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BLUEPRINT FOR FREEDOM: LIMITING THE ROLE OF THE UNITED NATIONS IN POST-WAR IRAQ

NILE GARDINER, PH.D., AND DAVID B. RIVKIN, JR., ESQ.

According to media reports, the United Nations Secretary General's office has already drawn up detailed plans for the U.N. to step in and govern Iraq three months after the war is over. Numerous countries, including most members of the European Union, Russia, China, and virtually all of the G-77 states, have also been clamoring for the U.N. to play a leading role in Iraq. Even some Coalition partners, such as the United Kingdom, have been urging the United States to accord the U.N. some modicum of influence, less because of the unique ability of the U.N. to assist in Iraqi rebuilding and reconstruction and mostly out of a desire to help heal the breach in the Atlantic alliance and rehabilitate the U.N.'s tattered record.

While the U.S. should always listen respectfully to requests from its allies, it is imperative that in the weeks ahead the Bush Administration rebuff U.N. plans for a central role in a post-war Iraqi government. Such a scheme would jeopardize the United States' key war aims and would also seriously hamper President George W. Bush's broad vision of a free Iraqi nation, rising from the ashes of tyranny.

To the extent there is a role for the United Nations to play in a post-war Iraq, it should be limited and restricted to purely humanitarian tasks,

carried out by agencies such as UNICEF and the World Food Program.

Key Principles to Apply in Iraq's Reconstruction. While administering post-war Iraq and carrying out democratic and economic reforms, the Bush Administration should apply the following guidelines to involvement by the U.N. and the international community:

- The United States and the United Kingdom, not the United

Nations, must oversee the future of a post-Saddam Iraq. They should make clear that the 1907 Hague Regulations, the 1949 Geneva Convention IV, and customary international law provide a solid legal basis for the Coalition countries' interim governance of Iraq, pending the full transition of power to a new democratic Iraqi government. There is no need for a U.N. resolution mandating a post-war Allied administration.

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- Only those nations that have joined the “coalition of the willing” should participate in the post-war administration, reconstruction, and security of Iraq.
- The role of the United Nations in a post-war Iraq should be solely humanitarian.
- All individuals who have committed war crimes, genocide, crimes against humanity, and other grave violations of international or Iraqi law should be vigorously and promptly prosecuted. Appropriate punishments, up to and including the death penalty, should be meted out to the individuals found guilty of these offenses.
- Both the prosecution and truth finding should be carried out primarily by the Iraqis themselves with appropriate input from the Coalition countries. There should be no involvement by any international tribunals, whether *ad hoc* (as was the case in the Balkans) or in the form of the permanent International Criminal Court.
- The United States must press the U.N. Security Council to end the oil-for-food program. All of the revenues from the past sales of Iraqi oil, now controlled by the U.N., are the sovereign property of Iraq and should immediately be turned over to the Iraqi interim government. The regime change in Iraq has vitiated all of the Saddam Hussein-era sanction resolutions. While a new Security Council resolution acknowledging this fact might be politically expedient, it is not legally required.
- The interim government run by Coalition countries, and its eventual Iraqi successor government, should be viewed as the legitimate government of Iraq, disposing of all attributes of sovereignty.
- Oil and other financial contracts signed between Saddam Hussein’s regime and Euro-

pean governments and companies that have violated either international law (by flouting the Saddam Hussein-era sanctions) or the applicable Iraqi national law should be carefully scrutinized by the post-war Iraqi government.

Conclusion. The U.N. is slowly dying as a force on the world stage and will go the way of the League of Nations unless it is radically reformed and restructured. It failed spectacularly to deal with the growing threat posed by Saddam Hussein, and its influence may well diminish further in the coming years. Indeed, what happens to the U.N. in the future very much depends upon how it behaves here and now.

This is a moment of truth for the U.N. and Secretary General Kofi Annan. There is no doubt that France and Russia are pursuing narrow, selfish, and anti-American policy agendas with regard to Iraq’s post-war governance and democratization. Their policy aspirations are quite different from any conceivable U.N. vision of how a post-Saddam Hussein Iraq should be governed and reformed.

President Bush should make it clear that no further discussions on the Iraq issue are needed at the U.N. Indeed, the role of the United Nations in a post-war Iraq should be limited to purely humanitarian involvement. The United States and the United Kingdom should take the lead in administering a post-war Iraqi transition government, with the U.N. playing only a subordinate role.

