

IAS Research Analysis

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Title: Is Iraq in the grip of an “internal armed conflict” within the meaning of Article 15 of the Refugee Qualification Directive?¹

Individuals seeking subsidiary protection pursuant to the provisions of Article 15 of the Refugee Qualification Directive (RQD) are required to demonstrate that they fear the death penalty or execution; torture or inhuman or degrading treatment or punishment; or, at 15(c), a “serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”² The Explanatory Notes to the RQD do not offer any explanation in relation to the definition of “internal armed conflict”. However, internal armed conflict is defined in the 1949 Geneva Conventions and the 1977 Additional Protocol II to the Geneva Conventions.³ The Geneva Conventions (taken to mean the 1949 Conventions and the 1977 Additional Protocols) are treaty laws binding on all parties who have accepted them. Uniquely, all 194 countries of the world have formally accepted the Geneva Conventions, giving the Conventions universal application.⁴ The binding nature and universal application of the Geneva Conventions offers a definition for “internal armed conflict” that can be applied to the RQD when making a claim for subsidiary protection under Article 15(c). This briefing first outlines the criteria for acceptance of internal armed conflict before, second, examining country information relating to Iraq, thereby demonstrating that the situation in today’s Iraq clearly meets the threshold of internal armed conflict.

Internal Armed Conflict in the Geneva Conventions

‘Common’ Article 3 of the Geneva Conventions (so called due to its presence in all four of the Geneva Conventions) defines an internal armed conflict as a conflict “not of an international character” and taking place within the territory of a High Contracting State.⁵ In the International Committee of the Red Cross’s authoritative commentary on the Geneva Conventions, Jean. S. Pictet notes that the term ‘armed conflict’ is not defined in common Article 3 and, moreover, the breadth of common Article 3 is such that it refers to “all situations of non-international armed conflict.”⁶

According to Pictet’s account of the Conference of Government Experts responsible for drafting the Protocols to the Geneva Conventions, the rationale for Protocol II is to elaborate on the brief rules set out in common Article 3. However, mindful of the risks of attempting to formulate a strict definition, the conference opted to establish a procedure for objectively determining the existence of an internal armed conflict. Accordingly, Article 1(1) of Protocol II states that internal armed conflicts “must take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement [Protocol II]”.⁷

¹ This research was commissioned by HJT Training and conducted by IAS’ Research and Information Unit.

² Article 15 of the Refugee Qualification Directive. Immigration Rule 339C.

³ “Internal armed conflict” is defined in common article 3 of the 1949 Geneva Conventions and Articles 1(1) and 1(2) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.

⁴ ICRC, A milestone for international humanitarian law, 22/09/2006.

⁵ Article 3 is common to Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949; Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949; and Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949.

⁶ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions para 4447.

Article 1(2) of Protocol II excludes from the definition of internal armed conflict “situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of a similar nature”.⁸ In the absence of a definition of “internal disturbances”, Pictet provides a non-exhaustive list of examples of situations that may amount to “internal disturbances”: “riots, such as demonstrations without a concerted plan from the outset; isolated and sporadic acts of violence, as opposed to military operations carried out by armed forces or armed groups; other acts of a similar nature, including, in particular, large scale arrests of people for their activities and opinions.”⁹ “[I]nternal tensions” are said to include “situations of serious tension (political, religious racial, social, economic, etc.) but also the sequels of armed conflict or internal disturbances”.¹⁰ The rigour of the criteria set out in Article 1(1) of Protocol II is sufficient to exclude any instances of “internal disturbances” or “internal tensions”.¹¹ Exclusion of “situations of internal disturbances and tensions” from the definition of internal armed conflict elevates situations of internal armed conflict beyond the realms of criminal violence and therefore beyond the ambit of criminal law.

Criteria for establishing the existence of internal armed conflict

Article 1(1) of Protocol II therefore provides the procedure for fulfilling a definition of internal armed conflict. Breaking the text of Article 1(1) down allows the following criteria to be established:

- i) the parties involved in the armed conflict are the armed forces of the state and dissident armed forces or other organized armed groups;
- ii) the parties are under responsible command;
- iii) the parties exercise control over part of the territory;
- iv) the military operations are sustained and concerted; and
- v) the parties have the ability to implement the Protocol.

These criteria make the application of article 1(1) of Protocol II very specific to conflicts of a certain degree of intensity. As a result, not all situations of non-international armed conflict are covered by Protocol II in the manner of the much more broadly defined common Article 3.¹²

Pictet’s commentary allows the objective criteria to be defined in more detail:

- i) Parties involved in the conflict: According to Pictet, “armed forces” should be interpreted broadly “in order to cover all armed forces, including those not included in the definition of the army in the national legislation of some countries (national guard, customs, police forces or any other similar force).” The Protocol applies “on the one hand in a situation where the armed forces of the government confront dissident armed forces, i.e., where there is a rebellion by any part of the government army or where the government’s armed forces fight against insurgents who are organized in armed groups, which is more often the case.”¹³ Pictet highlights the “collective character of the confrontation [which] can hardly consist of isolated individuals without co-ordination”.¹⁴
- ii) Responsible command: this criterion requires a level of organization amongst insurgent forces or dissident armed forces which allows on the one hand, “planning and carrying out sustained

⁷ Article 1(1) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) Adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts entry into force 7 December 1978, in accordance with Article 23.

⁸ Article 1(2) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

⁹ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions para 4474

¹⁰ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions para 4472

¹¹ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions para 4472

¹² Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions para 4447

¹³ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions para 4460

¹⁴ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions paras 4460-4462

and concerted military operations” and on the other hand, “imposing discipline in the name of de facto authority”.¹⁵

