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2007 IN IRAQ: THE SURGE AND BENCHMARKS – A NEW WAY FORWARD?

DARIN E.W. JOHNSON*

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INTRODUCTION

2006 was the most violent year in Iraq since the U.S.-led multinational force invasion in March of 2003. The February 2006 bombing of the Golden Dome Mosque at Samarra by extremists was generally viewed as the catalyst for wide scale ethno-sectarian conflict throughout Iraq.¹ Through 2006, U.S. troop deaths increased

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1. See Robert F. Worth, *Blast at Shiite Shrine Sets Off Sectarian Fury in Iraq*, N.Y. TIMES, Feb. 23, 2006, at A1 (reporting that on February 22, 2006, a bomb destroyed the dome of the Golden Mosque of the Askariya Shrine in Samarra, Iraq, one of Iraq's most important Shi'ite shrines, as it is the burial site for two of the

to 3,003 and Iraqi ethno-sectarian civilian deaths are estimated to have increased to more than 150,000.² American disaffection with the war also grew to its highest point since the original invasion.³ The congressional midterm elections of 2006 in which the Democrats took control of Congress from the Republican Party were viewed as a repudiation of the war.⁴ The increased violence in Iraq and decreasing public support for the war led to calls from the public and the new congressional majority leadership for President George W. Bush to draw down troops and modify the Iraq war strategy.⁵ Despite these calls, President Bush did not pursue a strategy that involved the drawdown of troops. Instead, he approved a strategy

twelve imams revered by mainstream Shiites). The bombing led to a day of sectarian fury, where mobs retaliated and attacked twenty-seven Sunni mosques. *Id.* Iraqi leaders blamed the attack on a terrorist plan to exploit sectarian rifts. *Id.*

2. See Iraq Coalition Casualty Count, <http://icasualties.org/oif> (last visited Sept. 21, 2008) (cataloging the U.S. troop casualty numbers as released by the Department of Defense); HANNAH FISCHER, CONGRESSIONAL RESEARCH SERVICE, IRAQI CIVILIAN CASUALTIES ESTIMATES 4 (May 16, 2008), available at <http://www.fas.org/sgp/crs/mideast/RS22537.pdf> (providing various estimates of Iraqi civilian deaths for differing time periods, while indicating that no concrete numbers exist for a definitive count of Iraqi civilian deaths).

3. See Susan Page, *USA More Pessimistic on Iraq War*, USA TODAY, Dec. 12, 2006, at 1A (reporting that a late 2006 USA Today/Gallup poll revealed that “Americans are increasingly pessimistic about the war and want most U.S. troops withdrawn within a year . . . [and that] 76% [of] those surveyed say Iraq is in a civil war,” in addition to a significant majority of Americans doubting the value of the Iraq war).

4. See Dan Balz & Jon Cohen, *Independent Voters Favor Democrats by 2 to 1 in Poll*, WASH. POST, Oct. 24, 2006, at A1 (reporting that public opinion polling conducted days before the election showed that the war in Iraq was considered the most important election issue by the largest segment of the public); *Exit Polls: Bush, Iraq Key to Outcome*, CNN.COM, Nov. 8, 2006, www.cnn.com/2006/POLITICS/11/08/election.why/index.html (indicating that exit polls showed that large segments of the public either disapproved of the war or wanted the withdrawal of troops within some time frame, and that both of these groups broke heavily for the Democrats).

5. See Adam Nagourney & Megan Thee, *With Election Driven by Iraq, Voters Want New Approach*, N.Y. TIMES, Nov. 2, 2006, at A1 (stating that “a substantial majority of Americans expect Democrats to reduce or end American military involvement in Iraq if they win control of Congress”); cf. Nancy Pelosi, Op-Ed, *Bringing the War to an End is My Highest Priority as Speaker*, HUFFINGTON POST, Nov. 17, 2006, http://www.huffingtonpost.com/rep-nancy-pelosi/bringing-the-war-to-an-en_b_34393.html (writing one day after her selection as Speaker-designate, Nancy Pelosi posted an entry on an internet website, expressing her commitment to “bringing the war to an end”).

that increased U.S. troop levels and specified benchmark measures to assess the Iraqi government's success at achieving political rapprochement among its different factions. This Article will describe the U.S. national security strategy in Iraq during 2007 and various assessments of the success of that strategy.

I. NEW WAY FORWARD

Shortly after the fall 2006 midterm congressional elections, the President initiated a formal internal review of Iraq policy among his national security agencies to obtain policy options on a way ahead in Iraq.⁶ In January 2007, President Bush delivered his long awaited speech on Iraq, *The New Way Forward*.⁷ In the speech, President Bush acknowledged that despite the 2005 national elections in Iraq and the formation of a new Iraqi national unity government⁸ in 2006,

6. See Robin Wright, *Bush Initiates Iraq Policy Review Separate From Baker Group's*, WASH. POST, Nov. 15, 2006, at A16 (reporting that on November 14, 2006, President Bush launched an internal policy review among his national security agencies with the goal of having them recommend options on future plans, and that the release of the internal policy review was scheduled for mid-December, to coincide with the release of the independent, bipartisan Iraq Study Group Report); President George W. Bush, *President Bush Meets with Cabinet* (Nov. 9, 2006), <http://www.whitehouse.gov/news/releases/2006/11/20061109.html> (stating that one day after the Democratic midterm election victory, the President accepted the resignation of Donald Rumsfeld as Secretary of Defense, and relaying the President's announcement that he was "open to any idea or suggestion that will help us . . . ensur[e] that Iraq's democratic government succeeds").

7. President George W. Bush, *The New Way Forward in Iraq* (Jan. 10, 2007), <http://www.whitehouse.gov/news/releases/2007/01/print/20070110-7.html> (acknowledging that the situation in Iraq was "unacceptable" to himself, as well as to the American people).