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BLUEPRINT FOR FREEDOM: LIMITING THE ROLE OF THE UNITED NATIONS IN POST-WAR IRAQ

NILE GARDINER, PH.D., AND DAVID B. RIVKIN, JR., ESQ.

According to media reports, the United Nations Secretary General's office has already drawn up detailed plans for the U.N. to step in and govern Iraq three months after the war is over. The confidential blueprint calls for establishing a U.N. Assistance Mission in Baghdad to oversee all aspects of a post-Saddam Iraqi government.¹

Numerous countries, including most members of the European Union,² Russia, China, and virtually all of the G-77 states, have also been clamoring for the U.N. to play a leading role in Iraq. Even some Coalition partners, such as the United Kingdom (U.K.), have been urging the United States to accord the U.N. some modicum of influence, less because of the unique U.N. ability to assist in Iraqi rebuilding and reconstruction and mostly out of a desire to help heal the breach in the Atlantic alliance and rehabilitate the U.N.'s tattered record.

While the U.S. should always listen respectfully to requests from its allies, it is imperative that in the weeks ahead the Bush Administration rebuff U.N. plans for a central role in a post-war Iraqi government. Such a scheme would jeopardize the United

States' key war aims: eliminating weapons of mass destruction and terrorist cells in Iraq, protecting Iraq's energy infrastructure and resuming normal oil production, securing law and order in large cities and the countryside, defending Iraq's borders, and protecting the country's territorial integrity. It would also seriously hamper President George W. Bush's broad vision of a free Iraqi nation, rising from the ashes of tyranny and spreading democracy throughout the Middle East.

To the extent there is a role for the United Nations to play in a post-war Iraq, it should be limited and restricted to purely humanitarian tasks, carried out by agencies such as UNICEF and the World Food Program. Meanwhile, the proposition

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1. See "UN Leaders Draw Up Secret Blueprint for Postwar Iraq," *The Times* (London), March 5, 2003.
2. The statement issued at the recent EU summit in Athens specifically indicated that "[t]he UN must play a central role, including the process leading toward self-government for the Iraqi people, utilizing its unique capacity and experience in post-conflict nation-building."

that the U.S. should ignore these factors and assign to the U.N. a role in Iraqi post-war governance for which it is not equipped, either legally or practically, just to help restore that organization's self-esteem is not particularly compelling. Foreign policy should not be driven by psychotherapy-related imperatives.

Even more fundamentally, and for reasons which go well beyond the imperatives of Iraqi reconstruction, the Administration needs to challenge numerous legal and policy arguments being advanced by U.N. partisans. These claims include that (1) the Coalition members cannot administer Iraq without the U.N.'s legal imprimatur; (2) the Coalition cannot draw on Iraqi national resources to pay for any reconstruction-related needs; (3) all existing Security Council sanctions resolutions (originally passed to address specific misdeeds by the Saddam Hussein regime) remain fully in force and can be overturned only by a new Security Council resolution; (4) only the U.N. can bestow legitimacy on any new Iraqi interim administration; and, ultimately, (5) the U.N.-led process is essential to the creation of an Iraqi democratic polity.

All of these legal and policy propositions are wrong. They are driven largely by the same ill-thought-out impulse of trying to discipline American military and diplomatic power that was so evident in the pre-Operation Iraqi Freedom debates about U.N. authorization of the use of force.³ They are also inconsistent with the U.N. Charter and violate international law. If embraced, they would have adverse policy consequences, both for the U.S. and for the U.N. Indeed, there is no surer way of weakening U.N. legitimacy even further, or killing it outright, than pushing the U.N. to act in ways that exceed its legal powers and managerial prowess.

Under well-established principles of international law, Coalition countries can govern Iraq on an interim basis. An entity created by Coalition forces, which can and should delegate authority to Iraqi-run local, regional, and national institutions as

quickly as possible, is the legitimate government of the sovereign state of Iraq. That entity is entitled to use Iraqi national resources, including proceeds from oil sales, to pay for the country's reconstruction and rebuilding projects. Over time, more and more power and authority would be assumed by the Iraqi-run democratic institutions. Eventually, Coalition-run governing structures would be dissolved.

While the U.N.'s endorsement of this effort would be politically advantageous, it is not legally required. Indeed, under the 1907 Hague Regulations, the 1949 Geneva Convention IV, and customary international law norms, the Coalition countries, having effected a regime change in Iraq, bear the ultimate responsibility for the safety and well-being of the Iraqi people until the full transition to a new Iraqi government takes place. While they can and should seek support and help from the U.N., other multilateral institutions (e.g., NATO), and non-Coalition countries, the ultimate legal responsibility remains with them and cannot be delegated to anybody else.