- iii) Control over a part of the territory: Following on from the previous criterion, a level of organisation is required for insurgent groups or dissident armed forces to exercise control over a part of the territory.¹⁶ The criterion does not set out what part of a territory should be controlled and it is worth noting that the Conference did not adopt any of the proposed definitions (“a non-negligible part of the territory” and a “substantial part of territory”) presented to it. Pictet suggests that the use of the word “such” in “such control over part of territory as to enable them to carry out sustained and concerted military operations”, implies that the level of control “must be sufficient to allow sustained and concerted military operations to be carried out [...] Sometimes domination of a territory will be relative, for example, when urban centers remain in government hands while rural areas escape their authority. In practical terms, if the insurgent armed groups are organized in accordance with the requirements of the Protocol, the extent of the territory they can claim to control will be that which escapes the control of the government armed forces. However, there must be some degree of stability in the control of even a modest area of land for them to be capable of effectively applying the rules of the Protocol.”¹⁷
- iv) Sustained and military character of operations: Pictet observes that common article 3 is likely to apply to an armed conflict in its early stages as it is not likely that the continuity of action and planning required by this criterion will be fulfilled.¹⁸ The Conference ruled out “duration and intensity” from this criterion for fear of introducing a subjective element in the assessment of the conflict.¹⁹ However, Pictet notes that “the criterion whether military operations are sustained and concerted, while implying the element of continuity and intensity, complies with an objective assessment of the situation”.²⁰
- v) Ability to implement the Protocol: This criterion “justifies the other elements of the definition: being under responsible command and in control of a part of the territory concerned, the insurgents must be in a position to implement the Protocol”.²¹ Pictet states that the “threshold for application therefore seems fairly high. Yet apart from the fact that it reflects the desire of the Diplomatic Conference, it must be admitted that this threshold has a degree of realism. The conditions laid down in this paragraph 1 [Article 1(1) of Protocol II], as analysed above, correspond with actual circumstances in which the parties may reasonably be expected to apply the rules developed in the Protocol, since they have the minimum infrastructure required therefore.”²²

Evidence of internal armed conflict in Iraq

This section tests country information on Iraq against the elements that define internal armed conflict in Protocol II of the Geneva Conventions. However, before turning to the criteria it is important to understand the background to the current situation in Iraq. Reviewing the violence in Iraq over the year leading to February 2006, the International Crisis Group observed in a report entitled “The Next Iraqi War? Sectarianism and Civil Conflict” that:

Over the past year, social and political tensions evident since the removal of the Baathist regime have turned into deep rifts. Iraq’s mosaic of communities has begun to fragment along ethnic, confessional and tribal lines, bringing instability and violence to many areas, especially those with mixed populations. The most urgent of these incipient conflicts is a Sunni-Shiite schism that

¹⁵ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions para 4463

¹⁶ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions paras 4464-4465

¹⁷ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions paras 4466-4467

¹⁸ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions para 4469

¹⁹ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions para 4469

²⁰ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions para 4469

²¹ Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions para 4470

²² Jean S.Pictet, Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions para 4470

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threatens to tear the country apart. Its most visible manifestation is a dirty war being fought between a small group of insurgents bent on fomenting sectarian strife by killing Shiites and certain government commando units carrying out reprisals against the Sunni Arab community in whose midst the insurgency continues to thrive.²³

Sectarian violence assumed a new dimension following the triumph of the Shiite parties forming the United Iraqi Alliance (UIA) in the January 2005 elections, the subsequent taking over of the Interior Ministry by the Supreme Council for the Islamic Revolution in Iraq (SCIRI) and the infiltration of the police force by the "military arm" of the SCIRI, the Badr Organisation.²⁴ Soon after, "a steep rise in killings of Sunnis" was reported and as the insurgency evolved it took on a "predominantly Sunni (Arab) character because it fed especially on the disaffection of Sunni Arabs who felt disfranchised and marginalized".²⁵ The October 2005 referendum highlighted the "profound sectarian nature of the Constitution which was endorsed by the Kurds and Shiites and massively rejected by the Sunnis".²⁶

The February 2006 bombing of the Shia holy shrine marked a "turning point" in the conflict between Sunnis and Shias paving the way for a wave of retaliatory attacks and further violence.²⁷ According to the New York Times, "[t]he sectarian violence that exploded after the bombing of a major Shiite shrine in Samarra in February has firmly locked into this new cycle of revenge, in which Sunnis and Shiites in many Baghdad neighbourhoods are now openly at war."²⁸ Sectarian violence has been ongoing and culminated in a further significant insurgent attack on 23 November 2006, in the Baghdad Sh'ite district of Al-Sadr City claiming the lives of 140 and leaving more than 200 wounded.²⁹

Testimony to the US Senate Committee on Armed Services describes the conflict in Iraq as "unquestionably complex and difficult [...] The U.S. presence obscured the true nature of this fight between and among competing groups for power".³⁰ The Testimony makes the following observation in relation to the changing nature of the conflict which has also resulted in targeting of the Coalition and Iraqi Security Forces (ISF):

The conflict has changed in character, scope, and dynamics and is increasingly a sectarian struggle for power and the right to define Iraq's future identity. ... The perception of unchecked violence is creating an atmosphere of fear and hardening sectarianism which is empowering militias and vigilante groups, hastening middle-class exodus, and shaking confidence in government and security forces. Sectarian violence, a weak central government, problems in basic services, and high unemployment are causing more Iraqis to turn to sectarian groups, militias, and insurgents for basic needs, imperilling Iraqi unity.

Despite ongoing Iraqi government and Coalition operations against terrorists, Sunni Arab insurgent groups, and Shia militias, violence in Iraq continues to increase in scope, complexity, and lethality. The Sunni Arab-based insurgency has gained strength and capacity despite political progress and security force developments. Nationwide, insurgents still conduct most attacks against the Coalition and ISF and retain the resources, capabilities, and support to sustain high levels of violence.³¹

²³ International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 Executive Summary and Recommendations

²⁴ International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 Introduction

²⁵ International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 Introduction

²⁶ International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 Constitution making

²⁷ Inter Press Service News Agency (IPS), 'Iraq: Hopes of a Solution Recede by the Day', 28/11/2006

²⁸ HJT Research, 'Tony Blair agrees that violence in Iraq has been a 'disaster'; At least 1,300 killed so far in November', 20/11/2006

²⁹ Radio Free Europe/Radio Liberty, 'More Than 100 Killed In Baghdad Bombings', 23/11/2006

³⁰ US Senate Committee on Armed Services, 'The Current Situation in Iraq and Afghanistan (Testimony of Lieutenant General Michael D. Maples, U.S. Army Director, Defense Intelligence Agency)', 15/11/2006 Iraq

³¹ US Senate Committee on Armed Services, 'The Current Situation in Iraq and Afghanistan (Testimony of Lieutenant General Michael D. Maples, U.S. Army Director, Defense Intelligence Agency)', 15/11/2006 Iraq

The Geneva Convention criteria

i) Parties involved in the conflict:

Key actors in the conflict: Armed government forces against insurgents organized in armed groups:

The key actors in the sectarian violence currently affecting Iraq are the Sunni and Shia insurgent groups and the Multi National Forces in Iraq (MNF) and ISF. This section will examine the nature and role of each of these key actors.

