad Allawi annexed to the resolution, describing the letters as establishing a "security partnership" between the interim government and the "multinational force." Allawi's letter speaks only of "coordination," "partnership," and "consultation" between the interim government and the multinational force. Powell's letter, on the other hand, states categorically that "the contributing states have responsibility for exercising jurisdiction over their personnel." That means that the US will deploy their troops to carry out whatever operations are ordered by the Pentagon, whether or not the Iraqi government agrees.

The final resolution does reflect US agreement to demands from France, Germany and China regarding how the UN mandate for the "Multinational Force" could be ended. While the resolution states in Article 12 only that the mandate will be "reviewed" after one year or if the Government of Iraq requests such a review, and would only expire "upon the completion of the political process" which might mean January 1, 2006, the Council "declares that it will terminate this mandate earlier if requested by the Government of Iraq." Unlike some of the earlier references in the resolution, however, Article 12 (and some others) does not refer specifically to the "Interim Government of Iraq" (which is to take power on June 30th) but rather only to the "Government of Iraq." That more limited designation may portend a US intention to challenge the "Interim" government's rights if it exercised them, claiming that the reference is only to the later "Transitional Government" instead. But it is more likely that the "concession" to Iraq's government reflects US confidence that that government will remain accountable to the needs of the US occupation forces. In any event, in the context of a Security Council "review," an affirmative Council vote to cancel the mandate would be required, which the US could veto, giving Washington continuing control over maintaining its occupation of Iraq.

The resolution "reaffirms its intention to revisit the mandates" of the two UN arms monitoring teams (UNMOVIC and IAEA) that had been carrying out the WMD and nuclear inspections in Iraq. But UNMOVIC has been excluded from

Iraq since the US invasion and occupation began when the Pentagon's own inspection teams took over, and the new resolution says nothing about allowing UNMOVIC to return to Iraq.

Article 27 of the new resolution, deliberately written in a particularly opaque manner by referring only to provisions of numbered paragraphs in earlier resolutions, makes a clear move to continue the privileges granted to oil companies by the US occupation forces. Specifically, it continues last year's grant of immunity to all oil-related companies involved with Iraq (meaning Iraqi oil cannot be seized in a court suit), while cancelling that privilege for all contracts signed after June 30th when Iraq's "interim government" takes over oil authority from the US

While details are emerging only very slowly, it is likely that the US, committed to obtaining a UN figleaf before the G-8 summit, engaged in heavier than normal bribes and threats against Council members. All that is known so far is that German officials openly briefed journalists a week or so ago regarding their intention in the fall of this year to re-raise their longstanding campaign for a permanent Security Council seat. The officials stated that they have support from four of the five permanent members, all except the US, as well as the necessary 2/3 vote of the General Assembly. It is virtually certain that they would not have gone public with such a high-profile announcement without a back-channel US guarantee of support. While there is no new evidence yet, it is likely that France and perhaps Russia were promised renewed access to Iraqi oil contracts in return for their Council votes supporting the US-UK resolution.

It is likely to become more difficult to challenge the legitimacy of the new UN resolution and its authorization particularly of the US occupation forces. That is because the "interim prime minister" of Iraq, Ayyad Allawi, in his letter to the Council, specifically requests "a new resolution on the Multinational Force (MNF) mandate to contribute to maintaining security in Iraq, including through the tasks and arrangements set out in the letter from Secretary of State Colin Powell to the President of the United Nations Security Council." But only international pressure on governments around the world will make it possible to begin to undermine the UN bluewashing of the US occupation. If global civil society is to be able to reclaim the UN as part

of our global mobilization against war and occupation, challenging the legitimacy of the Council resolution will be a necessary step.

With a few more Iraqi and now United Nations faces supporting it, the US occupation remains.

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## WAR: TRADE BY OTHER MEANS: How the US is getting a free trade agreement minus the negotiations

By Mary Lou Malig

On June 28, two days before the announced date of handover of power, the United States transferred political authority in Iraq, in a meeting so secret only six people participated. (1) This was the much talked about handover of sovereignty to the Iraqi people that would effectively “end” the occupation of Iraq by the US.

Before it handed over “sovereignty” to Iraq, the US has done the humanitarian task of installing peace and order. This they did by issuing orders – called the Coalition Provisional Authority (CPA) Orders or Bremer Orders for short. These orders covered almost everything from de-Baathification of Iraqi society to weapons control to management and use of Iraqi public property to new Iraqi Dinar banknotes. The CPA was impressively efficient in issuing orders compared to the haphazard way they have been repairing basic infrastructure in the country.

A rather harmless looking CPA order number 39 on Foreign Investment was issued as part of this laundry list last September 19, 2003. Not more than six pages long, it disguises its true weight, for it carries with it the same impact of a 100-page free trade agreement and covers all essential elements of an investment agreement that usually take years for countries to agree upon.

In one swift move, the US installed a market economy geared towards “promoting foreign investment through the protection of the rights and property of foreign investors in Iraq.” (2) These investor rights are not new. In fact its similarity to other investment agreements is a little too uncanny to be coincidental.

Order no. 39 was written following a blueprint. It is no accident that it reads exactly like various agreements involving the US - from a proposed treaty to a trilateral agreement to a multilateral agreement. And it is not a sweeping generalization to state that it reads like the Multilateral Agreement on Investment (MAI), the

North America Free Trade Agreement (NAFTA), the Free Trade Area of the Americas (FTAA), the General Agreement on Trade in Services (GATS) under the World Trade Organization (WTO) and the Free Trade Agreement between the US and Chile.