The existing legal requirements imposed on the victorious belligerent powers are designed both to protect the population of defeated belligerents and to promote a responsible and careful attitude toward the use of armed force by states. In this regard, imposing duties and obligations on victorious belligerents is just as important as other elements in the overall law of armed conflict, including the rules governing when armed force can be used and how it can be applied on the battlefield. Ironically, the very same European countries that, just a few weeks ago, piously espoused the importance of conforming the then-pending U.S. resort to force against Saddam Hussein to the applicable international law norms now seem perfectly willing to displace an equally important and venerable set of international law strictures governing belligerent occupation.

3. For a good discussion of the use and misuse of international law arguments to advance the realpolitik agenda of managing and constraining American power, see David B. Rivkin, Jr., and Lee A. Casey, "The Rocky Shoals of International Law," *The National Interest*, Winter 2000/2001. In fact, most of the recent debates regarding the circumstances in which armed force can be used legitimately, whose approval is required, and what rules should govern the actual employment of military force have been intellectually incoherent, internally inconsistent, and seem driven by one overarching policy imperative—complicating any unilateral and robust American resort to force. See David B. Rivkin, Jr., and Lee A. Casey, "That's Why They Call It War," *The Washington Post*, March 16, 2003.

As far as legal or moral legitimacy is concerned, neither the U.N. Charter nor customary international law grants the U.N. any cognizable legal right to recognize governments or bestow a seal of good housekeeping on them. Under democratic theory of governance, a government's legitimacy is derived, ultimately and only, from the consent of the people it governs. Meanwhile, as a matter of international law, there are well-established principles that govern the recognition of one government by its counterparts in other countries, e.g., effective control over territory.⁴

Significantly, from the very beginning, the U.N. has taken the position that it cannot set itself up as an arbiter of its member states' moral or ideological probity and that it takes its members as it finds them. In this regard, the U.N. has consistently emphasized that it is not competent to impose political or economic reforms on its member states and has to operate in accordance with the principle of non-intervention in the internal affairs of its members.⁵

It certainly would be awkward for an organization that lets Colonel Qaddafi's Libya run the U.N. Commission on Human Rights and was content to

have Saddam Hussein's Iraq chair the U.N. Conference on Disarmament to act as if it can or should pass moral judgments.⁶ Meanwhile, given the wide diversity of the political arrangements found among U.N. members, which range from democratic polities to authoritarian states to totalitarian and rogue regimes, the U.N. as an institution is singularly ill-equipped to assist in the post-Saddam Hussein democratization of Iraq, much less lead it.

Issues of legal authority aside, the U.N.'s track record on security matters, economic reconstruction, political reforms, building civil society, law enforcement, and anti-corruption efforts in such places as Kosovo, Rwanda, and Bosnia is—to put it mildly—uninspiring.⁷ These difficult tasks require, at the very least, superior managerial abilities—which the U.N. has not demonstrated in running its own organization, much less in running an occupied country.

Moreover, an organization that failed to enforce 17 of its own resolutions calling for Iraqi disarmament lacks the credibility to administer Iraq or enforce security in that country. These tasks require a firm hand and appropriate rules of engagement. The U.N.'s real and perceived weaknesses would

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4. Restatement (Third) of the Foreign Relations Law of the United States §201–202 (1987).
 5. Article 2.7 of the U.N. Charter specifically provides that “[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.” Thus, unless and until the high threshold—a threat to international peace—sufficient to trigger the invocation of the Security Council's Chapter VII authority has been met, the U.N. has very little to say about the internal political, economic, and cultural affairs of its member states.
 6. Certainly, some people argue that, as a part of much-needed U.N. reforms, an effort should be made to realign that organization's human rights and security policies. For example, some authors have suggested that, building upon our experience with Saddam Hussein, such factors as possession of weapons of mass destruction or attempts to obtain them, coupled with “grave and systematic human rights abuses sufficient to demonstrate the absence of any internal constraints on government behavior,” should be sufficient grounds to trigger a Security Council–blessed use of force authorization. See Anne-Marie Slaughter, “A Chance to Reshape the UN,” *The Washington Post*, April 13, 2003. However, such proposals, while possessing considerable merit, have not yet been acted upon and may never be implemented. Meanwhile, it would be a grave mistake to grant the U.N., just because it might be reformed in the future, powers that it cannot responsibly discharge at the present. It is also worth noting that, even if such proposals were implemented, their invocation would still require a threat to peace or international stability, which is the special condition in which the Security Council's powers are at their zenith. (See Charter of the United Nations, Ch. VII.) The U.N. cannot become an all-purpose teacher of democracy to its members, both because this would entirely vitiate Article 2.7 (non-intervention in the internal affairs of member states) and because it is not well-equipped to do so.
 7. For an excellent discussion of the Kosovo situation, see Stephen Schwartz, “UN Go Home,” *The Weekly Standard*, April 14, 2003. Among other problems, Schwartz points out that, four years after NATO intervention, “Kosovo still endures a two-hour power cut every four hours, night and day, and even that schedule is by no means reliable—this in a province that, before the Milosevic era, exported power for hard currency to neighboring Albania and Greece.” Meanwhile, the U.N.'s experience in Srebrenica and Rwanda certainly disqualifies it from playing any serious role in security-related matters.