Sunni insurgent groups: Sunnis were the rulers of Iraq until Saddam Hussein's regime ended in 2003.³² According to the Brookings Institution, by late 2003, "[s]erious US mismanagement of the occupation gave rise ...to an active insurgency, mostly in Sunni strongholds. Over time Sunni insurgents in central Iraq focused more on attacking Shi'a as a way of creating the chaos they hoped would allow to gain political control."³³ The Association of Muslim Scholars (AMS), a Sunni group first set themselves out to be an "anti-occupation insurgency" force.³⁴ Subsequently, they altered their stance by stating that the "radical Shi'a – and all Shi'a by extension" are their main enemy.³⁵ In October 2006, the US Congressional Research Service stated that according to the administration, many Sunni insurgents are driven by the "opposition to perceived U.S. rule in Iraq, to democracy and to Shiite political dominance".³⁶

The US Congressional Research Service describes the AMS as a "[h]ardline Sunni Islamist group... [b]elieved to have ties to and influence over insurgent factions."³⁷ According to the same source:

The Sunni Arab-led insurgency against U.S. forces and the Iraqi government has defied official U.S. expectations in intensity and duration. Although hesitant to assess the size of the insurgency, U.S. commanders say that insurgents probably number approximately 12,000-20,000. Some Iraqi officials have publicly advanced higher estimates of about 40,000 active insurgents, helped by another 150,000 supporters. Insurgent attacks — characterized mostly by roadside bombs, mortar and other indirect fire, and direct weapons fire as well as larger suicide bombings — numbered about 100 per day during most of 2005, and DOD officials in August 2006 put that number at about 120 attacks per day.³⁸

Sunni insurgent groups have been held responsible for the lethal bombings in Samarra (February 2006)³⁹, Sadr-city (November 2006)⁴⁰, attacks on various police stations and various Coalition targets, including Iraqis and security forces working for or with the Coalition⁴¹. On 1 December 2006, the Institute for War and Peace Reporting reported the head of the Sunni AMS as stating his support for the insurgency and in a series of press releases "by Sunni groups in the government and the parliament"; the latter threatened that "[n]ot to grant the Sunnis more might lead to a civil war".⁴² These press releases triggered a "bloody chain of

³² Inter Press Service News Agency (IPS), 'Iraq: Hopes of a Solution Recede by the Day', 28/11/2006

³³ Brookings Institution (USA) / University of Bern, 'Sectarian Violence: Radical Groups Drive Internal Displacement in Iraq', 18/10/2006 How the Violence Unfolded

³⁴ Brookings Institution (USA) / University of Bern, 'Sectarian Violence: Radical Groups Drive Internal Displacement in Iraq', 18/10/2006 Radical armed groups drive sectarian displacement

³⁵ Brookings Institution (USA) / University of Bern, 'Sectarian Violence: Radical Groups Drive Internal Displacement in Iraq', 18/10/2006 Radical armed groups drive sectarian displacement

³⁶ US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Sunni Arab-led Insurgency

³⁷ US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Iraqi Front for National Dialogue (Saleh al-Mutlak)

³⁸ US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Sunni Arab-led Insurgency

³⁹ Inter Press Service News Agency (IPS), 'Iraq: Hopes of a Solution Recede by the Day', 28/11/2006

⁴⁰ Radio Free Europe/Radio Liberty, 'More Than 100 Killed In Baghdad Bombings', 23/11/2006

⁴¹ US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Sunni Arab-led Insurgency

⁴² Institute for War and Peace Reporting, Baghdad on the Brink, 01/12/2006

events” in the course of which an unknown number of civil servants in a Sunni-controlled ministry were abducted and the Shi’a-controlled ministry of health was also targeted.⁴³

Al-Qaeda in Iraq: According to the US Senate Committee on Armed Forces although attacks by terrorist groups only account for a small proportion of the insurgency in Iraq, the high-profile nature of the attacks and modus operandi “have a disproportionate impact on the population and on perceptions of stability”.⁴⁴ Al-Qaeda in Iraq (AQI) is currently headed by Abu Ayyub al-Masri and “is the largest and most active of Iraqi-based terrorist groups”.⁴⁵ AQI continues to target the Iraqi government, the Coalition forces and is also considered to be “one of the most visible perpetrators of anti-Shia attacks”.⁴⁶ According to the US Senate Committee on Armed Services, AQI has “capitalized on the current cycle of violence by increasing perceptions that its operations are defending Sunni interests.”⁴⁷ According to the International Crisis Group, Abu Musab al-Zarqawi (former AQI leader – now deceased) who operated in predominantly Sunni areas was a “principal factor” in Iraq’s descent into a “sectarian war”.⁴⁸ The extremely well-financed al-Zarqawi was a source of financing for other insurgent groups hence strengthening and spreading his influence.⁴⁹ According to a senior Iraqi Islamic Party (IIP) official quoted by the Institute for War and Peace Reporting, AQI’s “agenda is against any Sunni participation in the political process” and according to an AQI member “Anyone who participates in any activity with the occupier is against Islam – whether politician, policeman, or army member, and his destiny is death [...] The IIP is the first renegade and we will clean up Anbar of their Islam renegade ideology”.⁵⁰

Shia insurgent groups: SCIRI is a member of the UIA and shares power with the Da’wa (Islamic Call) Party.⁵¹ SCIRI has a military arm, the Badr Brigade and according to the US Congressional Research Service, there are approximately 5,000 Badr militia.⁵² In April 2006, the leader of the Da’wa party became the Iraqi Prime Minister and vowed to address the spiraling sectarian violence.⁵³ However, subsequent to his election, violence has reached an “unprecedented level” and foreign media reports have pointed to the existence of Shi’a death squads that are assisted by government security forces.⁵⁴ According to the International Crisis Group:

Solagh's [Iraq’ Shiite interior minister] reign from the end of April 2005 until today [February 2006] has been marked by accusations of "death squads" operating in predominantly Sunni towns and neighbourhoods and the discovery of secret prisons holding alleged Sunni insurgents, many of whom had been subjected to torture. The rise of crack commando units deployed to fight the insurgency has been particularly notable. These units – the Wolf (Liwa al-Dheeb), Volcano (Liwa al-Burkan), Hawk (Liwa al-Saqr), [115] and Two Rivers Brigades (Liwa al-Rafidain) – are reported to circulate in unmarked or police cars during night curfew, raiding homes and rounding up suspects who are detained in their separately-run prisons. [116] They gained notoriety for abusive behaviour

