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THE IRAQ FEDERATION COUNCIL

Legislative Drafting Guide

**Prepared by
The Public International Law & Policy Group**

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LEGISLATIVE DRAFTING GUIDE: THE IRAQ FEDERATION COUNCIL

Decision Tree

What are the Powers of the Federation Council?

Limited Legal Powers

Advise

Extensive Legal Powers

Overridable Veto

Absolute Veto

Delay on Passage of Legislation

What is the Jurisdiction of the Federation Council?

Limited Jurisdiction

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Indirect election

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Ex Officio

LEGISLATIVE DRAFTING GUIDE: THE IRAQ FEDERATION COUNCIL

EXECUTIVE SUMMARY

Iraq's Constitution (Article 65) provides for the establishment of a second legislative body. The Federation Council (*Majlis al-Itihad*) will include representatives of regions and of governorates not organized in regions. The Council of Representatives will determine the operations of the Federation Council. There are three primary issues for the Council of Representatives to consider when creating the Federation Council: (1) the Council's power to affect legislation; (2) the legislative issues over which the Council has jurisdiction; and (3) the election and districts of the Council members.

The Federation Council could be either an advisory body with no active legal authority or a legislative body with power to enact or block legislation. An advisory body within the legislature is more efficient because it uses fewer resources and does not delay legislation. However, an advisory body is frequently seen as less democratic than a powerful legislative body and does not serve as an efficient check on executive branch power.

The power of the Federation Council could be applied to either broad or limited legislative jurisdiction. Broad legislative jurisdiction gives the upper chamber power over legislation in all subject areas. In federal systems, the jurisdiction of the upper legislative chamber frequently is limited to issues affecting the states and fundamental issues such as constitutional amendments.

The members of the Federation Council could represent either small districts or regions and governorates. The members could be selected through several methods. Direct and indirect elections are the most democratic, but they require electoral mechanisms. Appointment by regional governments is a common method that ensures regional interests are protected, but it may be criticized as undemocratic. Membership in the Federation Council may also be based on holding specific local or regional office.

Depending on the decisions made on structure and responsibility, ordinary legislation or a constitutional amendment may be appropriate. Decisions on structure and powers may be implemented through a variety of methods, so long as two-thirds of the Council of Representatives approve.

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LEGISLATIVE DRAFTING GUIDE: THE IRAQ FEDERATION COUNCIL

Statement of Purpose

This legislative drafting guide identifies and analyzes options for resolving outstanding issues related to the establishment of an Iraq Federation Council (*Majlis al-Itihad*). To inform decision makers and provide context, this guide describes and analyzes similar types of legislation in other states. Finally, this guide provides sample language for creating the Federation Council.

Introduction

The Iraq Constitution describes a bicameral legislature composed of a Council of Representatives and a Federation Council. Under the terms of the Constitution, the Council of Representatives will include legislators selected from governorate constituencies using proportional representation. Article 65 of the Constitution provides that the Federation Council is to include “representatives from the regions and the governorates that are not organized in a region.” Although the Constitution defines the character of the Council of Representatives, the structure and responsibilities of the Federation Council remain undecided. The Iraq Constitution charges the Council of Representatives with establishing the Federation Council’s “formation, its membership conditions, and its specializations and all that is connected with it.”¹ Among the specific issues for the Council of Representatives to consider are the power of the Federation Council, its jurisdiction over legislation, and the districts and election of members.

Constitutional Framework

The Iraq Constitution vests federal legislative authority in a Council of Representatives and a Federation Council.² Although the Constitution provides a detailed accounting of the specific powers of the Council of Representatives, similar detail is not provided for the Federation Council. The only description of the Federation Council is in Article 65:

A legislative council shall be established named the Federation Council, to include representatives from the regions and the governorates that are not organized in a region. A law, enacted

¹ IRAQ CONST. art. 65.