invite diverse Iraqi factions to challenge its writ and would impede its ability to govern.

BUSH ADMINISTRATION PLANS FOR POST-WAR IRAQ

In a March 26 statement to Congress, Secretary of State Colin Powell made it clear that Washington would not give the United Nations a commanding role in administering a post-war Iraq. Powell said, “We didn’t take on this huge burden with our Coalition partners not to be able to have a significant dominating control over how it unfolds in the future.” Echoing Powell’s comments, National Security Adviser Condoleezza Rice stated that the Coalition, not the U.N., would be the “leading” force in administering Iraq after the downfall of Saddam Hussein.⁸

The Bush Administration envisages a temporary U.S.-led administration, which will govern Iraq for a period until an interim Iraqi government can be put in place.⁹ The U.S. effort is headed by retired U.S. Army General Jay Garner under the rubric of the Pentagon’s Office of Reconstruction and Humanitarian Assistance. Garner has drawn together over 150 officials from the United States and the United Kingdom. The administration is charged with overseeing civil governance, reconstruction, and humanitarian assistance. It will work in tandem with a Coalition-led security force, which may involve up to 60,000 Coalition troops.

At the same time, the United States Agency for International Development (USAID) is co-ordinating the most ambitious international rebuilding project since the Second World War. It has been allocated \$900 million in taxpayers’ money to oversee the initial phase of the reconstruction of post-Saddam Iraq.

Aside from the immediate reconstruction-related tasks, the Administration has articulated a set of far-ranging, ambitious long-term goals, including fostering a democratic Iraq in which Kurds, Shiites, and Sunnis would live in peace, developing a civil society and rule of law, and empowering Iraqi

women to become full-fledged participants in the country’s political and economic life.

There are also U.S.-led efforts underway designed to convince such countries as Russia, France, and Germany to forgive most, if not all, of Iraqi national debt. Significantly, while the U.S. is prepared to commit money to Iraqi reconstruction and has done so already, rebuilding the country’s infrastructure, improving its educational and health systems, and creating jobs for the Iraqi people would require unimpeded access to Iraqi oil revenues—both the proceeds from the new oil sales and the billions of dollars from prior sales currently sitting in U.N.-controlled bank accounts. More generally, the Bush Administration believes that it is essential to vest the new Iraqi government with full sovereign powers so it can negotiate and sign contracts and borrow monies on the international markets.

THE U.N. AS A TROJAN HORSE

In the coming weeks, the United States will face mounting pressure from other members of the Security Council, most notably France, Russia, and Germany, to cede control of post-war administration to the United Nations. French Foreign Minister Dominique de Villepin has argued that the U.N. must have supremacy in post-war Baghdad: “The UN must steer the process and must be at the heart of the reconstruction and administration of Iraq.”

The three nations have stipulated that a U.N. mandate for a post-Saddam government will be given only on their terms. The French, Russians, and Germans unequivocally condemned Coalition military action against the Iraqi regime and refused to cooperate with London and Washington by expelling Iraqi diplomats from their capitals. In the words of Russian Deputy Foreign Minister Yuri Fedorov, the U.S. and its allies had acted “in violation of the norms of international law.”¹⁰ French President Jacques Chirac has made it clear that France will veto any resolution at the Security Council that “would legitimize the military intervention and give the belligerents, the United States

8. “Rice Says U.S. to Have ‘Leading’ Role in Iraq,” *The Washington Times*, April 5, 2003.

9. There are also indications that, even during this period, there will be delegations of power to Iraqi-led institutions. One good candidate for such an early delegation will be the energy sector.