⁴³ Institute for War and Peace Reporting, Baghdad on the Brink, 01/12/2006

⁴⁴ US Senate Committee on Armed Services, 'The Current Situation in Iraq and Afghanistan (Testimony of Lieutenant General Michael D. Maples, U.S. Army Director, Defense Intelligence Agency)', 15/11/2006 Iraq

⁴⁵ US Senate Committee on Armed Services, 'The Current Situation in Iraq and Afghanistan (Testimony of Lieutenant General Michael D. Maples, U.S. Army Director, Defense Intelligence Agency)', 15/11/2006 Iraq

⁴⁶ US Senate Committee on Armed Services, 'The Current Situation in Iraq and Afghanistan (Testimony of Lieutenant General Michael D. Maples, U.S. Army Director, Defense Intelligence Agency)', 15/11/2006 Iraq

⁴⁷ US Senate Committee on Armed Services, 'The Current Situation in Iraq and Afghanistan (Testimony of Lieutenant General Michael D. Maples, U.S. Army Director, Defense Intelligence Agency)', 15/11/2006 Iraq

⁴⁸ International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 The New Sectraianism

⁴⁹ International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 The New Sectraianism

⁵⁰ Institute for War and Peace Reporting (UK), Sunnis Fight Off Insurgents, 01/12/2006

⁵¹ US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Sunni Arab-led Insurgency Major Anti-Saddam Factions

⁵² US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Sectarian Violence and Militias/Civil War?

⁵³ Brooking Institution (USA) / University of Bern, 'Sectarian Violence: Radical Groups Drive Internal Displacement in Iraq', 18/10/2006 How the violence unfolded

⁵⁴ Brooking Institution (USA) / University of Bern, 'Sectarian Violence: Radical Groups Drive Internal Displacement in Iraq', 18/10/2006 How the violence unfolded

from the time they were created in 2004, but under the new SCIRI-led dispensation they were infiltrated and commandeered by Badr fighters, who gave their composition and operations a distinctly sectarian edge.⁵⁵

Whilst pressing the Iraqi regime to disband at least 23 known militias, the US forces have concentrated on the Mahdi army, Moqtada al-Sadr's Shiite militia which has strengthened since 2004 and now comprises of about 20,000 fighters.⁵⁶ Examples of some attacks for which the Mahdi army has been held accountable are: killing of 30 British soldiers in southern Iraq since late 2005, shooting down a British helicopter in May 2006, attack on a British base in August 2006 and killing of 20 ISF soldiers following clashes in Diwaniyah.⁵⁷ A US Commander in the Middle East stated that "[t]he [Iraqi] government needs not to support the sectarian militias [...] I think he [the Iraqi Prime Minister] must move against the Sadr militia if Iraq is to become a free and sovereign and independent state".⁵⁸

ISF/ING: On 28 November 2006, the Inter Press Service News Agency reported that "[n]either the new Iraqi police nor the US forces are able to contain the killings anymore".⁵⁹ Furthermore, the daily average of attacks against the ISF for the month of October 2006 indicated that they had doubled from January 2006, "approximately 30 compared to 13".⁶⁰ The ISF's combined efforts with the Coalition forces have failed to stem the flow of violence which "continues to increase in scope, complexity and lethality".⁶¹ Furthermore, according to the International Crisis Group, the Iraqi National Guard's (ING) 80,000 plead their allegiance to their political leaders and not to Iraq.⁶² The guards are former members of the Kurdish Peshmerga forces, the Badr Corps or are "Kurdish and Shiite officers from the disbanded army".⁶³ The International Crisis Group cited a US journalist as stating that officers of the new army "increasingly...look and operate less like an Iraqi national army unit and more like a Shiite militia....[Military commanders] said they worry that a mostly Shiite military unit will follow religious clerics before national leaders, risking a breakdown in the army along sectarian lines....Instead of rising above the ethnic tension that's tearing their nation apart, the [army's] mostly Shiite troops are preparing for, if not already fighting, a civil war against the minority Sunni population."⁶⁴ Despatching Shiite troops to Sunni areas has "heightened ethnic and sectarian tensions, even where these units have registered successes".⁶⁵ The Christian Science Monitor is of the opinion that security forces of the Iraqi state are disproportionately Shiite and Kurdish".⁶⁶ The Christian Science Monitor describes the use of ISF as a "sectarian tool" which can only stand in the way of peace being restored in Iraq and calls for members of the Sunni community to be included in the ISF.⁶⁷ According to the same source, the ISF should be inclusive of the numerous Sunni former soldiers and police, who are unemployed owing to the

⁵⁵ International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 SCIRI and BADR seize control

⁵⁶ US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Sectarian Violence and Militias/Civil War?

⁵⁷ US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Sectarian Violence and Militias/Civil War?

⁵⁸ Voice of America News, 'General Says US Troop Levels Right in Iraq, Iraqis Need to Disband Militias', 15/11/2006

⁵⁹ Inter Press Service News Agency (IPS), 'Iraq: Hopes of a Solution Recede by the Day', 28/11/2006

⁶⁰ US Senate Committee on Armed Services, 'The Current Situation in Iraq and Afghanistan (Testimony of Lieutenant General Michael D. Maples, U.S. Army Director, Defense Intelligence Agency)', 15/11/2006

⁶¹ US Senate Committee on Armed Services, 'The Current Situation in Iraq and Afghanistan (Testimony of Lieutenant General Michael D. Maples, U.S. Army Director, Defense Intelligence Agency)', 15/11/2006

⁶² International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 SCIRI and BADR seize control

⁶³ International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 SCIRI and BADR seize control

⁶⁴ International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 SCIRI and BADR seize control

⁶⁵ International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 SCIRI and BADR seize control

⁶⁶ The Christian Science Monitor, Diversify Iraqi security forces, For a stable Iraq, Sunnis, Shiites, and Kurds must share the security burden, 7/03/2006

⁶⁷ The Christian Science Monitor, Diversify Iraqi security forces, For a stable Iraq, Sunnis, Shiites, and Kurds must share the security burden, 7/03/2006

“disbanding of Saddam’s army and de-Baathification initiatives”.⁶⁸ The Christian Science Monitor further states that allowing the Shiite parties to control the ministry of interior and defense, to the exclusion of other parties is likely to “generate destabilizing fear and resentment” amongst Sunnis and Kurds.⁶⁹

Responsible command:

A level of organisation amongst insurgent forces that allows the planning and carrying out sustained and concerted military operations and that reflects de facto discipline:

Seven aspects of the insurgency can be discerned that demonstrate the level of organization that exists within insurgent groups.