8. *Id.* (taking responsibility for the failures in Iraq, but asserting that to succeed, the true path lies with the plans of the Iraqi government). The unity government was formed based upon provisions in the Iraqi Constitution designed to create a power sharing structure within the Prime Minister and President's Office supported by Iraq's various sectarian groups. See IRAQI CONSTITUTION art. 139 (requiring the Prime Minister to have two Deputy Prime Ministers during the first national electoral term of the Council of Representatives) and IRAQI CONSTITUTION art. 138 (creating a "Presidency Council" for the first electoral term of the Council of Representatives, during which period the powers of the President are shared by a tripartite Presidency Council, consisting of a President and two Vice Presidents—during 2007, the President of Iraq, Jalal Talabani, was a Kurd and his two vice-presidents Adil Abd al-Mahdi and Tariq al-Hashimi, respectively, were Shi'a and Sunni); see also Noah Feldman & Roman Martinez, *Constitutional Politics and Text In the New Iraq: An Experiment in Islamic Democracy*, 75

Iraq had not made the security and political gains that he had hoped for. He stated that the security environment had deteriorated significantly, largely as a result of the bombing of the Samarra mosque.⁹ The increase in sectarian conflict and deterioration of security ran counter to the political reconciliation that he had hoped would occur after the formation of the national unity government. Against this backdrop, President Bush determined that U.S. troop levels should be increased to provide greater security in order to facilitate greater political reconciliation at the national level.¹⁰ The strategy was premised on the notion that an increased security situation would create the breathing space for the Iraqi government to move forward with key political compromises. The success of the new strategy, therefore, would be fueled by U.S. investment in troops and treasure, but ultimately measured by the Iraqi government's success in delivering on specific benchmarks.

II. THE SURGE

The temporary troop increase, which became commonly known as “the surge,” was based upon President Bush's determination that increased security, particularly in the area of Baghdad—where eighty percent of the sectarian violence occurred—was “the most urgent priority for success in Iraq.”¹¹ President Bush stated that past efforts to secure Baghdad had failed because there were not enough American and Iraqi troops to secure neighborhoods after they had been cleared of terrorists and insurgents and because the troops were too restricted in the actions that they could take.¹² He announced that the new plan developed by his military commanders addressed these concerns. The plan would put the Iraqis in a lead position in improving security around Baghdad. Key to the new plan was the appointment of a new Iraqi military commander in Baghdad who

FORDHAM L. REV. 883, 910-15 (2006) (discussing the genesis of these constitutional provisions during the constitutional drafting process).

9. See Bush, *supra* note 7 (accusing Sunni insurgents of destroying the Golden Mosque to provoke a Shi'a response).

10. See *id.* (reasoning that an increase in American troops would lead to greater security in Baghdad, which in turn would make reconciliation possible).

11. *Id.*

12. *Id.*

would oversee the implementation of the plan.¹³ The Iraqi government would deploy eighteen Iraqi Army and National police brigades across nine of Baghdad's districts. These forces would work in concert with the local police to conduct patrols, set up checkpoints, and gain the trust of Baghdad residents.

President Bush noted that the Iraqis would need additional support from the United States to carry out their new security plan in Baghdad. For this reason he committed more than 30,000 additional American troops to Iraq, with the majority—five brigades—going to Baghdad, increasing U.S. troop levels in Iraq from 132,000 to over 160,000.¹⁴ President Bush noted that this plan would succeed where earlier plans to secure Baghdad had not because the Americans and Iraqis would have the troop levels to hold the areas that had been cleared of insurgents and terrorists and because of the Iraqi Prime Minister's pledge that political and sectarian influence would not prevent troops from going into neighborhoods that were fueling the sectarian violence.¹⁵

III. POLITICAL BENCHMARKS

In his January address, the President noted that a successful strategy in Iraq must extend beyond military operations and that the United States would hold the Iraqi government to benchmarks that it had previously announced as indicators of political reconciliation.¹⁶ These benchmarks included holding new provincial elections, the completion of a de-Ba'athification reform law, the establishment of a process for constitutional review, and the completion of a

13. *Id.*

14. *Id.* Although President Bush announced that 20,000 additional troops would be deployed in his speech, ultimately 30,000 additional troops were deployed as part of the surge, bringing troop levels to more than 160,000 at the peak of the surge in the summer of 2007. See Tim Cocks, *U.S. Military Says Iraq Troop "Surge" Has Ended*, REUTERS, July 22, 2008, available at <http://www.reuters.com/article/featuredCrisis/idUSL22490131>.

15. See Bush, *supra* note 7 (warning that the Iraqi government must keep this and other promises to maintain the support of the American and Iraqi peoples).

16. See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-1195, SECURING STABILIZING, AND REBUILDING IRAQ: IRAQI GOVERNMENT HAS NOT MET MOST LEGISLATIVE, SECURITY, AND ECONOMIC BENCHMARKS 1 (Sept. 2007) [hereinafter GAO STUDY] (noting that the benchmarks were derived from commitments articulated by the Iraqi government beginning in June 2006).

hydrocarbon sharing law.¹⁷ The ultimate goal of “political reconciliation” was viewed as the coming together of Iraq’s various sectarian groups—the Shi’a, Kurds, Sunni, and other minority ethnic and religious groups—to reach political common ground on issues of national importance to all Iraqis.¹⁸ Provincial elections were seen as particularly important to the Iraqi public because many Sunnis had boycotted the earlier national elections.¹⁹ Provincial elections were viewed as an opportunity to provide the Sunnis with greater political representation at the provincial level, increase Sunni participation and commitment to a democratic form of government, and undermine support for Sunni insurgent groups that opposed the new national government. The completion of a de-Ba’athification law was intended to help re-integrate thousands of disaffected former low level Ba’athists, largely Sunni, back into national civil servant positions.²⁰ As many of the difficult political issues that arose during the constitutional drafting process (such as territorial claims over Kirkuk and other disputed areas) had been deferred during the original drafting of the constitution,²¹ constitutional review was also seen as a mechanism through which the various sectarian groups could make political compromises in working towards a common objective. Finally, the issue of the distribution of Iraq’s oil resources was of great import to Shi’a, Sunnis and Kurds throughout the country. Concluding a law that would provide for the distribution of

17. See Bush, *supra* note 7 (highlighting these key benchmarks in announcing the *New Way Forward* strategy).

18. See GAO STUDY, *supra* note 16, at 1 (noting that the levels of violence in 2006 undermined efforts to achieve political reconciliation by fueling sectarian tensions and that the new U.S. strategy was designed to provide the Iraqi government with the time and space needed to help address reconciliation among the various segments of Iraqi society).