10. “Russia Seeks UN Ruling on Iraq,” BBC News Online, March 24, 2003.

and the United Kingdom, the right to administer Iraq.”¹¹

This is a typical example of French foreign policy hubris masquerading as law. Coalition operations against Saddam Hussein’s regime were perfectly legal under international law and do not require any new Security Council blessing.¹² Likewise, under the well-established principles of customary international law, the 1907 Hague Regulations, and the 1949 Geneva Convention IV, the U.S., the U.K., and other Coalition partners have an absolute legal right to administer Iraq, subject of course to various requirements and obligations. The U.N. Security Council’s blessing is not legally required, nor can it be used to abridge or curtail the post-combat obligations of the Coalition powers.

A U.N.-controlled post-war administration would merely serve as a Trojan horse for European nations opposed to regime change, enabling them to stake their economic and strategic claims in Iraq. Indeed, the appeasement of the brutal Iraqi dictatorship by France, Germany, and other members of the U.N. Security Council will go down in history as one of the most shameful episodes of the early 21st century. The spectacle of French and Russian bureaucrats, who for decades profited from dealing with a brutal dictator in power, ruling over the Iraqi people would be utterly abhorrent. It is important for the future of Iraq’s citizens that Paris, Moscow, and Berlin play no significant part in the creation of the new Iraqi state. Neither they nor the U.N.’s bureaucrats have the requisite democratic vision.

Efforts by Paris and Moscow to retain the U.N. sanctions regime against Iraq, particularly the “oil

for food” program, also ought to be vigorously opposed by the United States. As a matter of law, various Security Council resolutions imposed on Iraq under the Saddam Hussein regime were predicated upon the specific misdeeds committed by that regime and the threats that it posed to international peace and stability—e.g., weapons of mass destruction programs, aggressive designs against its neighbors (Kuwait, Iran, and Saudi Arabia), torture, and human rights abuses. Since the conditions that gave rise to these resolutions have now been vitiated and the prescriptions and measures specified in the resolutions have been superseded by the regime change in Baghdad and can no longer be performed, it is entirely permissible and appropriate for the United States to hold that the resolutions are no longer in force and that rescinding them does not require a new Security Council resolution.¹³

The debate about the legal status of these resolutions is not an academic one. Legal arguments aside, if the U.S. were to endorse the view that the Saddam Hussein-era sanctions remain in force, France, Russia, Germany, and the U.N. bureaucracy are certain to extract heavy political and economic concessions for any repealing resolution. Unfortunately, this is precisely what is taking place right now as Russia, France, and several other countries are indicating that they would be prepared to lift Iraq-related sanctions only in exchange for U.S. agreement on a broader U.N. role in the governance of Iraq.¹⁴ Conversely, only by asserting—as the U.S. legitimately can—that the regime change in Iraq

11. “We Will Not Help You to Justify War, Chirac Tells Blair,” *The Times* (London), March 22, 2003.

12. The use of force against the Saddam Hussein regime could be justified as (1) a continuation of the 1990 Gulf War, with Iraq having violated the cease-fire provisions and continuous military operations taking place during the intervening years; (2) authorized by a body of U.N. Security Council resolutions, including Resolutions 678 and 687; or (3) based on the customary international law right of anticipatory self-defense. In fact, in this instance, the use of force had so many meritorious legal bases that it was arguably the most well-lawyered and legally justified use of force in human history. For a discussion of this set of issues, see David B. Rivkin, Jr., and Darin R. Bartram, “The Law on the Road to Baghdad,” *National Review Online*, August 28, 2002.

13. The U.S. has always maintained that U.N. resolutions, including ones passed long ago, ought to be taken seriously and are not to be easily vitiated. Indeed, of all the Security Council’s permanent members, the U.S. and the U.K. have been the most solicitous of the Security Council’s legitimate legal prerogatives and the most compliance-minded. However, stubbornly insisting that Security Council resolutions remain in force after they clearly have been vitiated and are no longer appropriate or capable of being performed—as is being argued by France, Russia, and Germany—would do just as much to undermine the Security Council’s authority as ignoring those extant Council resolutions that remain in force.

14. See “Lifting of Sanctions Linked to UN Role,” *The Washington Post*, April 18, 2003.

has already vitiated these resolutions can the U.S. neutralize this blackmail scenario.