There are key areas where all these agreements show coherence, and in most cases, show exact wording. (See Table 1 in PDF format to see exact wording used in these provisions, <http://www.focusweb.org/pdf/ml-matrix.pdf>) Order no. 39 may not have the exact wording, albeit because it is at least a hundred pages shorter than these agreements, but it still says the same thing. It is important to note that these agreements are all different types: the MAI was a proposed treaty between 29 countries on investment but was stopped in 1998 by civil society opposition. The NAFTA is a trilateral agreement between Mexico, Canada and the US on trade and trade related issues. The FTAA is a hemispheric-wide free trade agreement covering 34 countries in North America, Central America, South America and the Caribbean (excluding Cuba). The GATS is an existing agreement under the WTO and the Free Trade Agreement between the US and Chile is a bilateral agreement on trade. The common factor of these agreements, aside from the ubiquitous presence of the US as the main driver in all of them, is their rules on investment. (3)

These agreements are still being fiercely opposed by social movements and people’s organizations around the world because they give disproportionate protection to the investor at the expense of the state and citizens. The MAI, a treaty that was being secretly negotiated in the Organization for Economic Cooperation and Development (OECD) created an uproar when the draft document was leaked in 1998. Civil society opposition was so intense that the OECD was forced to shelve it. The FTAA, called “NAFTA plus” by US negotiators is opposed by a hemispheric wide coalition of social movements, non-governmental organizations, trade unions and activists. Meetings of FTAA negotiators are regularly met by massive. The WTO’s latest Ministerial held in Cancun, Mexico, ended in disarray as protests combined with developing countries’ efforts to stick together effectively blocked negotiations and further agreements.

Order no. 39, which contains all the controversial investment provisions of these hotly contested agreements has, in contrast, had an

easy passage: it was simply imposed on the Iraqis before they could even realize what was happening.

The main provisions of Order no. 39 are:

“Foreign investment means investment by a foreign investor in any kind of asset in Iraq, including tangible and intangible property, and related property rights, shares and other forms of participation in a business entity, and intellectual property rights and technical expertise, except as limited by Section 8 of this Order”

This is a very broad definition of investment. Like in the MAI, the NAFTA, FTAA and US-Chile FTA, investment can cover almost anything from the traditional form of foreign direct investment through to portfolio investment. In the FTAA, it extends this coverage to “to include market share and access to markets, whether or not the investor has a physical presence.” (4) This is dangerous as the agreement affords the same privileges and protection to an investor that brings in capital and contributes to the domestic economy to a fly-by-night portfolio investor that can flee the country at first sight of crisis.

In the US-Chile FTA, it even includes in its definition investors who are intending to invest. This broad scope of investment has been abused, as will be shown later, by corporations under the NAFTA.

“(1) A foreign investor shall be entitled to make foreign investments in Iraq on terms no less favorable than those applicable to an Iraqi investor, unless otherwise provided herein.

(2) The amount of foreign participation in newly formed or existing business entities in Iraq shall not be limited, unless otherwise expressly provided herein.”

National Treatment basically means that a foreign investor will be treated at least as favorably as the domestic investor. This provision has traditionally applied to goods – countries all set tariffs and quotas but once the foreign goods have entered the country, they are treated the same way as local goods.

National Treatment for a foreign investor however, is not so simple. A foreign investor

especially in the case of Iraq, carries with it a tremendous amount of capital compared to the domestic investor. In developing countries, governments realize this disparity between big capital and small capital, as represented by local initiatives or entrepreneurs, and have tried to “level the playing field” by providing incentives or benefits to the local producers. Under this national treatment provision, it will no longer be possible to implement such local developmental policies and the government will have to extend the same tax break it would give to an local producer, to a multi-million dollar corporation.

Many governments who have enshrined this policy of building the domestic and national capacity by writing this into their constitutions now have to re-write their laws to adhere to this National Treatment provision. Under NAFTA, national treatment means better treatment for foreign investors as it “establishes new rights applicable only to foreign investors claiming compensation from taxpayers for the costs of complying with the same domestic policies that all domestic companies must follow.” (5) Order no. 39 cuts to the chase and decrees 100 percent ownership of investment by foreigners and national treatment before the Iraqis can write their constitution.

A policy like this will wipe out whatever domestic capacity or investment that still exists in Iraq.

Related to the provision on national treatment is the provision on performance requirements. Performance requirements are measures that governments impose on foreign investors to ensure that the country benefits from the investment. Traditionally, governments have required foreign investors to utilize a certain percentage of domestic content in goods, or technology transfer so as to build the domestic capacity or even just hiring locals. Measures like these aim to help the local economy and to spread the benefits of the investment to the communities.

But because under the National Treatment foreign investors are to be treated like domestic investors, it is “unfair” to impose performance requirements on them unless a government imposes the same requirements on domestic investors. The MAI, NAFTA, FTAA and US-Chile FTA put an absolute ban on performance requirements. And although Order no. 39 does

not ban it, one can safely assume it will use the provision on national treatment to ensure no performance requirements are imposed on foreign investors. As it states in Section 2: "This Order specifies the terms and procedures for making foreign investments and is intended to attract new foreign investment to Iraq."

"Transfer abroad without delay all funds associated with its foreign investment, including:

- i) shares or profits and dividends;
- ii) proceeds from the sale or other disposition of its foreign investment or a portion thereof;
- iii) interest, royalty payments, management fees, other fees and payments made under a contract; and
- iv) other transfers approved by the Ministry of Trade;"

Capital controls allow governments to manage exchange and interest rates, and thereby provide some protection against financial crisis. The most vivid example of the absence of capital controls was the Asian economic crisis where the massive flight of capital from the region triggered a domino effect of instability and left the countries in ruin. Countries have shown the effective implementation of capital controls. In Chile, it is called "encaje" and the use of these measures from the period of 1991 to 1998 allowed the country to avoid the financial crises that rocked many of its neighbours. (6)

The US-Chile FTA targets the use of encaje and specifies that its use is to be limited and if it is utilized, Chile must pay compensation to foreign investors. The proposed FTAA does not limit the use of capital controls, but rather bans it: "Article 9 of the draft FTAA Investment Chapter, even more clearly than Article 1109 of NAFTA, would prevent sovereign states from using this type of capital controls." (7) Order no. 39 repeats this language and bans any kind of capital control on foreign investment. This means that a foreign investor can rake in profits from Iraqis and then send all those profits back to their home country. There is no need to reinvest it in Iraq or to ensure that at least a portion of the profits get recycled into the Iraqi economy.