19. See *id.* at 31 (articulating that the Sunni boycott resulted in Shi’a and Kurd provincial councils representing provinces with majority Sunni populations, and that new provincial elections would rectify this imbalance).

20. See *id.* at 23-24 (noting that much of the Iraqi technocratic class had been removed from government under the de-Ba’athification process, angering many Sunni Arabs, and that U.S. officials sought to differentiate Ba’athist officials who had committed human rights violations, from those who had merely been members of the Ba’ath party).

21. See *id.* at 19 (noting that several contentious issues were not resolved in the October 2005 constitutional referendum).

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oil resources nationally was viewed as one of the most significant issues requiring political reconciliation at the national level.²²

IV. CONGRESSIONAL BENCHMARKS

On May 25, 2007, several months after he announced his new Iraq strategy, President Bush signed into law a troop funding provision that included eighteen congressional benchmarks to measure progress in Iraq. The U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act²³ required the President to provide two reports to Congress assessing the status of each of the eighteen benchmarks contained in the Act.²⁴

Citing President Bush's statement in his January speech that "America will change our approach to help the Iraqi government as it moves to meet these benchmarks"²⁵ and noting that significant time had passed since the January address, Congress stated in the law that it must have adequate reports of the Government of Iraq's progress towards meeting various political, military and economic benchmarks to perform its constitutional oversight responsibilities.²⁶ Through the passage of this law, Congress effectively enshrined President Bush's new Iraq strategy into law. Congress specifically mandated that:

the United States strategy in Iraq, hereafter, shall be conditioned on the Iraqi government meeting benchmarks, as told to members of Congress by the President, the Secretary of State, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff, and reflected in the Iraqi Government's commitments to the United States, and to the international community.²⁷

In addition to the political benchmarks announced by President Bush in January, the law listed several other benchmarks to be considered in the formulation of U.S. strategy in Iraq moving forward.²⁸ The law

22. *Id.* at 25.

23. Pub. L. No. 110-28, 121 Stat. 112 (2007).

24. *Id.* § 1314(b)(2)(A), (D).

25. *Id.* § 1314(a)(9).

26. *Id.* § 1314(a)(12).

27. *Id.* § 1314(b)(1)(A).

28. *See id.* § 1314(b)(1)(A)(i)–(xviii) (including goals ranging from the

required the President to report to Congress on the Iraqi Government's success in meeting the enumerated benchmarks and required the President to report on any revisions that would need to be made to the political, economic, regional, and military components of the Iraq strategy should specific benchmarks not be met.²⁹

While separate draft legislation considered by Congress would have directed the redeployment of troops and prevented funding for any troop increase,³⁰ the legislation ultimately passed by Congress and signed by President Bush did not contain explicit troop withdrawal requirements. Congress, however, included a provision that would require U.S. redeployment of troops if the sovereign Iraqi government reached consensus on troop withdrawal and called for such withdrawal in a resolution.³¹ The law also contained a provision which stated that none of the funds made available for Iraq could be expended unless the President certified that each of the benchmarks had been met.³² The President could waive that restriction by submitting a written certification with a detailed report containing the actions that the U.S. government was taking to bring the Iraqi government into compliance with the benchmarks.³³ The waiver provision ultimately removed any automatic punitive financial impact upon the Iraqi government should the benchmarks not be met.

The law required the President to deliver a first status report by July 15 and a second status report by September 15, 2007.³⁴ Congress directed that the second status report be delivered along with closed and open session congressional testimony by the U.S.

implementation of amnesty legislation to the reduction of sectarian violence).

29. *Id.* § 1314(b)(1)(B).

30. H.R. 2237, 110th Cong. § 1 (2007) (directing that the redeployment of troops begin ninety days after the legislation's passage and that the redeployment be completed within 180 days of passage, and prohibiting the use of any funds for an increase in troops beyond the level in country on January 1, 2007). The provision ultimately failed by a vote of 171-255. *See* Final Vote Result for Roll Call 330, <http://clerk.house.gov/cgi-bin/vote.asp?year=2007&rollnumber=330>.

31. U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110-28, 121 Stat. 112 (2007) § 1314(d).

32. *Id.* § 1314(c)(1).

33. *Id.* § 1314(c)(2).

34. *Id.* § 1314(b)(2)(A), (D).

Ambassador to Iraq and the Multi-National Force Commander.³⁵ Congress also directed that two independent assessments be completed—the first by the Comptroller General of the General Accounting Office on the Iraqi government's ability to meet the various benchmarks and the second by a private sector contractor hired by the Department of Defense to assess the Iraqi Security Forces' preparation to take over security responsibility within Iraq.³⁶

V. BENCHMARK ASSESSMENT REPORTS

On July 12, 2007, the White House submitted its initial report to Congress, containing updates on all eighteen benchmarks.³⁷ The measures included the original four benchmarks announced by President Bush in January: passage of a de-Ba'athification reform law, constitutional review, a hydrocarbons sharing law, and provincial elections.³⁸ Congress further required the President to evaluate some of Iraq's legislative action,³⁹ security related progress,⁴⁰ political stability,⁴¹ and economic self-sufficiency.⁴²

35. *Id.* § 1314(b)(3).

36. *Id.* § 1314(e).

37. *See* WHITE HOUSE, INITIAL BENCHMARK ASSESSMENT REPORT 9-25 (July 12, 2007), available at <http://www.whitehouse.gov/nsc/iraq/2007/FinalBenchmarkReport.pdf> [hereinafter INITIAL BENCHMARK ASSESSMENT REPORT].

38. *Id.* at 9-13.

39. *Id.* at 11-15 (enumerating legislative benchmarks including the passage of an amnesty law and legislation on the formation of autonomous regions, as well as legislation establishing a disarmament program).

40. U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110-28, 121 Stat. 112 (2007) § 1314(b)(1)(A)(viii)-(xv) (requiring the President to report to Congress regarding Iraq's security situation, such as the establishment of various committees to further the Baghdad Security Plan, the provision of three Iraqi brigades to assist in Baghdad operations, the provision to Iraqi military commanders the necessary authority to execute the security plan, ensuring that the Iraqi military in charge of the operations applied the law fairly to all parties, ensuring that the Baghdad Security Plan did not allow outlaws to escape apprehension, reducing sectarian violence and militia control of local security, establishing the joint security stations previously planned for Baghdad, and increasing the number of functioning and independently operating Iraqi Security Force units).