IRAQI SOVEREIGNTY

The United States should also immediately address the legal status of both the post-Saddam Hussein interim governing entity, run by the Coalition countries, and the eventual Iraqi national government. The Bush Administration should vigorously argue that, under the existing international law norms, both the interim entity and its successor Iraqi government are fully legitimate and possess all attributes of Iraqi sovereignty, including the ability to borrow money, sign contracts with foreign entities, and manage Iraq's natural resources. The 1907 Hague Regulations and the 1949 Geneva Convention IV, which govern the conduct of belligerent occupation, specifically allow occupying powers to draw upon the natural resources of the occupied country to pay for projects that benefit that country's people, e.g., schools, roads, hospitals, and factories.

This is also a debate that the Administration can and should easily win if it is willing to resort to an assertive public diplomacy. For example, the notion that Iraq-related sanctions can be lifted only in exchange for a bigger U.N. role in post-war Iraq is so fundamentally at odds with the precepts of the U.N. Charter¹⁵ that exposing it as a blatantly cynical ploy is not difficult. Likewise, it is easy to challenge recent statements by Russian Foreign Minister Igor Ivanov that “[f]or the Security Council to take this decision [the lifting of sanctions] we need to be certain whether Iraq has weapons of mass destruction or not.” Coming from a country that, together with France and Germany, has consistently expressed doubt, as recently as several weeks ago,

that Saddam Hussein's regime had any weapons of mass destruction and has, throughout the 1990s and early 2000, consistently called for the lifting of all U.N. sanctions, Russia's new-found solicitude for Iraqi arms control compliance is—to put it mildly—unusual.¹⁶

Significantly, the dispute is not between the U.S. and the U.N. At its core, this is really an effort by several unprincipled and selfish European powers to exploit the people of Iraq.¹⁷ French and Russian officials are likely to use their economic and political leverage to protect their Saddam Hussein-era contracts and debts. The fact that the very same entities and countries that heretofore have been most accommodating *vis-à-vis* Saddam's brutal regime are trying to be tough and legalistic *vis-à-vis* the free post-Saddam Iraq only adds insult to injury.

THE DANGER OF A RIFT BETWEEN WASHINGTON AND LONDON

Unquestionably, the United Kingdom is viewed by Washington as its most important ally—politically, strategically, and militarily—and is seen as the keystone of the “coalition of the willing” formed to unseat Saddam Hussein. President George W. Bush and Prime Minister Tony Blair have jointly displayed outstanding world leadership at a time when the U.N. has demonstrated a lack of moral fortitude and a blatant unwillingness to enforce its own resolutions. The U.S.–U.K. special relationship remains the cornerstone of strategic thinking in both Washington and London, and the United Kingdom is once again standing shoulder-to-shoulder with the United States at a crucial moment in history.

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15. Even if one were to assume that these resolutions remain valid, no plausible construction of the Security Council's Chapter VII authority or of the language of these resolutions can support the linkage between their repeal and the policy concessions that are being sought by France and Russia.
16. See “Russia Renews Call for Lifting of Sanctions on Iraq,” *People's Daily*, November 14, 2000. This article quotes Russian Foreign Minister Ivanov as opining at a press conference that “It is time to lift the sanctions and end the sufferings of the Iraqi people.” See also “France Calls for Lifting of Sanctions Against Iraq,” Xinhua News Agency, August 1, 2000, at www.globalpolicy.org/security/sanction/iraq1/000801b.htm (April 18, 2003). This news article quotes the then-French Foreign Minister Hubert Vedrine to the effect that sanctions against Iraq are “cruel, inefficient and dangerous” and as calling for an immediate lifting of all U.N. arms control-related sanctions.
17. In this context, it would be useful to remind world public opinion that the U.N. has benefited handsomely from its administration of the oil-for-food program. It collected well over \$1 billion in commissions on Iraqi oil sales and has run this program as its private slush fund, with no accountability or transparency. For an excellent discussion of this issue, see Claudia Rosett, “Oil for Food, Money for Kofi,” *The Weekly Standard*, August 7, 2003.

Unfortunately, serious disagreements have emerged between London and Washington over the role of the U.N. in liberated Iraq. Tony Blair has already signalled support for seeking some form of a U.N. mandate for the transitional U.S.–U.K.-led Iraqi administration. The White House so far has demonstrated no enthusiasm for such a course of action. If Blair were to return to the U.N. seeking a new resolution, he would be trying to cross a bridge too far.