"Disputes between a foreign investor and an Iraqi investor pertaining to investment in Iraq, or between a foreign investor and an Iraqi legal

or natural person, shall be resolved in accordance with the dispute resolution provisions contained in any applicable written agreement governing the relationship between the parties. The parties may elect in any agreement to utilize the arbitration mechanisms outlined in Iraqi law."

Of all the provisions, dispute settlement is probably the most controversial. The concept of binding, rules based dispute settlement mechanism in trade agreements was introduced in the World Trade Organization. In fact, this is what made it unique. As leading activists have said it, "The WTO is a global trade institution with teeth." (8) This is because, with the dispute settlement mechanism, the WTO can sanction countries for not following the trade rules. The state-state dispute settlement process of the WTO means that a government can sue another government for actions that can be deemed discriminatory or implementing measures that can be equated as "trade barriers." Once found "guilty" by the dispute settlement body "the losing country has three choices: change its law to conform to the WTO ruling; face harsh, permanent economic sanctions; or pay permanent compensation to the winning country." (9)

NAFTA on the other hand, goes a step further than the WTO by adding an "investor to state" dispute settlement mechanism. In the WTO, only governments can sue other governments. In the NAFTA however, a foreign corporation can directly sue a government for impeding its right to profit in that country. This provision has been the target of international opposition as it allows foreign investors to challenge democratically written national and domestic policies and even stop in mid-track policies that governments are about to implement. "In the very first NAFTA investor-to-state case ever litigated, which involved US Ethyl Corporation, Canada moved to rescind its environmental and public health measure regulating a gasoline additive developed by Ethyl even before the final NAFTA tribunal ruling in an effort to avoid a large damage reward." (10)

Canada had good reason to want to avoid a large damage reward. Since the implementation of NAFTA, the total amount of damages claimed by foreign investors has been a total of 13 billion USD - USD1.8 billion from US taxpayers, USD249 million from Mexican taxpayers and a USD11 billion from Canadian taxpayers." (11)

These disputes are filed, heard and judged in dispute settlement courts outside of national jurisdiction and outside the reach of people. The NAFTA decrees that these disputes be settled by only two courts: the World Bank's International Center for Settlement of Investment Disputes (ICSID) or the United Nations Commission on International Trade Law (UNCITRAL). The ICSID was used primarily for private disputes between corporations and therefore it made sense that it was not accessible to the public. However, at present, the ICSID is being used to settle disputes that involve corporations and governments and the money used to pay the damages claimed by foreign corporations are the losing country's taxpayers' money. The UNCITRAL is even worse as its rulings, like the ICSID's, are binding but it "does not collect (12) and therefore does not make public even basic information about pending and concluded cases, in fact, the history of cases brought under its rules is not known." (13) These hearings, both under ICSID and UNCITRAL are closed to the public, have no appeals process and are binding.

This investor to state provision together with the state-to-state dispute settlement provision are present in all these agreements. The authors of Order no. 39 anticipated this need for dispute settlement in the future and covered all bases by specifying that disputes in Iraq pertaining to foreign investment will be settled using whatever arbitration procedures are present in applicable agreements.

It is not only the fact that foreign corporations are given the right to sue governments that is contestable, it is the actual cases they file. All the cases filed under NAFTA and one anticipates in FTAA and other agreements, have used the argument of expropriation. Expropriation has traditionally meant an action of a government that takes away the right of an investor to profit, for example, when a government reclaims the foreign investors' property to use as a public road. Expropriation, however, under these investment laws has an expanded meaning:

- 1) Private property not only refers to land and physical assets, but the market-determined commercial value of property, including a company's asset value and future profit earnings.
- 2) Traditionally compensation was awarded only when the whole value of property was lost. Under the new definition it applies when any part of its commercial value is lost.
- 3) It is not only expropriation but acts "tanta-

mount to expropriation" that require compensation. This means that a wide range of government policies, laws or administrative measures can be treated as having a similar effect as expropriation. (14)

What this expanded definition means in layman's terms is that a foreign corporation can sue the government for almost anything so long as it impedes in any way its right to profit, in real terms or in theory. A well-known case is Metalclad, a US firm, which sued Mexico because the government imposed environmental measures, citing that this impeded Metalclad's right to profit.

It is interesting to note why the US just did not add this expanded definition of expropriation in Order no. 39 since it put all the key provisions, from national treatment to dispute settlement, of the investment agreements already. A theory could be that if stated in Order no. 39, it can benefit non-US foreign investors, specifically European investors whose governments did not aid the US in its invasion of Iraq.

"Where an international agreement to which Iraq is a party provides for more favorable terms with respect to foreign investors undertaking investment activities in Iraq, the more favorable terms under the international agreement shall apply."

As stated earlier, Order no. 39 anticipates the entry of Iraq into other international agreements like the WTO and bilateral agreements. It therefore adds, almost as a footnote at the end of the order, a provision that ensures that whatever agreements Iraq joins later, will still be beneficial to foreign investors.