Firstly, the “Iraqi insurgency has become financially self-sustaining, with various militant groups raising tens of millions of dollars a year from oil smuggling, kidnapping, counterfeiting and other crimes”.⁷⁰ According to the New York Times, insurgents in Iraq are raising approximately \$70 million to \$200 million a year “aided by ‘corrupt and complicit’ Iraqi officials”.⁷¹

Secondly, the insurgent groups have defined leadership and ideologies. For example, Muqtada al Sadr heads the Sadrist militia and has a following amongst “established Shiite factions, as well as Iranian diplomats, [who] are building ties to him because of his large following”.⁷² According to the International Crisis Group, al-Sadr’s core principles are “rejection of the occupation, foreign meddling and Iraq’s partition” and al-Sadr’s movement has become “more central than ever”.⁷³ In relation to doctrinal issues, the International Crisis Group states that insurgent groups draw on “a well established corpus of authoritative texts and documents”.⁷⁴

Thirdly, insurgent groups are now structured and well-organised. For example, within the Sadrist movement structure “a semblance of structure exists, with a network of institutions called “Offices of the Second Martyr” (Makatib al-Shahid al-Thani), themselves sub-divided into smaller, specialised committees (dealing with economic matters, social or political affairs and press relations). These offices and committees, which are led by individuals selected by Muqtada, oversee the movement’s non-paramilitary activities and form the link with the local population. The offices also comprise an arbitration committee, made up of local tribal chiefs, in charge of conflict resolution.”⁷⁵ Sunni insurgent groups are “believed to be loosely coordinated within cities and wide provinces. However, in early 2006, a group of insurgent factions announced the formation of a national ‘Mujahedin Shura (Council)’ purportedly consisting mostly of Iraqi factions but including foreign fighters”.⁷⁶

Fourthly, military strategies adopted by the various insurgent groups demonstrate the level of organization that allows for the planning and carrying out of “sustained and concerted military action”. According to the US Senate Committee on Armed Services, “[n]ationwide, insurgents still conduct most attacks against the

⁶⁸ The Christian Science Monitor, Diversify Iraqi security forces, For a stable Iraq, Sunnis, Shiites, and Kurds must share the security burden, 7/03/2006

⁶⁹ The Christian Science Monitor, Diversify Iraqi security forces, For a stable Iraq, Sunnis, Shiites, and Kurds must share the security burden, 7/03/2006

⁷⁰ Radio Free Europe/Radio Liberty, 'Classified U.S. Study Finds Strong Funding For Iraqi Insurgency', 26/11/2006

⁷¹ Radio Free Europe/Radio Liberty, 'Classified U.S. Study Finds Strong Funding For Iraqi Insurgency', 26/11/2006

⁷² US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Muqtada al-Sadr Faction

⁷³ International Crisis Group, 'Iraq's Muqtada al-Sadr: Spoiler or Stabiliser?', 11/07/2006 Executive summary and recommendations and Muqtada’s Political Entry

⁷⁴ International Crisis Group, 'In their own words: Reading the Iraqi insurgency', 15/02/2006 Phase C Confidence

⁷⁵ International Crisis Group, 'Iraq's Muqtada al-Sadr: Spoiler or Stabiliser?', 11/07/2006 B. An Unstructured Movement

⁷⁶ US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Sunni Arab-led Insurgency

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Coalition and ISF and retain the resources, capabilities and support to sustain high levels of violence".⁷⁷ According to the Brookings Institution, as the targeting of Shi'as increased, "radical Shi'a leaders began to organize violent responses, using Sunni attacks as a pretext to ratchet up the fight. By mid-2005, Iraqi victims of execution-style killings, both Sunni and Shi'a, were routinely discovered around the country."⁷⁸ Furthermore, the military capacity of the Sunni insurgency is described by the International Crisis Group as:

Although hesitant to assess the size of the insurgency, U.S. commanders say that insurgents probably number approximately 12,000-20,000. Some Iraqi officials have publicly advanced higher estimates of about 40,000 active insurgents, helped by another 150,000 supporters. Insurgent attacks — characterized mostly by roadside bombs, mortar and other indirect fire, and direct weapons fire as well as larger suicide bombings — numbered about 100 per day during most of 2005, and DOD officials in August 2006 put that number at about 120 attacks per day.⁷⁹

Furthermore, the Badr Brigades, the 5000 men militia army of the SCIRI, led by Hadi al-Amiri, are said to have been "recruited, trained, and equipped" by Iran's Revolutionary Guard.⁸⁰ Members of the Badr Brigade and the Sadr militia are said to have infiltrated the government security forces with the latter being held responsible for operating under "the protection or approval of Iraqi police to detain, torture, and kill suspected Sunni insurgents and innocent Sunni civilians".⁸¹

Fifthly, according to the International Crisis Group, insurgent groups "are well organized, produce regular publications, react rapidly to political developments and appear surprisingly centralized".⁸² According to the same source, the insurgency is "better organized, coordinated, information-savvy" as it has "survived, even thrived, despite being vastly outnumbered and outgunned, suggests the limitations of the current counter-insurgency campaign. Its discourse may be dismissed as rhetoric, but, notwithstanding credible reports of internal tensions, it appears to have been effective at maintaining agreement on core operational matters, generating new recruits, and mobilising a measure of popular sympathy among its target audience."⁸³ In relation to the Shi'a insurgency leadership, the International Crisis Group observes that:

The insurgency is built around a loose and flexible network, feeds on deep-seated family, tribal and local loyalties, with allegiance to a cause rather than to specific individuals. Insurgent leaders are an important part, but there is no evidence their individual roles are crucial; those who have been killed or captured have been swiftly replaced with no notable impact on any group's performance. The insurgents, meanwhile, have been both playing on and exacerbating Sunni Arab hostility, first toward the occupation, and now also toward sectarian Shiite parties seen as intent on taking over national institutions and resources, waging a dirty communal war and pursuing an essentially Iranian agenda. The combination of social networks, an ample supply of weapons, a powerful message and adequate funds has allowed the insurgency to maintain a relatively constant level of violence.⁸⁴

Sixthly, the "cycle of attack and counterattack, with Sunni militants staging what commanders call 'spectacular' strikes and Shiite militias retaliating with abductions and murders of Sunnis" demonstrates that

⁷⁷ US Senate Committee on Armed Services, 'The Current Situation in Iraq and Afghanistan (Testimony of Lieutenant General Michael D. Maples, U.S. Army Director, Defense Intelligence Agency)', 15/11/2006

⁷⁸ Brookings Institution (USA) / University of Bern, 'Sectarian Violence: Radical Groups Drive Internal Displacement in Iraq', 18/10/2006 How the Violence Unfolded