It is imperative that no public spat emerge between Washington and London over this issue. There must be no open divide that would aid the cause of those who opposed Coalition military action. The Bush Administration must privately put across the view that it would be a grave error to return to the U.N. for an open-ended discussion regarding yet another resolution on the Iraq question. If the U.K. and America were to do so, the two powers would become mired in endless negotiations at the Security Council, debating nations that would happily have kept Saddam Hussein in power. The ultimate losers would be the Iraqi people themselves.¹⁸

The far better approach would be to let the French, Russians, and Germans know that the U.S. would listen if they offered a reasonable draft Security Council resolution on Iraq, featuring the right mix of legal and policy propositions but not seeking to arrogate to the U.N. those powers which it does not possess. The Security Council ball should be in their court.

U.S.–U.K. CONTROL OF A POST-WAR SECURITY FORCE

The United Nations should also be denied a role in the post-war security force. The U.N.'s track record in peacekeeping operations has been a dismal failure, from the Balkans to West Africa. Blue helmets, which have elicited the derision and scorn of Bosnian and Rwandan warlords, are unlikely to

command any respect in Iraq. Even if the Coalition troops were used, with the U.N. in charge, unrealistic rules of engagement and rigid command structures are certain to be imposed. Coalition forces, operating under the existing command authorities and not the U.N., must be entrusted with the security of post-Saddam Iraq.

U.K.–U.S. forces could be joined by troops from other members of the Coalition, including Australia, Poland, Italy, Spain, and the Czech Republic. Over 45 nations across the world have supported U.S.–U.K. military action. This is a numerically larger coalition than the one assembled for Operation Desert Storm in 1991.

There is a strong case to be made for the U.K.'s taking command of the security element of a post-war force under the overall command of General Tommy Franks. The United Kingdom has deployed 45,000 combat troops to the Gulf, tens of thousands of whom were at the forefront of military action against the Iraqi regime. Downing Street has already discussed the possibility of 15,000 U.K. troops' remaining in Iraq for several years after the downfall of the Baathist regime.¹⁹

The United Kingdom has a long and highly successful record of non-combat operations in a number of theatres across the globe, including Afghanistan, Kosovo, Bosnia, Sierra Leone, and Northern Ireland, and would be ideally suited to running the highly complex post-war Iraq security operation. British leaders also have an in-depth knowledge of Iraq and the region and enjoy close diplomatic and historical ties with much of the Arab world. A U.K.-led military operation would be less likely to inflame tensions and complicate Bush Administration plans for democratization in the region. In addition, it would allow the United States to free much-needed resources for the wider war against terrorism.

18. Proponents of a new Security Council resolution authorizing the post-Saddam interim Iraqi government often argue that the U.N. imprimatur, whether or not legally redundant, would help to quell the anger of the so-called Arab street and thus make Iraqi reconstruction easier to manage. Yet, even assuming that the fickle and difficult to discern views of the Arab street should be viewed by the Coalition countries as an overarching policy imperative, there is absolutely no evidence that the U.N. or the other European powers command a much better acceptance in these quarters than the Coalition countries.

19. "British Troops Will Stay in Iraq for Five Years After Saddam Is Ousted," *The Daily Telegraph*, July 14, 2002.

KEY POLICY AND LEGAL PRINCIPLES TO APPLY IN IRAQ'S RECONSTRUCTION

While administering post-war Iraq and carrying out democratic and economic reforms, the Bush Administration should apply the following guidelines to involvement by the U.N. and the international community:

- The United States and the United Kingdom, not the United Nations, must oversee the future of a post-Saddam Iraq. They should make clear that the 1907 Hague Regulations, the 1949 Geneva Convention IV, and customary international law provide a solid legal basis for the Coalition countries' interim governance of Iraq, pending the full transition of power to a new democratic Iraqi government. There is no need for a U.N. resolution mandating a post-war Allied administration. While such a resolution might be politically helpful, the U.N. and European countries need it just as much, if not more, than the Coalition does. Accordingly, the U.S. and the U.K. should avoid another open-ended and acrimonious set of Security Council debates. If France, Russia, and Germany are prepared to offer a satisfactory draft resolution, the U.S. and U.K. should accept it.
- Only those nations that have joined the "coalition of the willing" should participate in the post-war administration, reconstruction, and security of Iraq.
- The role of the United Nations in a post-war Iraq should be solely humanitarian.
- All individuals who have committed war crimes, genocide, crimes against humanity, and other grave violations of international or Iraqi law should be vigorously and promptly prosecuted. Appropriate punishments, up to and including the death penalty, should be meted out to the individuals found guilty of these offenses. Truth finding and national reconciliation activities, patterned after the post-apartheid South African Truth and Reconciliation Commission, should be launched promptly.
- Both the prosecution and truth finding should be carried out primarily by the Iraqis themselves with appropriate input from the Coalition countries. While individuals who have committed war crimes against Coalition forces, either during the 1990 Gulf War or during ongoing fighting, can and should be tried by the military justice systems of the Coalition forces, there should be no involvement by any international tribunals, whether *ad hoc* (as was the case in the Balkans) or in the form of the permanent International Criminal Court.²⁰
- The United States must press the U.N. Security Council to end the oil-for-food program.²¹ All of the revenues from the past sales of Iraqi oil, now controlled by the U.N., are the sovereign property of Iraq and should immediately be turned over to the Iraqi interim government. The United States and the United Kingdom should also vigorously argue that the regime change in Iraq has vitiated all of the Saddam Hussein-era sanction resolutions and that, while having the Security Council confirm this fact through a new resolution would be helpful, no such resolution is legally required.
- The interim government run by Coalition countries, and its eventual Iraqi successor government, should be viewed as the legitimate government of Iraq, disposing of all attributes of sovereignty.
- Oil and other financial contracts signed between Saddam Hussein's regime and European governments and companies that have violated either international law (by flouting the Saddam Hussein-era sanctions) or the applicable Iraqi national law should be carefully scrutinized by the post-war Iraqi government. This, of course, is a decision that can be undertaken only by the Iraqis themselves. However, there are good reasons to believe that the Iraqis can legally repudiate, or at least renegotiate, any inequitable or one-sided contracts signed during Saddam's tenure. Legal arguments aside, the Iraqi government should be able to use its bully

20. See David B. Rivkin, Jr., and Lee A. Casey, "Saddam's Judge and Jury: An Iraqi Court Should Try the Country's Tormentor," *The Washington Times*, March 26, 2003.

21. The U.N. Secretary General has been given a 45-day mandate to continue administering the oil-for-food program. The arrangement expires on May 12.

pulpit to shame, through full public disclosure, those parties that did business with Saddam Hussein's regime into an equitable resolution of these issues.

- Once the Baathist regime's archives have been opened in Baghdad, there must be a full and exhaustive investigation into links between the Iraqi dictatorship and French, German, and Russian companies and politicians. Appropriate U.S. sanctions should be applied against those businesses that have contributed to Iraq's development of weapons of mass destruction or have violated the U.N. oil-for-food program.

CONCLUSION

The U.N. is slowly dying as a force on the world stage and will go the way of the League of Nations unless it is radically reformed and restructured. It failed spectacularly to deal with the growing threat posed by Saddam Hussein, and its influence may well diminish further in the coming years. Indeed, what happens to the U.N. in the future very much depends upon how it behaves here and now.

This is a moment of truth for the U.N. and Secretary General Kofi Annan. There is no doubt that France and Russia are pursuing narrow, selfish, and anti-American policy agendas with regard to Iraq's post-war governance and democratization. Their policy aspirations are quite different from any conceivable U.N. vision of how a post-Saddam Hussein Iraq should be governed and reformed. Yet these countries badly need the veneer of U.N. support for their activities; without it, their schemes would be so obviously self-serving as to command no support from their European allies.

There is also no doubt that Kofi Annan has taken a very assertive stance *vis-à-vis* the United States and the United Kingdom during the debates over Security Council Resolution 1441 and the subsequent efforts to pass yet another Security Council

resolution authorizing the use of force against Saddam Hussein. Unless and until he is prepared to take a similarly assertive stance against Paris and Moscow, which are pursuing policies that threaten the U.N.'s own best interests by threatening to diminish further the U.N.'s credibility and deprive it of any role in Iraq, one would be forced to conclude that anti-Americanism is the U.N.'s only *raison d'être*.

In this regard, it is one thing for the U.S. to conclude that the U.N. is driven by a particular vision of how to run the international system and that, while this vision may differ from the one to which the U.S. subscribes, it is at least applied consistently and in a principled matter. If this proves to be the case, there are at least future opportunities for the United States to cooperate with the U.N. On the other hand, if the U.N.'s sole policy driver is the desire, in all circumstances, to make life more difficult for the United States, then the opportunities for cooperation would be nonexistent.

Against this backdrop, President Bush should make it clear that no further discussions on the Iraq issue are needed at the U.N. Indeed, the role of the United Nations in a post-war Iraq should be limited to purely humanitarian involvement. The United States and the United Kingdom should take the lead in administering a post-war Iraqi transition government, with the U.N. playing only a subordinate role.

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