Order no. 39 ties in with the other orders issued by the CPA – a Banking Law, the Company Law, Trade Liberalization and an order on taxes. All of them complement each other in establishing the Iraqi economy as a corporate haven. As the Iraqi Minister of Finance Kamel Al-Gailani explained, these measures are all part of the plan to reconstruct Iraq. "The reforms will significantly advance efforts to build a free and open market economy in Iraq." (15)

In the end, Order no. 39 encapsulates all key provisions of trade and investment agreements that took months, if not years to pass, in other countries and in other multilateral fora. These

agreements were negotiated and with the case of the FTAA is still being negotiated in highly secretive meetings. The MAI would not have been opposed if its draft document had not been leaked out into the internet by activists. The NAFTA was passed with many legislators not knowing what they agreed to. President George W. Bush used the fast track privilege where congress' participation is limited to a vote of yes or no to the whole agreement. The US-Chile FTA was so secret that two months after it was signed, Chilean social movements still could not get a copy of the agreement. This is because if the public were allowed to participate, provisions that privilege foreign investors over the people and public interests would never go through. Even now, many developing country governments are fighting to defend their own national interests, albeit domestic corporate interests. The FTAA for example has eight definitions of investment and the text itself is heavily bracketed, indicating the high level of disagreement between negotiators. In the WTO, the US and its cohorts have to resort to arm-twisting or threats of military or economic sanctions to get agreements passed.

Order no. 39 was met with no such resistance simply because the people of Iraq were not asked if they agreed to it or not. While the people of Iraq are busy defending their lives and resisting the occupation, the US slipped in an order that effectively binds the Iraqis to a trade agreement that enshrines the rights of foreign investors, and as detailed above, surpasses many existing agreements. Besides, as a top US military official best explains, there was no need for negotiations as the US is in control of Iraq, "At this point we'd be negotiating with ourselves because we are the government." (16)

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1. Coalition Provisional Authority Administrator Paul Bremer, Iraq interim Prime Minister Ayad Allawi, Iraq interim President Ghazi Yawar, Chief Justice Mehdad Mahmoudi, Deputy Prime Minister Barham Salih and British envoy David Richmond.
2. Section 2 of CPA Order no. 39
3. The GATS is an agreement on trade in services not investment. But since in its four "modes of supply" in trade in services, it covers foreign direct investment in services ("by a service supplier of one Member, through commercial presence in the territory of any other Member;") GATS can then be said to have rules on investment and is thus called by some as the first multilateral investment agreement under the WTO.
4. Allianza Social Continental, "The FTAA Unveiled: A Citizens' Critique of the November 2002 Draft of the Free Trade Area of the Americas" January 2003. p. 56

5. Public Citizen, "NAFTA Chapter 11 Investor-to-State Cases: Bankrupting Democracy Lessons for Fast Track and the Free Trade Area of the Americas" Washington DC, September 2001, p. iv
6. Allianza Social Continental, "The FTAA Unveiled: A Citizens' Critique of the November 2002 Draft of the Free Trade Area of the Americas" January 2003. p. 51
7. Article 9 of the draft FTAA Investment Chapter, even more clearly than Article 1109 of NAFTA, would prevent sovereign states from using this type of capital controls."p. 51
8. Barlow, Maude and Clarke, Tony. "Making the Links: A People's Guide to the WTO and the FTAA" Council of Canadians and Polaris Institute 2003. p.5
9. Barlow, Maude and Clarke, Tony. "Making the Links: A People's Guide to the WTO and the FTAA" Council of Canadians and Polaris Institute 2003. p.6
10. Public Citizen, "NAFTA Chapter 11 Investor-to-State Cases: Bankrupting Democracy Lessons for Fast Track and the Free Trade Area of the Americas" Washington DC, September 2001, p. 4
11. Public Citizen, "NAFTA Chapter 11 Investor-to-State Cases: Bankrupting Democracy Lessons for Fast Track and the Free Trade Area of the Americas" Washington DC, September 2001, p.vi
12. This inability to document cases of the UNCITRAL is attributed to a lack of administrative staff, which takes a stretch of imagination to believe
13. Public Citizen, "NAFTA Chapter 11 Investor-to-State Cases: Bankrupting Democracy Lessons for Fast Track and the Free Trade Area of the Americas" Washington DC, September 2001, p.7
14. Greenfield, Gerard. "The NAFTA ruling on Metalclad vs. Mexico - The Broader Context - September 2000
15. Press Statement: Iraqi Minister of Finance Kamel Al-Gailani, September 21,2003
16. Top US military official quoted



## THE US' STRATEGY OF DESPERATION

By Walden Bello\*

This is an excerpt from the Chancellor's Distinguished Fellow speech, University of California at Irvine, June 8, 2004. The full text is available at <http://www.focusweb.org/main/html/Article319.html>

"The crisis of the empire is not only good for the world. It is good for the people of the United States as well..."

Despite the fact that the situation in Iraq has spun out of its control, the Bush administration hangs on, pushing through a so-called "transfer of sovereignty" to people associated with the US-controlled "Interim Governing Council" that enjoyed little popular legitimacy.

To whom will "sovereignty" be handed over? What exactly will sovereignty consist of? Where will the legitimacy of the government come from? What exactly is the relationship of the coming government to the United Nations? The United States reserves the right to control its military forces in Iraq and to maintain them there indefinitely. A qualification from Secretary of State Powell that the US would leave if the incoming government asked it to is disingenuous since that regime would never ask for the elimination of the military might on which its own existence depended. These are unresolved issues that lend substance to the New York Times' charge that "the only unifying these for Washington's policies seems to be desperation." The United Nations Security Council recent endorsement of the post-June 30 arrangements will not make this US-imposed solution any more acceptable to the Iraqi people or to the world.

But neither does the Times and the liberal opposition to Bush have any answers. The Times itself, while attacking Bush for inept management of the occupation, endorsed giving the United Nations "real... authority over transition political arrangements," bringing in more foreign contingents to participate in providing security, and increasing the number of US troops in Iraq in the short run." But all the elements were already in the Bush plan,

including drawing additional troops from the US forces in South Korea.

In so far as the Democrats can be said to have an approach, it approximates the Times' quibbling, with John Kerry, the Democrats' presidential candidate, making the key issue not substantive differences with the Bush plan but management of the process: he would manage the Iraq intervention better than Bush. In what was touted as the defining speech of his policy on national security on May 27, 2004, Kerry said NATO should be asked to provide troops, the training of Iraq's security forces should be "internationalized," and an "International High Commissioner" be appointed to organize elections, draft a constitution, and coordinate reconstruction.