41. *Id.* § 1314(b)(1)(A)(xvi), (xviii) (dictating that political authorities should not undermine or make any false accusations against the Iraqi Security Force, and ensuring that minority political parties have their rights protected).

42. *Id.* § 1314(b)(1)(A)(xvii) (requiring that Iraq spend \$10 billion of its own revenues for reconstruction projects while at the same time providing essential

Out of the eighteen total benchmarks, the President's first report (July 2007) stated that the Government of Iraq had made satisfactory progress toward achieving nine of the benchmarks.⁴³ The benchmarks in which the Iraqi Government had made significant progress included: forming a Constitutional Review Committee; enacting and implementing a regions law; establishing the Iraqi High Electoral Commission (but not a provincial elections law); establishing political, economic, and service committees in support of the Baghdad Security Plan; providing three trained and ready Iraqi brigades to support Baghdad operations; ensuring the Baghdad Security Plan does not provide a safe haven for any outlaws; reducing the level of sectarian violence in Iraq (but not eliminating militia control of local security); establishing the planned joint security stations in Baghdad neighborhoods; increasing the number of Iraqi Security Force units capable of operating independently; ensuring the rights of minority political parties are protected in the legislature; and allocating funds to ministries and provinces (but not spending \$10 billion in Iraqi revenue).⁴⁴

The report noted that the *New Way Forward*, embodying the current U.S. strategy, required the U.S. and Iraqi governments to fully commit toward a common goal: "a democratic Iraq that can govern, defend, and sustain itself, and be an ally in the War on Terror."⁴⁵ The Report characterized the *New Way Forward* as an acknowledgement that:

in response to the upsurge in sectarian violence in 2006, it was necessary for Coalition Forces to temporarily play a greater role, in conjunction with the Iraqi Security Forces, in securing the Iraqi population. This is not meant to replace Iraqi efforts to provide security, but to help provide the necessary time and space with which the Iraqi Government can continue to build its own capacity, can intensify efforts against the accelerants of violence . . . and can meaningfully

services fairly to citizens).

43. See generally INITIAL BENCHMARK ASSESSMENT REPORT, *supra* note 37 (indicating that the President felt that some progress was being made in all respects but that as of July 2007 the progress on half of the eighteen benchmarks was unsatisfactory).

44. *Id.* at 9-25.

45. *Id.* at 1.

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address the all-important issue of reconciliation among the various segments of Iraqi society.⁴⁶

The report further noted that the high levels of violence in 2006 threatened political reconciliation efforts and the legitimacy of the coalition forces and Iraqi government by “fueling sectarian tensions, [and] emboldening extremists.”⁴⁷ The report concluded that amid such violence, Iraqi leaders had difficulty making the “compromises necessary to foster reconciliation.”⁴⁸

On September 14, 2007, the White House released the second benchmark report to Congress.⁴⁹ In the report, the White House noted it was assessing whether given all of the facts and circumstances, the “present trend data demonstrates a positive trajectory, which is tracking toward satisfactory accomplishment [of the benchmarks] in the near term.”⁵⁰ Some benchmarks with multiple elements showed mixed progress, as Iraq had only met some elements of the final benchmark. The report noted that its assessment metric differed from that of the U.S. Government Accountability Office’s [G.A.O.] August 2007 report (discussed below) which determined whether the Iraqi government had met each benchmark and the status of achievement.⁵¹ Further, the September White House report was based on information available through September whereas the G.A.O. report was based on information available through the end of July. The September assessment recognized further progress in the same areas noted in the July assessment, as well as in some additional areas.⁵² Although no de-Ba’athification reform law had yet been passed, the White House now determined that the Government of Iraq had made satisfactory progress toward enacting and implementing de-Ba’athification legislation, based upon the fact that the leaders of Iraq’s five major political groups had

46. *Id.* at 2.

47. *Id.*

48. *Id.*

49. WHITE HOUSE, BENCHMARK ASSESSMENT REPORT (Sept. 14, 2007), available at <http://www.whitehouse.gov/news/releases/2007/09/20070914.pdf> [hereinafter SECOND BENCHMARK ASSESSMENT REPORT].

50. *Id.* at 10.

51. *Id.*

52. *See id.* (summarizing that the current report assesses seven benchmarks as not satisfactory and nine benchmarks as satisfactory).

agreed in principle on draft legislation aimed at re-integrating former Ba'athists back into the government at an August political leaders summit.⁵³ Although legislation had yet to be passed, this agreement was viewed as a sign of growing political accommodation between the Shi'a and Sunni communities. Similarly, the September report also determined that since July, satisfactory progress had been made toward establishing a provincial powers law. Although legislation had not yet been passed, the Iraqi political leadership had reached an agreement at the August summit on a draft law defining provincial authorities.⁵⁴

In the September report, the White House also determined that partial progress had been made in two additional security benchmarks. The report assessed that the Iraqi government had made progress toward giving Iraqi commanders the necessary authority to execute the *New Way Forward* strategy and to make the decisions, both tactical and operational, to pursue extremists; however, the White House also assessed that there had not been "satisfactory progress towards [eliminating] political intervention by leaders throughout the chain of command."⁵⁵ By September, the Prime Minister had granted the Iraqi and coalition forces all of the necessary authorities to go after insurgents and militias but political influence and sectarian behavior at various levels within the Iraqi Security Forces [ISF] remained.⁵⁶ In describing the nature of sectarian influence within the ISF, the White House reported that the Prime Minister and senior Iraqi commanders were aware of the long term security threat posed by militia extremists both in and out of the ISF.⁵⁷ As positive steps, the White House pointed to actions that the Prime Minister had taken in August to remove sectarian Shi'a commanders within the ISF in addition to targeting Shi'a militia groups.⁵⁸ The White House also noted that seventeen out of twenty-

53. *See id.* at 12 (reporting that in mid-August 2007, the leaders of Iraq's five major political parties met to discuss and reach political agreement on a number of difficult, high priority political issues, including the draft de-Ba'athification legislation).