⁷⁹ US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Sunni Arab-Led Insurgency

⁸⁰ US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Sunni Arab-led Insurgency

⁸¹ US Senate Committee on Armed Services, 'The Current Situation in Iraq and Afghanistan (Testimony of Lieutenant General Michael D. Maples, U.S. Army Director, Defense Intelligence Agency)', 15/11/2006

⁸² International Crisis Group, 'In Their Own Words: Reading the Iraqi Insurgency', 15/02/2006 Executive Summary and Recommendations

⁸³ International Crisis Group, 'In Their Own Words: Reading the Iraqi Insurgency', 15/02/2006 Executive Summary and Recommendations

⁸⁴ International Crisis Group, 'In Their Own Words: Reading the Iraqi Insurgency', 15/02/2006 IV Conclusion: Implications for Coalition Policy

both Shi'a and Sunni insurgent groups are organised enough to maintain a cycle of violence.⁸⁵ Some examples of retaliatory attacks are: killing of 150 people in reprisal attacks following the bombing of a Shia Shrine in Samarra⁸⁶, the bombings in Sadr city in November 2006 "were followed by a barrage of mortar fire at a nearby Sunni enclave"⁸⁷, in October 2006, following the abduction and killing of 17 Shi'a construction workers in Balad, 90 Sunni civilians were killed by "armed men wearing black militia clothes"⁸⁸ and in November 2006, following the bombing of the Shi'a town of Hilla, it was reported that Sunni men in the area began to disappear⁸⁹. According to Sunni families, 20-40 Sunnis were killed.⁹⁰

Finally, the sustained and planned nature of the attacks that have taken place and continue to take place in Iraq demonstrate the existence amongst insurgent groups of the level or organization and discipline required to instigate and perpetuate sectarian violence. The following quotes from UNAMI are telling of the sustained and planned nature of the sectarian violence in Iraq:

Terrorist activities and murders and extra-judicial executions, carried out by death squads linked to sectarian militias, as well as indiscriminate killings of civilians, are the main cause of Iraqi deaths. Hundreds of bodies continued to appear in different areas of Baghdad handcuffed, blindfolded and bearing signs of torture and execution-style killing. Many witnesses reported that perpetrators wear militia attire and even police or army uniforms. The perpetrators were reported to operate in groups, arrive in what appeared as police vehicles and were not deterred by the presence of police forces in the vicinity. Such killings have sectarian connotations and have equally affected all communities in the country.⁹¹

Terrorist attacks and deliberate targeting of civilians continued to take place in several parts of the country. They have mainly been used to spark sectarian violence thus fuelling a cycle of revenge killings. Many of those attacks targeted mosques, crowded markets, restaurants, bakeries, bus stations and areas where labourers gather to search for work. Assassinations by drive-by shootings were frequently recorded as well. Some of these attacks appear to be directed towards a specific group, for instance in mixed areas where the militants use the attacks to intimidate the members of the unwanted group so as to force them to leave. Frequent revenge attacks are recorded against police recruits, designed to send a warning signal and discourage individuals and institutions perceived as "collaborating" with the Coalition.⁹²

Violence in Iraq has become increasingly sectarian in nature with each attack generating a surge of revenge attacks in Baghdad and around the country. Sunni and Shi'a mosques have been attacked by rival factions, while mixed neighborhoods, such as Dora, have been increasingly polarized along the Sunni-Shi'a line.⁹³

⁸⁵ HJT Research, 'Tony Blair agrees that violence in Iraq has been a 'disaster'; At least 1,300 killed so far in November', 20/11/2006

⁸⁶ Inter Press Service News Agency (IPS), 'Iraq: Hopes of a Solution Recede by the Day', 28/11/2006

⁸⁷ Radio Free Europe/Radio Liberty, 'More Than 100 Killed In Baghdad Bombings', 23/11/2006

⁸⁸ United Nations Assistance Mission for Iraq (UNAMI), 'Human Rights Report :1 September– 31 October 2006', 22/11/2006 para 31

⁸⁹ HJT Research, 'Tony Blair agrees that violence in Iraq has been a 'disaster'; At least 1,300 killed so far in November', 20/11/2006

⁹⁰ HJT Research, 'Tony Blair agrees that violence in Iraq has been a 'disaster'; At least 1,300 killed so far in November', 20/11/2006

⁹¹ United Nations Assistance Mission for Iraq (UNAMI), 'Human Rights Report :1 September– 31 October 2006', 22/11/2006 para 19

⁹² United Nations Assistance Mission for Iraq (UNAMI), 'Human Rights Report :1 September– 31 October 2006', 22/11/2006 para 24

⁹³ United Nations Assistance Mission for Iraq (UNAMI), 'Human Rights Report :1 September– 31 October 2006', 22/11/2006 para 27

Sustained and military character of operations:

Continuity and intensity:

The insurgency's military strategies have evolved and focus primarily on "improvements in the use of improvised explosive devices (IEDs) – and analyses of the number, type and location of its armed operations. In fact, the insurgents have produced copious internet documentation in which they assess past mistakes, evaluate their opponents' weaknesses and formulate practical operational recommendations.⁹⁴ According to the International Crisis Group, "[f]rom time to time, the insurgency seeks to undertake large-scale operations requiring significant planning, mobilisation of many fighters, and even coordination between groups. Targets in this case often have high symbolic value, and the action is followed by exceptionally lavish communiqués and videos. Unlike what have now become more routine, daily operations, these are meant to attract attention and grab headlines, the purpose being to demonstrate the insurgents' untapped potential and ability to act anywhere, anytime, even at significant cost. The death toll resulting from sectarian violence in Iraq bears testimony as to the sustained and military nature of the attacks led by insurgents."⁹⁵

Perhaps, the best indicator of the sustained and military character of the insurgent operations in Iraq is the death toll resulting from violence (according to UNAMI, sectarian violence is the main form of violence in Iraq⁹⁶). According to UNAMI, 6,599 civilians were killed in July and August 2006 whilst in September and October 2006, the number of killings rose to 7,054.⁹⁷ On 20 November 2006, the Associated Press reported that the death toll in Iraq for the period of 1 November to 20 November 2006 was at least, 1,368 and that the death toll is likely to be higher as many deaths remain unreported.⁹⁸ On 3 December 2006, Radio Free Europe/Radio Liberty reported that the death toll for the month of November was 3,700 and that the multiple bombings in Baghdad in the first few days of December seemed to "foreshadow similar hard times".⁹⁹ The total death toll since the date of the 2003 invasion is somewhat controversial and widely differs depending on the source. For example, a report published by the medical Journal, The Lancet states that an estimated 655,000 people have died in Iraq as a result of the 2003 invasion.¹⁰⁰ The Lancet results have been criticised by the Iraq Index of the Brooking Institution which puts the death toll at 62,000.¹⁰¹ According to the Iraq Body Count, the reported civilian deaths are between 43,850 and 48,693.¹⁰²