All this is well within the Bush agenda, as was Kerry's call to increase the US military by 40,000 troops. Noting that Bush had already issued orders to increase the military by 30,000 by January 2005, a spokesman for the Bush campaign noted, "John Kerry is playing following the leader."

None of the Democratic candidates during the primary except perhaps Dennis Kucinich dared to say the utter the five words that constituted the only viable strategy: "Immediate withdrawal of US troops." A key consideration before Falluja and Abu Ghraib was that this stance could harm them in the November elections—despite the fact that even before the uprising in Fallujah and the Abu Ghraib scandal, according to the Pew Research Center, 44 per cent of Americans now say that troops should be brought home as soon as possible, up from 32 per cent last September. But by late May, there was no longer any excuse for timidity: 52 per cent of those surveyed in a May 2004 Gallup Poll said the war in Iraq was not worth it and only 45 said it was, compared to 29 per cent and 68 per cent a year earlier.

Yet this is not just a tactical issue. According to the liberal Financial Times columnist Gerard Baker, "Whether or not you believe Iraq was a real threat under Saddam Hussein, you cannot deny that a US defeat there will make it one now." This is a non-sequitur, but it illustrates the fact that both liberals and conservatives are still operating within the American imperial paradigm. While liberals and the Democrats may have come to the conclusion that the invasion had not been justified, they dare not call for a unilateral withdrawal since this will be

an incalculable blow to American prestige and leadership. In other words, the “demonstration effect” of an America leaving Iraq with its tail between its legs would be disastrous for the credibility of US power in the future.

No easy exit seems possible from Iraq as moral failure of the highest degree engulfs the ruling regime in Washington and the loyal opposition. What seems to be in the making is the continuation of an occupation with no viable political rationale and military rationale and bereft of any moral legitimacy.

The paralysis that has gripped the Democrats on Iraq can only be broken by one thing: a strong anti-war movement such as that which took to the streets daily and in the thousands before and after the Tet Offensive in 1968. So far that had not materialized, though disillusionment with US policy in Iraq had spread to a majority of the US public, especially after Abu Ghraib.

Indeed, at the very time that it is most needed by the people of Iraq, the international peace movement has had trouble getting into gear. The demonstrations on March 20, 2004, were significantly smaller than the Feb. 15, 2003, when tens of millions marched throughout the world against the projected invasion of Iraq. The kind of international mass pressure that makes an impact on policymakers—the daily staging of demonstration after demonstration in the hundreds of thousands in city after city—is simply not in evidence, at least not yet.

Perhaps a major part of the reason is that a significant part of the international peace movement, particularly in the United States, hesitates to legitimize the Iraqi resistance. Who are they? Can we really support them? These questions have increasingly been flung at me and other advocates of an unconditional military and political withdrawal from Iraq. The use of suicide as a political weapon continues to bother many US activists who were repelled by statements such as that of the Palestinian leaders who proudly assert that suicide bombers were the oppressed people’s equivalent of the F-16. The role of Islamic fundamentalists and the possibility that, on account of the presence of a majority Shiite population, a post-US Iraq could turn into an Islamic state a la Iran is also a matter of great concern.

Yet there has never been any pretty movement

for national liberation or independence. Many Western progressives were also repelled by some of the methods of the “Mau Mau” movement in Kenya, the FLN in Algeria, the NLF in Vietnam. What western progressives forget is that national liberation movements are not asking them mainly for ideological or political support. What they really want from the outside is international pressure for the withdrawal of an illegitimate occupying power so that internal forces can have the space to forge a truly national government based on their unique processes. Until they give up this dream of having an ideal liberation movement tailored to their values and discourse, US peace activists will, like the Democrats they often criticize, continue to be trapped within a paradigm of imposing terms for other people.

Let me conclude by saying that things can only get worse for the US in Iraq. Moreover, the Iraqi resistance has transformed the global equation. The US is weaker today than it was before May 1, 2003. The Atlantic Alliance that won the Cold War no longer functions. The situation in Afghanistan is more unstable now than last year, and US troops are also pinned down there. Islamic revivalism, against which the US has ranged itself, is now more vigorously spreading. In Latin America, we now have governments in Brazil, Argentina, Venezuela, and Bolivia that are avowedly against the old neo-liberal economic policies imposed by Washington. The World Trade Organization is in serious trouble after the collapse of its ministerial in Cancun last September, and Washington’s vision of the Free Trade of the Americas failed to materialize owing to Latin American opposition during the FTAA Ministerial in Miami last November.

Owing to its hubris, the US is suffering from that fatal disease of all empires—imperial overstretch. And its threat to institute regime change in other countries, such as Iran, Syria, and North Korea is no longer credible.

I think that the crisis of the empire is not only good for the world. It is good for the people of the United States as well, for it opens up the possibility of Americans relating to other peoples as equals and not as masters, really learning from them, and really respecting and appreciating them. Failure of the empire is, moreover, a precondition for the emergence of the truly democratic republic that the United States was intended to be before it was hijacked

to be an imperial democracy.