54. *Id.* at 12-14.

55. *Id.* at 19.

56. *See id.* (pointing to various methods possibly being used to replace effective personnel simply because they were Sunni).

57. *Id.* at 18.

58. *Id.*

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seven battalion commanders in the National Police had been removed from duty because of suspicions that they had engaged in sectarian activity since the beginning of the year.⁵⁹ Although Iraqi commanders continued to make choices about which operations to undertake in part out of fear of being replaced for political or sectarian reasons, the Prime Minister's actions against fellow Shi'a commanders and groups were viewed as encouraging.⁶⁰

The White House also reported in September that while the government of Iraq was now making satisfactory progress toward ensuring that the Iraqi Army is providing "even-handed enforcement of the law," the Iraqi police had not made similar progress.⁶¹ The White House reported that individual ISF units that worked with coalition forces generally acted in a responsible manner and that ISF operations against insurgent cells appeared to target both Sunni and Shi'a elements.⁶² However, the report pointedly noted that some police units outside of Coalition supervision gravitated toward "old habits of sectarianism."⁶³

Finally, as of September 2007, the Government of Iraq had failed to make satisfactory progress toward achieving a number of benchmarks, including enacting a hydrocarbons sharing law, enacting an elections law, establishing a date for provincial elections, enacting an amnesty law, establishing a strong militia disarmament program, increasing the number of ISF units operating independently, and ensuring that political authorities were not undermining or making false accusations against ISF members.⁶⁴

VI. SEPTEMBER TESTIMONY

On September 10 and 11, 2007, Ambassador Ryan Crocker, the U.S. Ambassador to Iraq and General David Petraeus, the Multinational Force Commander, testified before Congress about how the US Mission and Coalition forces were performing in the

59. *Id.* at 19.

60. *Id.*

61. *Id.* at 20.

62. *Id.* at 19.

63. *Id.* at 20.

64. *Id.* at 10-27.

implementation of the *New Way Forward's* goals of increased security and political reconciliation. In Ambassador Crocker's view:

It is no exaggeration to say that Iraq is—and will remain for some time—a traumatized society Iraqis are facing some of the most profound political, economic and security challenges imaginable Some of the more promising political developments at the national level are neither measured in benchmarks nor visible to those far from Baghdad Our country, however, has come to associate progress on national reconciliation as meaning the passage of key pieces of legislation. There is logic to this, as the legislation we are urging the Iraqis to produce does . . . have to do with the question of how to share power and resources among Iraq's many communities I do believe that Iraq's leaders have the will to tackle the country's pressing problems, although it will take longer than we originally anticipated because of the environment and the gravity of the issues before them.⁶⁵

Ambassador Crocker discussed various central concerns to the future of Iraq, such as de-Ba'athification reform and provincial powers legislation.⁶⁶ While he was not able to report that any of these particular benchmark measures had been completed, he discussed the significance of the resolution of those issues to the Iraqi people and the significant debates that party leaders were having about each of those issues.⁶⁷ He was encouraged that after much preparatory work and many days of intensive meetings, Iraq's five leading national figures from the Shi'a, Sunni, and Kurdish communities agreed on draft legislation addressing de-Ba'athification reform and provincial powers on August 26, 2007.⁶⁸

65. Ambassador Ryan C. Crocker, U.S. Ambassador to the Republic of Iraq, Statement Before a Joint Hearing of the House Committee on Foreign Affairs and the House Committee on Armed Services 3-4 (Sept. 10, 2007), *available at* <http://foreignaffairs.house.gov/110/cro091007.pdf>.

66. *See id.* at 3-4 (characterizing the debates surrounding the oil and revenue sharing laws, de-ba'aathification, and the balance of provincial powers as akin to those surrounding the American civil rights movement or struggle over states rights).

67. *See id.* (asserting that the issue is whether Iraq has the capability to resolve these fundamental problems).

68. *Id.* at 4.

Ambassador Crocker concluded his testimony observing that:

2006 was a bad year in Iraq. The country came close to unraveling politically, economically, and in security terms. 2007 has brought improvement. Enormous challenges remain The changes to our strategy last January—the surge—have helped change the dynamics in Iraq for the better We have given Iraqis the time and space to reflect on what sort of country they want Whether Iraq reaches its potential is of course ultimately the product of Iraqi decisions.⁶⁹

At the same hearings, General Petraeus reported that the majority of the military objectives of the surge were being met.⁷⁰ Furthermore, he believed that the United States would be able to reduce its forces to pre-surge levels by the summer of 2008 without jeopardizing the security gains that had been made.⁷¹ Citing several statistics about the changing security environment in Iraq during the surge offensive, General Petraeus showed that sectarian violence peaked in December 2006 and since then, civilian deaths of all categories had decreased by forty-five percent, civilian deaths in Baghdad had decreased by seventy percent, ethno-sectarian deaths throughout Iraq decreased by fifty-five percent, and deaths in Baghdad decreased by eighty percent.⁷² General Petraeus also described gains in the security situation in Anbar Province, fueled by local Iraqi leaders allying themselves with coalition forces against Al Qaeda; a decrease in the number of car bombings throughout Iraq; and significant progress in the targeting of Al Qaeda and its affiliates, as well as Shi'a militia extremists.⁷³

In his congressional testimony, General Petraeus also made several observations about the status of the Iraqi Security Forces, stating that “[d]espite concerns about sectarian influence, inadequate logistics and supporting institutions, and an insufficient number of

69. *Id.* at 8.

70. General David H. Petraeus, Commander, Multi-National Force-Iraq, Statement Before a Joint Hearing of the House Committee on Foreign Affairs and the House Committee on Armed Services 1 (Sept. 10-11, 2007) available at http://armedservices.house.gov/pdfs/FC091007/Petraeus_Testimony091007.pdf.

71. *Id.* at 7.

72. *Id.* at 3.