² IRAQ CONST. art. 48.

by a two-thirds majority of the members of the Council of Representatives, shall regulate the formation of the Federation Council, its membership conditions, its competencies, and all that is connected with it.³

Additionally, in the section on Final and Transitional Guidelines, the Constitution provides in Article 137:

Application of the provisions of the articles related to the Federation Council, wherever it may be cited in this Constitution, shall be postponed until the Council of Representatives issues a decision by a two-thirds majority vote in its second electoral term that is held after this Constitution comes into force.⁴

These two provisions hint at a number of details regarding the role of the Federation Council, including that (1) the Council will be legislative in nature; (2) the Council will be composed of representatives of the regions and governorates; (3) the conditions of the Council will later be established by an agreement of a two-thirds majority of the Council of Representatives; and (4) the Federation Council will not be effective until at least two legislative cycles after the enactment of the Constitution. However, a number of other issues are left to the Council of Representatives to decide through implementing legislation.

This guide analyzes the major issues that the Council of Representatives will likely have to resolve through legislation. Specifically, this guide provides an overview of the primary issues states generally face in establishing an upper chamber of the legislature, as applied to Iraq. The issues fall into three basic categories: (1) powers, (2) jurisdiction, and (3) election. Powers refers to the scope of authority the Federation Council may exercise over laws and its authority in relation to the Council of Representatives and other branches of government. Jurisdiction, in contrast, refers to the specific types of laws or issues the Federation Council has authority to consider. Finally, election refers to the terms under which members of the Federation Council will be elected.

³ IRAQ CONST. art. 65.

⁴ IRAQ CONST. art. 137.

Powers of the Federation Council

The first issue to address in establishing the Federation Council is the power of the Council. States generally follow one of two basic models with regard to the power of an upper legislative chamber. The first is a relatively weak advisory body and the second is a powerful legislative chamber with comparable authority to the lower chamber.

Second Chambers as Advisory Bodies

The main function of advisory councils in most states is to offer advice to other government bodies that possess the legal authority to act. Advisory councils have the authority to offer advice but not the authority to act. Advisory councils may serve another legislative body with law-making power or serve an executive that has both legislative and executive powers. These types of councils are rare worldwide but relatively common in the Arab world.⁵ There are several elements common to these bodies. In advisory bodies, the executive branch of government

⁵ The United Arab Emirates (UAE) has a legislative council that is advisory. The UAE is a federation consisting of seven emirates. Central leadership resides in the Federal Supreme Council, which elects the President. The President appoints a cabinet, the Council of Ministers. The legislature is the 40 member, unicameral Federal National Council (FNC). Each of the seven emirates appoints a number of members of the FNC. The FNC is largely advisory. It may suggest amendments to laws proposed by the Council of Ministers, but has no constitutional or legal power to act. The FNC may not initiate or veto legislation, but may summon and question federal ministers. The organization of the FNC is similar to more powerful legislative bodies. It has a Speaker and deputies, committees, and Standing Order governing its operation. *See generally Legislature: United Arab Emirates*, UNDP-POGAR at <http://www.pogar.org/countries/legislature.asp?cid=21> (last visited Feb. 5, 2007).

Egypt also has a second legislative chamber with advisory powers. In Egypt, the *Shoura* Assembly acts as an advisory body to the lower legislative chamber and the executive branch by commenting on proposed legislation. The *Shoura* Assembly consists of 264 members. The public elects two-thirds of the members, half of whom must be farmers or workers. The President of Egypt appoints the other one-third. The Constitution limits the scope of issues on which the *Shoura* Assembly may advise.

The Constitution also limits the power of the *Shoura* Assembly over the government. The Prime Minister, deputies, ministers, and other government officials are not responsible to the *Shoura* Assembly, although they have the option of speaking before the *Shoura* Assembly. The Constitution provides some protection to the *Shoura* Assembly against arbitrary dissolution. Article 204 states: “[t]he president of the republic may not dissolve the Assembly except in case of necessity, while such a decision should comprise a invitation to electors to hold new elections for the *Shoura* Assembly within a period of sixty days from the date of dissolution.” Despite this constitutional protection, the body remains legally weak with only advisory powers.

usually has the power to appoint some or all of the representatives. Some powerful heads of state have created advisory councils in response to pressure for reform. The advisory council can be a compromise between retaining all power in the executive and granting legislative power. Yemen is one example of a state with an advisory legislative council.

