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From: Edward Chaplin, HMA Baghdad

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Neil Crompton  
Head IPU  
Foreign and Commonwealth Office  
King Charles Street  
London

*Dear Neil,*

## **IRAQ: HELPING TO DRAFT THE NEW CONSTITUTION**

### **Summary**

1. A snapshot of where we are on the process and substance, and suggestions of where we might focus UK help. There is a Lord Irvine factor to consider. Timing issues.

### **Detail**

2. With the elections behind us, I promised some further thoughts from here about the constitution making process and the role the UK could play. I thought it best to kick off with a letter. You can let us know when a telegram to a wider audience would be useful. There is some overlap with the Sunni outreach ideas in my letter to Dominic Asquith of -17 December.

### **The Process**

3. The TAL sets out the constitution drafting process in very broad terms. Taken together, Articles 60 and 61 of the TAL require the Transitional National Assembly (TNA) to prepare a draft of a permanent constitution, following public debate, by 15 August and to present it to the Iraqi people in a referendum by 15 October 2005. Our assumption is that the intervening period is for further debate and explanation, not for amendment. There is scope to extend the drafting process by 6 months by a majority vote in the TNA, but little indication of what the steps of that drafting process should be. Presumably this will be decided when the TNA draws up its own internal procedures and structures (Article 32).

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4. Discussions with the parties here leads us to expect the TNA to appoint a Constitution Preparatory/Drafting Committee, and to undertake public and expert consultations before preparing a draft constitution to put to the Assembly and then the Iraqi people. The UN currently envisages a very broadly based Preparatory Committee, drawn from across the political, social and ethnic spectrum of Iraq. It remains to be seen how far the parties will live up to their rhetoric on inclusiveness. Some will try to minimise any role for non-TNA actors.

### *UN Role*

5. The UN is mandated to “play a *leading* role to ... promote national dialogue and consensus-building on the drafting of a national constitution” (UNSCR 1546 OP 7). Reporting from UKMis suggests quite a lot of useful UN activity to define what the drafting/consultation process might look like and what role they can play.
6. A number of donors also appear to be eager to help with the constitution drafting process eg The Inter-Parliamentary Union, following a meeting with Dr Ezzat al-Sadeeq (current Head of the Interim National Council Secretariat and presumed head of its TNA successor) and the US. Iraqi thinking on how to coordinate all the goodwill has yet to develop. There is a clear need for the UN to take the lead in co-ordinating the form of the consultation and drafting process with the TNA.

### *UK Role*

7. Apart from encouraging a UN lead (I have suggested to political leaders here that an early priority for the TNA should be a formal request for UN help), we can usefully go on plugging the message with political parties about broad political involvement in the drafting process and promote effective contributions from civil society (eg the discussion forum we hosted earlier this month, our telno 33)
8. We should also explore what support we might offer to a TNA-UN agreed constitution-making process eg funding the production of materials for distribution to the Iraqis, or- reference materials for use by the Preparatory Committee/TNA, or providing support/training to the Secretariat appointed to assist the Preparatory Committee.
9. You may remember the Prime Minister’s exhortation that we find a role for Lord Irvine in this process. Security and logistics in Iraq over the next few months are likely to rule out a role for Lord Irvine *inside* Iraq. But we imagine there will be some set piece events organised by the UN outside the country, where his presence as the head of a UK delegation (which might include the likes of Professor Jowell, mentioned in recent e-mailing from Doug Wilson and Alastair Totty) would help send a clear message of the importance the UK attaches to the constitution-making process, if we decide that is the message we want to send. If, on the other hand, we decide on a lower profile, we would do better to provide input through individual experts, not excluding visits to Baghdad when security permits.

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## Substance of the Constitution

10. Many of our interlocutors have already solicited our views on how the Constitution might look. We have stuck to the line so far that we should focus on getting to the elections, and that in any case this is a matter for the Iraqis. We may not be able to hold that line entirely with political, religious and civil society interlocutors, and perhaps should not do so if we see the debate going in a direction which we think will be destabilising.
11. There will certainly be pressure for us to be more pro-active. For example, some have suggested that a French style (5<sup>th</sup> Republic) constitution with an executive President would suit Iraq better than the current system, and many think that a two chamber Parliament with a fixed number of representatives in the Upper Chamber from each Governorate regardless of population would help balance the Shia majority in the Lower House and give room for the great and good (and e.g. tribal leaders) inside the system. But we should of course be wary of putting British (or US) fingerprints on any proposal if we are not to kill it off. So any advocacy will need to be discreet.
12. On the other hand, it would be good to do some rapid internal thinking, or commission others to think about the pros and cons of certain constitutional options in the Iraqi context, starting with the two examples above, and including voting systems etc. Martin Hetherington's paper of November 2003 (attached) provides a good starting point, and- Benomar's paper of January is also useful (copies of both attached for ease of reference).

## Timeframe for Constitution Drafting and New Elections

13. The timetable set down in the TAL is extremely tight, not helped by the uncertainty over how long it will take to convene the TNA and elect a Presidency Council and Council of Ministers. The UN and the international community may find themselves asked soon for an assessment of whether it is possible to produce a draft (following suitable public consultation) in the time available.
14. The other timing issue concerns next steps after the completion of a draft permanent constitution. The IECI view is that holding a referendum will be simpler than full national elections, but the logistics (printing/procurement/voter education on the constitution) are still complex. At least most of the operational planning can be front-loaded before the draft constitution is completed by the TNA.
15. The more difficult question is whether elections can follow, two months after the referendum, if a new electoral system has been approved. The answer will depend on how complex the changes are e.g. voting based on single or provincial constituencies, a uni- or bicameral government, an elected head of state (and under what system of voting), different voter eligibility etc. At the very least, some updating of the voter register will be required for both referendum and elections. The challenge will be to balance the time constraints with the requirement for credibility.

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## Comment

16. We already have an agreed policy on some points: UN lead, making the process as inclusive as possible. We need to decide on the UK profile in the debate, and the direction and scale of UK assistance. We should be prepared for a long haul: it seems to me that a combination of political and practical necessity makes it very likely that the six month clause will be invoked.
17. Personally I see advantage in a low public profile, with some quiet advocacy of options which we think the parties should consider, but always making clear that only the Iraqis can decide what suits them. It would serve our wider purpose of internationalising help to Iraq if we promoted a higher profile for those who have so far stood aloof, but who have real expertise to offer (e.g. Belgium).

*Yours ever,*

*Edward*

Edward Chaplin  
HM Ambassador

cc: Dominic Asquith, Director IPU  
Simon Collis, CG Basra  
Noel Guckian, CG Kirkuk  
Chancery, Baghdad  
Alastair Totty, IPU  
Neal Carlin, IPU  
Paul Mckell, Legal Advisers  
Martin Hetherington  
Lindy Cameron, DfID Baghdad  
Adam Bye, UKMiS New York  
Huw Llewellyn, UKMiS New York  
Jo Adamson, Washington

ATTACHEMNTS: 2