73. *Id.* at 4.

qualified . . . officers, Iraqi units [were] engaged around the country.”⁷⁴ At that time, there were nearly 140 battalions of various Iraqi military forces and police units in the fight, and the vast majority of those could lead operations⁷⁵ and a number of Iraqi units were operating throughout the country with a minimum of coalition assistance.⁷⁶ General Petraeus summarized several recommendations that he had made to the Joint Chiefs of Staff on the future military strategy in Iraq, emphasizing the need for coalition forces to secure the population of Iraq and transition responsibilities to Iraqi institutions and forces quickly, “without rushing to failure.”⁷⁷ General Petraeus noted that two important components remained the development of the ISF while at the same time advancing the counterinsurgency strategy, all the while advancing the responsibility of Iraqis in the effort.⁷⁸ As part of this strategy, General Petraeus recommended a drawdown of surge troops to the pre-surge levels by mid-July 2008.⁷⁹ He stated that he would revisit further rates for reductions beyond pre-surge levels in mid-March 2008, when he would have “a better feel for the security situation, the improvements in the capability of the Iraqi counterparts, and the enemy situation.”⁸⁰

VII. G.A.O. BENCHMARK ASSESSMENT

In addition to testimony from Ambassador Crocker and General Petraeus before Congress, the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery and Iraq Accountability Appropriations Act also called for an independent assessment of the Iraqi government’s success in achieving the various political benchmarks and another assessment of the Iraqi government’s preparation to take over security responsibility in the country.⁸¹ The first report, completed by

74. *Id.* at 5.

75. *See id.* (indicating that ninety-five percent of the battalions were ready to take the lead, but that they would require coalition support).

76. *Id.*

77. *Id.* at 6.

78. *Id.*

79. *See id.* at 7 (emphasizing that continued reductions would continue beyond summer-2008 reductions to pre-surge levels, but that establishing a pace for those reductions would be premature).

80. *See id.* at 7.

81. U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 § 1314(e)(1).

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the Comptroller General of the United States as the head of the G.A.O., determined that Iraq had largely failed to meet the benchmarks called for in the legislation.⁸² As of September 2007, the Government of Iraq fully met only three of the benchmarks and partially met four of the benchmarks.⁸³ G.A.O. determined that Iraq had not made substantial progress towards achieving eleven of the eighteen benchmarks.⁸⁴ G.A.O. concluded that the Government of Iraq had only completed one of the eight legislative benchmarks—the protection of minority political parties and partially met the benchmark of establishing a regions law, since a regions law had been passed but would not take effect until April 2008. The report also noted that the government had not enacted legislation on de-Ba'athification reform, oil revenue sharing, provincial elections, amnesty, or militia disarmament.⁸⁵ In reporting on the G.A.O. study to Congress, the Comptroller General concluded that as of September 2007, the Iraq government had failed to fulfill its commitments “to advance legislative, security, and economic measures that would advance national reconciliation among Iraq’s warring factions.”⁸⁶ In the Comptroller General’s view “the polarization of Iraq’s major sects and ethnic groups and fighting among Shi’a factions diminishes the stability of Iraq’s governing coalition and its potential to enact legislation needed for sectarian reconciliation.”⁸⁷ The Comptroller General also reported that violence remained high in Iraq and that G.A.O. faced difficulty in assessing whether sectarian violence in Iraq had decreased since it was unable to measure whether the perpetrators’ intentions were sectarian in nature.⁸⁸

82. See GAO STUDY, *supra* note 16, at 2.

83. *Id.* at 3.

84. *Id.* at 4-5.

85. *Id.*

86. David M. Walker, Comptroller General of the United States, Testimony Before the House Committee on Foreign Affairs, 12, *available at* <http://www.gao.gov/htext/d071222t.html>.

87. *Id.*

88. See *id.* at 9 (citing the administration’s July 2007 report, which indicated a decrease in sectarian violence but “acknowledged that precise measurements vary, and it was too early to determine if the decrease would be sustainable”).

VIII. INDEPENDENT ASSESSMENT OF THE IRAQI SECURITY FORCES

The report on the Iraqi Security forces conducted by General Jones USMC (ret.) and the Independent Commission was similarly critical of the Government of Iraq's success in implementing the *New Way Forward*.⁸⁹ Congress mandated that an independent commission assess the readiness of Iraq's military and police forces to maintain the territorial integrity of Iraq, deny safe haven to international terrorists, bring greater security to the country's provinces in the next twelve to eighteen months, and bring an end to sectarian violence to achieve national reconciliation.⁹⁰ The commission was also directed to report on the overall capabilities of the ISF, including their training levels, equipment, and intelligence abilities as well as whether continued assistance by U.S. troops would likely help the ISF's ability to fulfill its responsibilities identified by Congress to ensure security within the country.⁹¹ The independent commission determined that all of the Iraqi Armed Forces were increasingly "capable of assuming greater responsibility for the internal security of Iraq" and that the Iraqi police were improving.⁹² The authors also determined that the Iraqi Security Forces would continue to rely upon the coalition forces over the next twelve to eighteen months, and that the ISF would not have the power to protect Iraq from external threats independent of coalition support.⁹³ The Commission was also very critical of the Ministry of Interior, which has responsibility for the local and national police and the border enforcement department, describing it as a "ministry in name only."⁹⁴ The report determined that the ministry was dysfunctional,

89. See REPORT OF THE INDEPENDENT COMMISSION ON THE SECURITY FORCES OF IRAQ 8 (Sept. 6, 2008) (evaluating the domestic security forces in Iraq as being unable to meet the goals set for them within the upcoming twelve to eighteen months).

90. U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 § 1314(e)(2)(i).

91. *Id.* § 1314(e)(2)(ii)-(iii).

92. REPORT OF THE INDEPENDENT COMMISSION ON THE SECURITY FORCES OF IRAQ, *supra* note 89, at 46.

93. *Id.*

94. *Id.* at 17.