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**Table1: Comparison of trade and investment agreements**

	MAI Multilateral Agreement on Investment	NAFTA North America Free Trade Agreement	FTAA Free Trade Area of the Americas	WTO - GATS World Trade Organization – General Agreement on Trade in Services	FTA: US-Chile Free Trade Agreement	CPA Order no.39 Iraq Coalition Provisional Authority
Type of Agreement	Proposed treaty between 29 countries only on investment	Trilateral agreement (Mexico, US and Canada) on trade and related issues	Hemispheric-wide free trade zone covering 34 countries in North America, Central America, South America and the Caribbean (minus Cuba)	Agreement in the WTO, gives a set of multilateral rules for international trade in services	Bilateral Free Trade Agreement between the US and Chile	Order on Foreign Investment issued by the CPA in Iraq
Status	Proposal stopped by civil society protests	Currently being implemented	Currently under negotiation*	The GATS is an existing agreement in the WTO	Currently being implemented	Currently being implemented
Definition of Investment	Means (a) every kind of asset owned or controlled directly or indirectly by an investor, including: (i) an enterprise (being a legal person or any other entity constituted or organised under the applicable law of the Contracting Party, whether or not for profit, and whether private or government owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association or organisation);  (ii) shares, stocks or other forms of equity participation in an enterprise, and rights derived therefrom;  (iii) bonds, debentures, loans to and other form of debt [of an enterprise]; and rights derived therefrom; (iv) rights	Means (a) an enterprise; (b) an equity security of an enterprise; (c) a debt security of an enterprise (i) where the enterprise is an affiliate of the investor, or (ii) where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise; (d) a loan to an enterprise (i) where the enterprise is an affiliate of the investor, or (ii) where the original maturity of the loan is at least 3 years, but does not include a loan, regardless of original maturity, to a state enterprise; (e) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph c	Means: Every kind of asset and rights of any nature acquired with resources transferred to the territory of a Party or reinvested therein by investors of another Party, and shall include, in particular, although not exclusively: (a) an enterprise (b) the shares of an enterprise (c) the debt instruments of an enterprise (i) where the enterprise is an affiliate of the investor, or (ii) where the original maturity of the debt instrument is at least 3 years, but does not include a debt instrument of a State enterprise, regardless of original maturity; (d) a loan to an enterprise: (i) where the enterprise is an affiliate of the investor, or (ii) where the original maturity of the loan is at least 3 years, but does not include a loan,	<i>There is no explicit definition of investment in the GATS because it is an agreement on trade in services not investment. But since in its four “modes of supply” in trade in services, it covers foreign direct investment in services (by a service supplier of one Member, through commercial presence in the territory of any other Member;) GATS can then be said to have rules on investment and is thus called by some as the first multilateral investment agreement under the WTO.</i>  <i>There has been a proposal for a comprehensive agreement on investment in the WTO under the so-called Singapore Issues or New Issues but it has since been put on hold since the collapse of the 5<sup>th</sup> Ministerial in Cancun, Mexico.</i>	Means: Every asset that an investor owns or controls, directly or indirectly, that has the characteristics as the commitment of capital or other resources, the expectations of gain or profit, or the assumption of risk. Forms that an investment may take include: (a) an enterprise (b) shares, stock, and other forms of equity participation in an enterprise; (c) bonds, debentures, loans and other debt instruments; (d) futures, options, and other derivatives; (e) rights under contract, including turnkey, construction, management, production, concession, or revenue-sharing contracts; (f) intellectual property rights; (g) rights conferred pursuant to domestic law, such as	(Foreign investment) Means investment by a foreign investor in any kind of asset in Iraq, including tangible and intangible property, and related property rights, shares and other forms of participation in a business entity, and intellectual property rights and technical expertise, except as limited by Section 8 of this Order

	<p>under contracts, including turnkey, construction, management, production or revenue sharing contracts;</p> <p>(v) claims to money and claims to performance;</p> <p>(vi) intellectual property rights;</p> <p>(vii) rights conferred pursuant to law or contract [such as] or [by virtue of] concessions, licenses, authorisations, and permits.</p> <p>(viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges, [unless such assets lack the characteristics of an investment.]</p> <p>(b) "Investment" does not include:</p> <p>[(i) public debt;] [debt securities of and loans to a state enterprise or Contracting Party;]</p>	<p>or d</p> <p>(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes, &amp; (h) interests arising from the commitment of capital or other resources in the territory of a party to economic activity in such territory, but investment does not mean:</p> <p>(a) claims to money that arise solely from (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party, or (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph d or any other claims to money that do not involve the kinds of interests set out in subparagraphs a through h</p>	<p>regardless of original maturity, to a State enterprise;</p> <p>(e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise</p> <p>(f) an interest in an enterprise that entitles the owner to a share in the assets of that enterprise on dissolution, other than a debt instrument or a loan excluded under subparagraphs c or d</p> <p>(g) real estate or other property, tangible or intangible, acquired or used for the purpose of economic benefit or other business purposes; and</p> <p>(h) interests arising from the commitment of capital or other resources to the development of economic activity in the territory of another Party, such as under: (i) contracts involving the presence of an investors property in the territory of another Party, including concessions, or construction or turnkey contracts, or (ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;</p>		<p>concessions, licenses, authorizations, and permits; &amp; (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges; but investment does not mean an order or judgement entered in a judicial or administrative action</p>	
National Treatment	(1) Each Contracting Party shall accord to investors of another Contracting Party and to their investments, treatment no less favourable than the treatment it accords [in like	(1) Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the	(1) Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the	(1) In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers	(1) Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the	(1) A foreign investor shall be entitled to make foreign investments in Iraq on terms no less favorable than those applicable to an Iraqi investor, unless otherwise provided