UNHCR are of the view that "new waves of sectarian violence and the deteriorating humanitarian situation" have caused extensive population movements in Iraq.¹⁰³ According to UNHCR, since the Samarra bombings, 425,000 Iraqis have been displaced whilst hundreds of thousands of other Iraqis are "teetering" on the edge of displacement.¹⁰⁴ The same source further reports that approximately two to three thousand Iraqis are leaving Iraq on a daily basis.¹⁰⁵ UNHCR estimates the total number of internally displaced Iraqis to be around 1.6 million with another 1.6-1.8 million in neighbouring states.¹⁰⁶ The Brooking Institution state that figures made available by Iraq's Ministry of Displacement and Migration indicate that in September alone, sectarian violence led to the displacement of 234,600 individuals.¹⁰⁷

⁹⁴ International Crisis Group, 'In Their Own Words: Reading the Iraqi Insurgency', 15/02/2006 C Military Strategies

⁹⁵ International Crisis Group, 'In Their Own Words: Reading the Iraqi Insurgency', 15/02/2006 C Military Strategies

⁹⁶ United Nations Assistance Mission for Iraq (UNAMI), 'Human Rights Report :1 September– 31 October 2006', 22/11/2006 para 5

⁹⁷ United Nations Assistance Mission for Iraq (UNAMI), 'Human Rights Report :1 September– 31 October 2006', 22/11/2006 para 4

⁹⁸ HJT Research, 'Tony Blair agrees that violence in Iraq has been a 'disaster'; At least 1,300 killed so far in November', 20/11/2006

⁹⁹ Radio Free Europe/Radio Liberty, 'Iraq Violence Continues After Triple Bombing', 03/12/2006

¹⁰⁰ BBC News, Huge gaps between Iraq death estimates, 20/10/2006

¹⁰¹ BBC News, Huge gaps between Iraq death estimates, 20/10/2006

¹⁰² BBC News, Huge gaps between Iraq death estimates, 20/10/2006

¹⁰³ UNHCR, Update on the Iraq situation, 30/11/2006

¹⁰⁴ UNHCR, Update on the Iraq situation, 30/11/2006

¹⁰⁵ UNHCR, Update on the Iraq situation, 30/11/2006

¹⁰⁶ UNHCR, Update on the Iraq situation, 30/11/2006

¹⁰⁷ Brooking Institution (USA) / University of Bern, 'Sectarian Violence: Radical Groups Drive Internal Displacement in Iraq', 18/10/2006 Synopsis

According to the Center for Strategic and International Studies (CSIS), “[t]he growing increase in insurgent and sectarian violence was all too clear during the course of 2006”.¹⁰⁸ In particular, “attacks increased by 23% from 2004 to 2005 [...] Indicating increasing violence, total attacks reported from January 2006 through July 2006 were about 57% higher than the total reported during the corresponding period in 2005”.¹⁰⁹ According to the same source, “[a]ttacks against Coalition forces, the ISF, the civilian population and infrastructure, increased 15% between May 2006 and the beginning of September, and Iraqi casualties increased by 51% compared to the previous quarter”.¹¹⁰

The CSIS cites a Department of Defense report according to which 55% of the attacks took place in Baghdad and Anbar and Anbar, Baghdad, Salah al Din and Diyala provinces accounted for 81% of the attacks between 20 May 2006 and 6 August 2006.¹¹¹ The Department of Defense report also observes that “sectarian violence is gradually spreading north into Diyala Province and Kirkuk as Sunni, Shi’a, and Kurdish groups compete for provincial influence...In the Southern, predominantly Shi’a region of the country, political and tribal rivalries are a growing motive behind violence, particularly in Basrah, with limited anti-Coalition forces, attacks are likely undertaken by rogue Shi’a militia.”¹¹² According to a June 2006 UN report cited by the CSIS, cities worst affected by violence were Baghdad, Basra and Kirkuk whilst “[s]erious sectarian violence” took place in Ninewa, Salahuddin, Anbar, and Diyala and an increase in “violent incidents” was also noted in other areas, particularly Kerbala and Tarneem.¹¹³

Control over a part of the territory:

Control of an area which escapes the control of government forces and a level of control “sufficient to allow sustained and concerted military operations to be carried out”:

According to UNAMI, “[m]ilitias and other armed groups are said to be in control of whole areas in the east and west of Baghdad and continue to carry out illegal policing, manning of checkpoints and “distribution of justice” through illegal trials and extra-judicial executions. They operate with almost total impunity. Attacks against minorities, Palestinian refugees and women are often allegedly carried out by such groups. Many victims are kidnapped by militias at improvised checkpoints and then extra-judicially executed. These tactics have been employed by both Sunni and Shi’a armed groups or militias.”¹¹⁴ Furthermore, the US Congressional Research Service reports that in addition to having infiltrated the ISF, members of the Badr militia are involved in “unofficial policing roles in Basra, Najaf, and elsewhere in southern Iraq”.¹¹⁵ It is worth noting that most attacks tend to take place in Baghdad and neighbouring towns, in particular those having mixed inhabitants as well as “from Baghdad to the Shiite holy cities of Najaf and Karbala, which traverse a string of Sunni-inhabited towns – Latifiya, Mahmoudiya, Iskanderiya, Yusefiya, Musayyeb – in the so-called Triangle of Death.”¹¹⁶

The US Congressional Research Service further reports that “[w]hole neighborhoods of Baghdad, including Amiriya, Jihad, Amal, and Doura, not to mention the Anbar Province city of Ramadi, have increasingly served as insurgent bases. Iraqis say that the upscale and previously quiet Baghdad district of Mansour is now penetrated by insurgents.”¹¹⁷ In fact, according to the International Crisis Group, some Baghdad neighbourhoods and nearby villages have “roaming checkpoints” that are manned by Badr fighters or

¹⁰⁸ Center for Strategic and International Studies, Is There a "Civil War" in Iraq? 16/10/2006 Force Development

¹⁰⁹ Center for Strategic and International Studies, Is There a "Civil War" in Iraq? 16/10/2006 Force Development