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sectarian, and lacked effective leadership.⁹⁵ In the commission's view, the fundamental flaws within the system posed a serious obstacle to achieving the "levels of readiness, capability, and effectiveness" necessary for internal security and stability in Iraq.⁹⁶

IX. APRIL 2008 TESTIMONY

During their September 2007 testimony, Ambassador Crocker and General Petraeus reported that the President asked them to provide Congress and the American people with a further update on the security and political environment in Iraq in March 2008.⁹⁷ On April 8 and 9, 2008 Ambassador Crocker and General Petraeus updated Congress on the security environment and the Government of Iraq's achievements in the area of political reconciliation.⁹⁸

In his testimony, Ambassador Crocker provided a new assessment of the political, economic, and diplomatic progress of the Iraqi government.⁹⁹ Ambassador Crocker observed that a number of significant accomplishments by the Iraqi government since September 2007 indicated a positive trend with respect to political reconciliation. He stated that "[i]mmense challenges remain and progress is uneven and often frustratingly slow, but there is progress."¹⁰⁰ He noted that at the national level, the Iraqi parliament had passed some key pieces of legislation, including some of the benchmark measures. Since September the Parliament had passed a pension law that extends benefits to individuals who had been denied benefits because of their service under Saddam's regime, a de-Ba'athification reform law (the Accountability and Justice Law), and

95. *Id.*

96. *Id.*

97. See SECOND BENCHMARK ASSESSMENT REPORT, *supra* note 49, at 3 (indicating the assessment is to address mission progress, adjustments to military resources, adjustments to economic assistance, regional and international contributions, political and security initiatives, and institutional adjustments within the USG to better support the missions in Iraq).

98. See Karen DeYoung & Thomas E. Ricks, *Frustrated Senators See No Exit Signs*, WASH. POST, Apr. 9, 2008, at A1.

99. Ambassador Ryan C. Crocker, U.S. Ambassador to the Republic of Iraq, Statement Before the Senate Armed Services Committee (Apr. 8, 2008), *available at* <http://armed-services.senate.gov/statemnt/2008/April/Crocker%2004-08-08.pdf> [hereinafter Crocker Statement, April 2008].

100. *Id.* at 1.

an amnesty law.¹⁰¹ Each of these pieces of legislation were viewed as key accomplishments in the area of reconciliation—the de-Ba'athification reform legislation enabled an increasing number of civil servants under the prior regime to seek government jobs and the amnesty law was intended to enable certain individuals to move forward in Iraqi society without being criminally detained, notwithstanding their former activities as combatants. The Iraqi parliament also passed a provincial powers law defining the relationship between the federal and provincial governments and set the date of October 1, 2008 for provincial elections.¹⁰² As the Iraqi Parliament had begun to pass key pieces of legislation, Ambassador Crocker observed that as an institution, the Council of Representatives (COR) was maturing and had begun to resolve tough problems in a practical way. He noted that “while [Iraqi] politics still have a sectarian bent and basis, cross-sectarian coalitions have formed around issues, and sectarian political groupings which often were barriers to progress have become more flexible.”¹⁰³

Ambassador Crocker also noted that the Iraqi unity government continued to face a number of challenges. He believed that a reinvigorated cabinet was necessary for political balance and to improve the delivery of services to the Iraqi people.¹⁰⁴ He also noted

101. *Id.*

102. *Id.* at 3. Although the provincial powers law, which established a provincial elections date of October 1, 2008 passed the Council of Representatives and was signed into law by the Presidency Council on March 19, a key elections law defining the electoral framework had not yet passed the Iraqi parliament. There was concern that an elections law would not pass the Council of Representatives and receive the ratification of the Presidency Council in time for provincial elections in 2008. See Erica Goode & Richard A. Opper, *Official's Shift Raises Hope for Iraq Elections*, N.Y. TIMES, Mar. 20, 2008, at A12 (reporting that the legislation was initially rejected by the Presidency Council, but subsequently approved by Iraqi Vice President Adel Abdul Mehdi after meeting with U.S. Vice President Dick Cheney in Iraq); Ned Parker & Caesar Ahmed, *Iraqi Election Law Remains Stalled*, L.A. TIMES, Aug. 4, 2008, at A3 (explaining that failure to reach an agreement by winter 2008 on provincial powers could delay elections to December 2008).

103. See Crocker Statement, April 2008, *supra* note 99, at 3.

104. *Id.* at 6. At the time of Crocker's testimony, a bloc of Sadrist (Shia) and Tawafuq (Sunni) had boycotted the Iraqi parliament and the Council of Ministers (Iraq's multi-sectarian cabinet). The boycott included Sunni Deputy Prime Minister Zobaie, who was responsible for overseeing the delivery of basic services to Iraqis. Since the time of Ambassador Crocker's testimony, Tawafuq (also know

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that the Iraqi government would need to confront significant issues, including corruption, disputed internal boundaries, the return of refugees and internally displaced persons, and the protection of the rights of minorities and women.¹⁰⁵ As in the political arena, the Iraqi government had made some advances in its economic policy, but continued to face challenges. Ambassador Crocker observed that Iraq had allocated \$13 billion for reconstruction and that the United States would no longer be funding major infrastructure projects.¹⁰⁶ He also noted that Iraq would increasingly use its own funds to support projects developed by the United States, such as Iraq's commitment of \$200 million in support of a program to provide vocational training for local concerned citizens who had opposed militia groups.¹⁰⁷ Ambassador Crocker determined that as with the process of political reconciliation, "Iraq's economy [remained] fragile, the gains reversible and the challenges ahead substantial."¹⁰⁸ Despite these challenges, Ambassador Crocker stated that the progress he had seen in Iraq led him to believe that "the strategy that began with the Surge is working."¹⁰⁹ He cautioned that while U.S. support would remain critical that did not mean that U.S. support should be "open-ended" or that the "level and nature of our engagement should not diminish over time."¹¹⁰

During his testimony, General Petraeus provided an overview of the security situation in Iraq following the build up of the surge.¹¹¹ He reported that:

as the Iraqi Accordance Front) has re-joined the government. *See* Sudarsan Raghavan, *Sunni Bloc Rejoins Iraqi Government, Amid Reconciliation Hopes*, WASH. POST, July 20, 2008, at A12 (crediting Shiite Prime Minister Nouri al-Maliki with the return of the Iraqi Accordance Front, which rejoined the government partly because they viewed Maliki's crack down on Shiite militias in Basra as a sign that he was not sectarian).

105. *See* Crocker Statement, April 2008, *supra* note 99, at 6-7.

106. *Id.* at 8.

107. *Id.* at 9.

108. *Id.*

109. *Id.* at 5.

110. *Id.*

111. General David H. Petraeus, Commander, Multi-National Force-Iraq, Statement Before the Senate Armed Services Committee (Apr. 8, 2008), *available at* <http://armed-services.senate.gov/statemnt/2008/April/Petraeus%2004-08-08.pdf>.