	<p>circumstances] to its own investors and their investments with respect to the establishment, acquisition, expansion, operation, management, maintenance; use, enjoyment and sale or other disposition of investments.</p> <p>(2) Each Contracting Party shall accord to investors of another Contracting Party and to their investments, treatment no less favourable than the treatment it accords [in like circumstances] to investors of any other Contracting Party or of a non-Contracting Party, and to the investments of investors of any other Contracting Party or of a non-Contracting Party, with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposition of investments.</p> <p>(3) Each Contracting Party shall accord to investors of another Contracting Party and to their investments the better of the treatment required by Articles 1.1 and 1.2, whichever is the more favourable to those investors or investments.</p>	<p>establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.</p> <p>(2) Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.</p> <p>(3) The treatment accorded by a Party under paragraphs 1 &amp; 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party which it forms a part.</p> <p>(4) For greater certainty, no Party may:</p> <p>(a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party to be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or</p> <p>(b) require an investor of another Party, by reason of its nationality, to sell or otherwise</p>	<p>establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.</p> <p>Each Party shall accord to [covered investments] [investments of investors of another Party] treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.]</p> <p>(1.1) Each Party shall accord to the investments of the investors of other Parties made in its territory treatment no less favorable than that accorded[, in like circumstances,] to investments by its own investors. [National treatment shall be granted in accordance with the laws of the host State].]</p> <p>(2) The treatment accorded by a Party, under paragraph 4.1 above, means, with respect to a [state or province] [regional level of government], treatment no less favorable than the most favorable treatment accorded by that [state or province] [regional level of government], in like circumstances, to the investors and investments of</p>	<p>of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.</p> <p>(2) A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.</p> <p>(3) Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.</p>	<p>establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory</p> <p>(2) Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.</p> <p>(3) The treatment to be accorded to a Party under paragraphs 1 &amp; 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.</p>	<p>herein.</p> <p>(2) The amount of foreign participation in newly formed or existing business entities in Iraq shall not be limited, unless otherwise expressly provided herein.</p>
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		dispose of an investment in the territory of another Party	investors of the Party to which it belongs.] (2.1) The treatment to be accorded by a Party under paragraph 4.1 means, with respect to a regional level of government, treatment no less favorable than the treatment accorded, in like circumstances, by that regional level of government to natural persons resident in and enterprises constituted under the laws of other regional levels of government of the Party of which it forms a part, and to their respective investments.			
Performance Requirements	No Contracting Party may impose, enforce or maintain any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, operation, or conduct of an investment of an investor of a Contracting Party or of a non-Contracting Party in its territory: (a) to export a given level or percentage of goods or services; (b) to achieve a given level or percentage of domestic content; (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase	(1) No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory: (a) to export a given level or percentage of goods or services; (b) to achieve a given level or percentage of domestic content; (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from	(1) No Party shall establish performance requirements through the adoption of investment-related measures that are incompatible with the prevailing disciplines in the framework of the WTO Agreement on Trade-Related Investment Measures and any subsequent developments of those disciplines.] (2) [Mandatory] Performance Requirements: No Party may impose or enforce any of the following requirements or [enforce any] commitments [or undertaking], in connection with the establishment, acquisition, expansion, management, conduct or operation [or sale or other disposition] of an investment of an investor of a	-No performance requirements specified-	Mandatory Performance Requirements (1) Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory: (a) to export a given level or percentage of goods or services; (b) to achieve a given level or percentage of domestic content; (c) to purchase, use or accord a preference to goods produced in its territory, or to	-No performance requirements specified-