¹¹⁰ Center for Strategic and International Studies, Is There a "Civil War" in Iraq? 16/10/2006 Force Development

¹¹¹ Center for Strategic and International Studies, Is There a "Civil War" in Iraq? 16/10/2006 Force Development

¹¹² Center for Strategic and International Studies, Is There a "Civil War" in Iraq? 16/10/2006 Force Development

¹¹³ Center for Strategic and International Studies, Is There a "Civil War" in Iraq? 16/10/2006 Force Development

¹¹⁴ United Nations Assistance Mission for Iraq (UNAMI), 'Human Rights Report :1 September– 31 October 2006', 22/11/2006 para 28

¹¹⁵ US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Badr Brigades

¹¹⁶ International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 Introduction:

Escalating Sectarian Violence

¹¹⁷ US Congressional Research Service, 'Iraq: Post-Saddam Governance and Security', 18/10/2006 Sunni Arab-led Insurgency

insurgents (Sunni) of the Islamic Army who check the identity of civilians to determine whether they are Sunni or Shi'a and detain them accordingly.¹¹⁸

In addition, Al-Sadr city, which witnessed deadly attacks in November 2006 is also known as a "stronghold of the militia".¹¹⁹ On 5 December 2006, Irin News reported that from Sadr city which has an almost exclusive Shiite community, "Mahdi militiamen can move across eastern Baghdad to reach areas to the south and east. This gives them a degree of control along the eastern and northern routes into the city - and they are trying to strengthen that control" whilst "[o]n the opposite side of the river, Sunni insurgents are more active. They have turned the major western neighbourhoods of Jihad, Amiriyah, Ghazaliyah, Yarmouk and Mansour into virtual 'no go' zones for Shi'ites."¹²⁰ According to a source quoted by Irin News a "new Baghdad is now emerging" with a "Sunni West" and a "Shi'ite East".¹²¹

On 1 December 2006, the Institute for War and Peace Reporting reported that "Sunni leaders in lawless western Iraq have formed a kind of citizen's militia to combat sustained attacks against insurgent groups linked to al-Qaeda".¹²² Named, the Anbar Salvation Council, the group "marks an important counter to the increasing sectarian divide within the country".¹²³

In addition to gaining direct control over territory, government control has been undermined by (i) the "inability of law enforcement agencies and the justice system to protect the population of Iraq" and "by continuing reports that the police and security forces are either infiltrated or act in collusion with militias"¹²⁴; ii) "[f]requent revenge attacks are recorded against police recruits, designed to send a warning signal and discourage individuals and institutions perceived as 'collaborating' with the Coalition"¹²⁵; iii) the Coalition's use of excessive force, torture and "tactics that inflict widespread harm on civilians" and its reliance on sectarian militias has served to undermine its credibility whilst enhancing the credibility of insurgents, "thereby clearly outweighing any possible military gain"¹²⁶; the increase in violence which has led Iraqis to join militias, some to participate in retaliatory attacks but most seeking protection that they fear the Iraqi government is unable to provide¹²⁷.

Ability to implement the Protocol:

Insurgents must be in a position to implement the Protocol since they have the minimum infrastructure required do so:

The section entitled "Responsible Command" demonstrates that insurgents have access to resources, networks and infrastructure which they use to undertake sustained and concerted military actions. Insurgents are also tapped into the political infrastructure or discourse as rival sectarian factions have links to or affiliations with political parties belonging to the Government.¹²⁸ It is therefore at least arguable that

¹¹⁸ International Crisis Group, 'The Next Iraqi War? Sectarianism and Civil Conflict', 27/02/2006 SCIRI and Badr Seize Control

¹¹⁹ Radio Free Europe/Radio Liberty, 'More Than 100 Killed In Baghdad Bombings', 23/11/2006

¹²⁰ Integrated Regional Information Networks News (IRIN), 'Iraq: Sectarian violence tears Baghdad into two parts', 05/12/2006

¹²¹ Integrated Regional Information Networks News (IRIN), 'Iraq: Sectarian violence tears Baghdad into two parts', 05/12/2006

¹²² Institute for War and Peace Reporting (UK), 'Sunnis Fight Off Insurgents', 01/12/2006

¹²³ Institute for War and Peace Reporting (UK), 'Sunnis Fight Off Insurgents', 01/12/2006

¹²⁴ United Nations Assistance Mission for Iraq (UNAMI), 'Human Rights Report :1 September– 31 October 2006', 22/11/2006 para 7

¹²⁵ United Nations Assistance Mission for Iraq (UNAMI), 'Human Rights Report :1 September– 31 October 2006', 22/11/2006 para 24

¹²⁶ International Crisis Group, 'In Their Own Words: Reading the Iraqi Insurgency', 15/02/2006 s I Introduction

¹²⁷ Radio Free Europe/Radio Liberty, 'Iraq: Is Baghdad attack beginning of civil war?', 29/11/2006

¹²⁸ United Nations Assistance Mission for Iraq (UNAMI), 'Human Rights Report :1 September– 31 October 2006', 22/11/2006 para 27

insurgents would be in a position to implement the Protocol. In addition, the Iraqi Prime Minister has come under significant pressure to curb al-Sadr's militia however, according to Radio Free Europe/Radio Liberty, "[i]t would almost be unthinkable for al-Maliki to call for a major crackdown on al-Sadr's militia and risk a bloody conflict and put his political coalition in jeopardy [al-Sadr is a key partner in Maliki's coalition]".¹²⁹ Furthermore, "[g]roups that deliberately target Shiites clearly believe that the costs of openly claiming responsibility and calling on foreigners to wage an all-out anti-Shiite campaign outweigh the benefits. Paradoxically, and for the time being at least, the insurgents' desire to preserve unity may be restraining the slide toward a fully-fledged civil war."¹³⁰ If the insurgency is in a position to be able to maintain the "unity" described above, it is, surely, in a position to implement the Protocol should they be required to do so.

Conclusion: Internal armed conflict in Iraq

The available country information on Iraq demonstrates that a sectarian war is under way. The above sections demonstrate that the criteria set out in the Geneva Conventions' definition of internal armed conflict are satisfied by available country information and therefore it must be concluded that there is currently an internal armed conflict in Iraq.

¹²⁹ Radio Free Europe/Radio Liberty, 'Iraq: Shi'ite Militia Continues To Pose Dilemma', 20/10/2006

¹³⁰ International Crisis Group, 'In Their Own Words: Reading the Iraqi Insurgency', 15/02/2006 B Communication Strategies