[s]ince September, levels of violence and civilian deaths have been reduced substantially, Al Qaeda-Iraq and a number of other extremist elements have been dealt serious blows, the capabilities of Iraqi Security Force elements have grown Nonetheless, the situation in certain areas is still unsatisfactory and innumerable challenges remain . . . the progress made since last spring is fragile and reversible . . . still, security in Iraq is better than it was when Ambassador Crocker and I reported to you last September, and it is significantly better than it was 15 months ago when Iraq was on the brink of civil war and the decision was made to deploy additional US forces to Iraq.¹¹²

General Petraeus noted that in addition to the U.S. surge, the Iraqis had also conducted a surge, adding over 100,000 additional soldiers and police to the ISF in 2007.¹¹³ He attributed the security improvements to the increased numbers and capability of the ISF, as well as the carrying out of counterinsurgency operations by Coalition and Iraqi forces, and the attitudinal shift among certain elements of the Iraqi population against Al-Qaeda Iraq's (AQI) "indiscriminate violence and extremist ideology."¹¹⁴ He believed that this was most evident in the fact that tens of thousands of Iraqis – including former insurgents – had chosen to contribute to local security as "Sons of Iraq."¹¹⁵ In his view, their assistance had helped to significantly reduce the threat posed by AQI.¹¹⁶ He also cited the fall 2007 ceasefire declaration by Moqtada al-Sadr, the Shiite militia leader, as another factor in the overall reduction of violence.¹¹⁷ In his view, the greatest long term threat to the viability of a democratic Iraq would continue to be Iran's funding, training, arming, and directing of "Special Groups" in Iraq that engage in violent activity.¹¹⁸

In General Petraeus' view, the nature of the conflict in Iraq continued to be a competition among ethnic and sectarian groups for power and resources and that various elements—terrorists,

112. *Id.* at 1.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 2.

117. *Id.*

118. *Id.*

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insurgents, militia extremists, and gangs—continued to push that competition toward violence. Nonetheless, he argued that most parties realized that the only rational way ahead was through political dialogue, rather than violent street-fighting.¹¹⁹ Despite his view that Iraq remained a violent country, General Petraeus also cited some statistics to indicate that progress had been achieved in the area of security. He stated that for almost six months, security incidents had been at a “level not seen since early-to-mid-2005.”¹²⁰ He also stated that Iraqi civilian deaths had decreased over the past year to a level not seen since the February 2006 Samarra Mosque bombing which had set off the devastating cycle of sectarian violence seen in 2006 and early 2007.¹²¹

General Petraeus also reported that the ISF continued to develop and that the coalition had been able to transfer the security responsibility of more provinces to the ISF. As of the time of his testimony, security responsibility for 9 out of 18 Iraqi provinces had been transferred from coalition control to Iraqi control.¹²² He also reported that the ISF had grown by 133,000 soldiers and the Iraqi police services had grown over the past 16 months to more than 540,000 individuals.¹²³ He stated that more than 100 Iraqi combat battalions were capable of taking the lead in operations with coalition support.¹²⁴ Although greatly improved, General Petraeus determined that the ISF were not yet ready to defend Iraq or maintain security throughout the country on their own and he believed that the improved security remained vulnerable to a resurgence of AQI, a violation of Moqtada’s ceasefire by Shi’a groups, and further stoking of violence by Iran and other external actors.¹²⁵

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.* at 4 (emphasizing that these provinces include not only the successful Kurdish provinces but also “a number of Southern provinces”).

123. *Id.*

124. *Id.*

125. *See id.* at 5 (asserting that these external factors include Iran and actions by other neighbors that could undermine the security situation).

CONCLUSION

In his April testimony, General Petraeus assessed that the surge in conjunction with several other factors, including Moqtada al Sadr's ceasefire and the new alliance between the "Sons of Iraq" and MNF-I against insurgents brought improvement to the security environment in Iraq in 2007.¹²⁶ Nonetheless, the Government of Iraq's ability to capitalize on these security gains was sporadic. The passage of key political reconciliation measures at the national level was slow and for many measures, remained unrealized.

The premise of the *New Way Forward* was that increased military troop numbers and counterinsurgency operations by the coalition and Iraqi forces would help drive down sectarian violence, enabling the Iraqi political leadership to enter into compromise "benchmark" measures that would foster greater political reconciliation among Iraq's various sectarian groups. This premise placed extreme pressure on the coalition forces to improve security, sometimes with the ISF in the lead, and on the American Mission to convince Iraqi leaders to pass legislative and other initiatives in an environment where, Ambassador Crocker once noted, "the Washington clock seems to be running a lot faster than the Baghdad clock."¹²⁷ This task came at a period of transition in Iraq—a period in which the former American—led occupation authority, the Coalition Provisional Authority, had been replaced by a democratically elected Iraqi government and the coalition forces had begun to transfer greater security responsibility to the Iraqi Security Forces.

In essence, the *New Way Forward* called for greater U.S. diplomatic and military pressure to achieve results on the ground in Iraq at the same time that the coalition forces and the embassy had the obligation to support the Iraqi Government as the sovereign political authority and, increasingly, as the lead in ensuring the protection of its citizenry. To prove the *New Way Forward* a success, the U.S. military and diplomatic corps were required to demonstrate

126. *See id.* at 1-2.

127. Ambassador Ryan C. Crocker, Press Roundtable, U.S. Embassy, Baghdad (May 18, 2007), available at http://iraq.usembassy.gov/iraq/20070518_roundtable.html.

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to Congress greater and more specific political, military, and economic accomplishments, but had to rely upon the Iraqi Government to ensure that the benchmark measures of success were achieved.

As the *New Way Forward* strategy recognized, the Iraqi Government must reach a point where it can govern independently and take on security responsibility for its nation. The U.S. government can play a role in helping the Iraqi government reach this end state but the question remains—how long can the success of the U.S. mission in Iraq be measured by the Iraqi government’s ability to meet benchmarks? In a post-surge environment, new measurements for success in Iraq will need to be developed as the U.S. strategy in Iraq is again updated and modified to reflect the ever-changing environment in Iraq.