	<p>goods or services from persons in its territory;  (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;  (e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;  (f) to transfer technology, a production process or other proprietary knowledge to a natural or legal person in its territory [except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of the Agreement];  (g) to locate its headquarters for a specific region or the world market in that Contracting Party;  (h) to supply one or more of the goods that it produces or the services that it provides to a specific region or world market exclusively from the territory of that Contracting Party;</p>	<p>persons in its territory;  (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;  (e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;  (f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or  (g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market  (2) A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1 (f).</p>	<p>Party [or of a non Party] in its territory:] [None of the Parties shall impose, or demand, unless otherwise provided for in that Party's legislation, any of the following requirements, with respect to permission to establish, expand, maintain or acquire an investment:]  a) to export a given level or percentage of goods [or services];  b) to achieve a given level or percentage of domestic content;  c) to purchase, use or accord a preference to goods produced [or services provided] in its territory, or to purchase goods from [producers] [persons] [or services from service providers] in its territory;  d) to relate in any way the volume or value of imports to the volume or value of exports, or to the amount of foreign exchange inflows associated with such investment;  e) [to restrict sales of goods or services in its territory that such investment produces or [provides] [supplies] by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;]  f) [to transfer [a particular] technology, [a] production process[,], or other proprietary knowledge to a person in its</p>		<p>purchase goods from persons in its territory;  (d) to relate in any way the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;  (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;  (f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or  (g) to supply exclusively from the territory of the Party the goods that it produces or the services that it supplies to a specific regional market or to the world market.  Advantages Subject to Performance Requirements:  (2) Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:  (a) to achieve a given level or percentage of domestic</p>	
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	<p>[(i) to achieve a given level or value of production, investment, manufacturing, sales, employment, research and development in its territory;]</p> <p>[(j) to hire a given level or type of local personnel; ]</p> <p>(k) to establish a joint venture; or</p> <p>[(l) to achieve a minimum level of local equity participation.]</p> <p>[A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1 (f). For greater certainty, Articles XXX on National Treatment and MFN apply to the measure.]</p> <p>No Contracting Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Contracting Party or of a non-Contracting Party, on compliance with any of the following requirements:</p> <p>[(a) to export a given level or percentage of goods or services];</p> <p>(b) to achieve a given level or percentage of domestic content;</p> <p>(c) to purchase, use or accord a preference to goods and services produced in its</p>	<p>(3) No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:</p> <p>(a) to achieve a given level or percentage of domestic content;</p> <p>(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;</p> <p>(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment, or</p> <p>(d) to restrict sales of good or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.</p> <p>(4) Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand</p>	<p>territory [, except when the requirement is imposed [or the commitment is enforced] by a court, administrative tribunal or [competent] [competition] authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement]; or]</p> <p>g) [[to act as the exclusive supplier of] [to supply exclusively from the territory of the Party] the goods that it produces or the services that it [provides] [supplies] to a specific regional market or to the world market.]]</p> <p>(2) [A measure of general application which requires an investment to use a technology to meet health, environment and safety requirements shall not be inconsistent with subparagraph 1.f.)] [A measure that requires an investment to use a technology to meet generally applicable health, environmental, or safety requirements shall not be construed to be inconsistent with subparagraph 1.f.)] For greater certainty, Articles 4 (National Treatment) and 5 (Most-Favored-Nation Treatment) shall apply to the measure.]</p>		<p>content;</p> <p>(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;</p> <p>(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or</p> <p>(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.</p> <p>Exceptions and Exclusions</p> <p>(3) (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory. (b) Paragraph 1(f) does not apply: (i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the</p>	
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	<p>territory;  (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such an investment;  (e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings; or  [(f) others to be defined.]  Paragraph 1 shall not apply insofar as a Contracting Party conditions the receipt or continued receipt of an advantage on compliance with requirement other than those set out above.  Nothing in paragraph 3 shall be construed to prevent a Contracting Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Contracting Party or of a non-Contracting Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.]  Provided that such measures are not applied in an arbitrary</p>	<p>particular facilities, or carry out research and development in its territory.  (5) Paragraphs 1 &amp; 3 do not apply to any requirement other than the requirements set out in those paragraphs.  (6) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:  (a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement  (b) necessary to protect human, animal or plant life or health; or  (c) necessary for the conservation of living or non-living exhaustible natural resources.</p>			<p>disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or (ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.  (c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures: (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement; (ii) necessary to protect human, animal, or plant life or health; or (iii) related to the conservation of living or non-living exhaustible natural resources.  (d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or</p>	
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	<p>or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(b) or (c) shall be construed to prevent any Contracting Party from adopting or maintaining measures, including environmental measures:</p> <p>(a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;</p> <p>(b) necessary to protect human, animal or plant life or health; or</p> <p>(c) necessary for the conservation of living or non-living exhaustible natural resources.]</p>				<p>services with respect to export promotion and foreign aid programs.</p> <p>(e) Paragraphs 1(b), (c), (f) and (g) and 2(a) and (b), do not apply to procurement.</p> <p>(f) Paragraphs 2(a) and (b) do not apply requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.</p> <p>(4) For greater certainty, paragraphs 1&amp;2 do not apply to any requirement other than the requirements set out in these paragraphs.</p> <p>(5) This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking or requirement.</p>	
Dispute Settlement	<p>(1) State-State dispute</p> <p>The rules and procedures set out in Articles A-C shall apply to the avoidance of conflicts and the resolution of disputes between Contracting Parties regarding the interpretation or application of the Agreement unless the disputing parties agree to apply other rules or procedures. However, the disputing parties may not depart from any obligation regarding notification of the Parties Group and the right of</p>	<p>Settlement of Disputes between a Party and an Investor of Another Party</p> <p>Without prejudice to the rights and obligations of the Parties under Chapter 20, this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an</p>	<p>State-to-State Disputes</p> <p>(1) Disputes which may arise between Parties regarding the interpretation or application of the Agreement shall, to the extent possible, be settled by diplomatic channels. (2) If a dispute cannot be settled through diplomatic channels within a reasonable period of time, of no less than six (6) months, the matter shall be submitted to the general dispute settlement mechanism</p>	<p>WTO - Dispute Settlement Understanding</p> <p>(1) If any Member should consider that any other Member fails to carry out its obligations or specific commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter have recourse to the DSU.</p> <p>(2) If the DSB considers that the circumstances are serious</p>	<p>Investor-State Dispute Settlement</p> <p>In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures.</p> <p>(1) In the event that a disputing party considers that an investment dispute cannot be settled by consultation and</p>	<p>Disputes between a foreign investor and an Iraqi investor pertaining to investment in Iraq, or between a foreign investor and an Iraqi legal or natural person, shall be resolved in accordance with the dispute resolution provisions contained in any applicable written agreement governing the relationship between the parties. The parties may elect in any agreement to utilize the arbitration mechanisms</p>

	<p>Parties to present views, under Article B, paragraph[s 1.a and] 3.c, and Article C, paragraphs 1.a, 3.c, and 4.e.</p> <p>(2) Investor-State dispute This article applies to disputes, between a Contracting Party and an investor of another Contracting Party concerning an alleged breach of an obligation of the former under this Agreement [or under an investment agreement with or authorisation to the investor] which causes[, or is likely to cause,] loss or damage to the investor or his investment.</p>	<p>impartial tribunal.</p>	<p>to be established in the framework of the FTAA.] (3) Where a large or developed State submits a dispute to the general settlement mechanism, at least half of the legal costs incurred by the smaller economy State should be borne by a Regional Integration Fund or some other hemispheric technical assistance/cooperation scheme.]]</p> <p>Dispute Settlement between a Party and an Investor of Another Party: Investor-State Disputes (1) For purposes of this Agreement, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to investment agreement or alleged breach of any right conferred, created or recognized by this Treaty with respect to a covered investment.] (2) Where an investor of a large or developed economy is involved in a dispute with a smaller economy State and the matter is submitted to arbitration, at least half of the legal costs incurred by the State should be borne out of a Regional Integration Fund.]</p>	<p>enough to justify such action, it may authorize a Member or Members to suspend the application to any other Member or Members of obligations and specific commitments in accordance with Article 22 of the DSU. (3) If any Member considers that any benefit it could reasonably have expected to accrue to it under a specific commitment of another Member under Part III of this Agreement is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may have recourse to the DSU. If the measure is determined by the DSB to have nullified or impaired such a benefit, the Member affected shall be entitled to a mutually satisfactory adjustment on the basis of paragraph 2 of Article XXI, which may include the modification or withdrawal of the measure. In the event an agreement cannot be reached between the Members concerned, Article 22 of the DSU shall apply.</p>	<p>negotiation: (a) the claimant on its own behalf , may submit to arbitration under this Section a claim (i) that the respondent has breached (A) an obligation under Section A, or Annex 10-F (B) an investment authorization, or (C) an investment agreement; and (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; &amp; (b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim (i) that the respondent has breached (A) an obligation under Section A, or Annex 10-F (B) an investment authorization, or (C) an investment agreement; and (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach</p>	<p>outlined in Iraqi law.</p>
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\* The FTAA is still being negotiated, this is based on the most current draft text. The brackets indicate where there is disagreement among negotiators.