Yemen: Yemen is a unitary state with a bicameral legislature.⁶ The House of Representatives has legislative powers and the Consultative Council is primarily an advisory body.⁷ The President appoints the 111 members of the Consultative Council. Although the body is still largely advisory, constitutional amendments in 2001 gave the Consultative Council limited legislative powers. On legislation pertaining to national defense, the House of Representatives and the Consultative Council sit together in joint session. For legislation relating to national defense to pass the legislature, bills must receive an absolute majority of the members of the combined bodies.⁸ The President may also request this procedure for other legislation.⁹ Therefore, the Yemen Consultative Council does have direct legislative authority. That authority is diluted, however, because the 111-member Consultative Council sits in joint session with the 301-member House of Representatives. In theory, the House of Representatives can control the joint sessions and adopt defense legislation without the approval of members of the Consultative Council.

A frequent criticism of legislative bodies appointed by the executive, such as in Yemen, is that they reflect the opinion of the executive.¹⁰ An advisory council can provide more opportunity for debate of issues than occurs through executive decision-making, but there is no guarantee that the debate reflects the interests of the citizenry.

⁶ *Yemen in Brief*, UNDP-POGAR, at <http://www.pogar.org/countries/index.asp?cid=22> (last visited Feb. 5, 2007).

⁷ *Legislature: Yemen*, UNDP-POGAR, at <http://www.pogar.org/countries/legislature.asp?cid=22> (last visited Feb. 5, 2007).

⁸ *Legislature: Yemen*, UNDP-POGAR.

⁹ *Legislature: Yemen*, UNDP-POGAR.

¹⁰ See e.g. Rima Habasch, *The Role of Parliaments in Conflict and Post-Conflict Situations: Comparative Study of Five Arab Countries*, p. 9, at <http://www.parlcrp.undp.org/docs/arabRegPAP.pdf> (last visited Feb. 5, 2007) (noting the use in Yemen of decrees by the executive and the legislature's rubber-stamp approval of the laws, exacerbated by the legislature's dependence on the executive for funding).

Legal Advantages and Disadvantages of the Federation Council as an Advisory Body: A purely advisory council can be advantageous because it does not delay the work of the lower chamber. In effect this would leave a unicameral legislature, which achieves efficiency yet retains input from the regions. Conversely, if the advisory council's opinion is of no consequence, then there is little purpose for the council and its existence is a drain on government resources. An additional disadvantage is that advisory councils can be seen as extensions of rulers with consolidated power. The existence of an advisory council may prompt criticisms that true power lies elsewhere, such as in the executive. This is particularly true when the advisory council is appointed by the executive. Creating an advisory council in Iraq under the terms of the Constitution might avoid the difficulties of creating a powerful legislative council where a powerful Council of Representatives already exists. It may be difficult to divide responsibilities between the chambers after the Council of Representatives has commenced work.

Sample Language for the Federation Council as an Advisory Body

Powers

Option – Federation Council as an Advisory Body

The Federation Council shall be an advisory body. The President of the Republic, the Prime Minister of the Republic, and the Council of Representatives may offer legislation to the Federation Council for its opinion.

Second Chambers with Extensive Powers

In contrast to the limited number of states with upper legislative chambers as advisory bodies, many states allow their upper chamber to debate, modify, and adopt legislation. Furthermore, many states require that the upper chamber approve a law through a vote for the legislature to adopt the law. Upper chambers with legislative authority complement the work of the lower legislative chamber. Within the class of upper chambers with legislative authority, different states grant their upper chamber varying degrees of authority. Some second chambers have equal power to the lower chamber, while in others, the approval of the upper chamber is not required for the legislature to adopt the legislation. Nigeria maintains a powerful upper legislative chamber.

Nigeria: Nigeria is a federal state with a bicameral legislature, called the National Assembly. There are 360 delegates in the House of Representatives.¹¹ In the Senate there are three Senators for each of the 36 regions, and one Senator for the Federal Capital Territory, for a total of 109 Senators.¹² Senators serve four-year terms.¹³

The Senate possesses the same authority to introduce and amend legislation as the House of Representatives. Both chambers must adopt legislation in identical form for it to pass to the executive for acceptance or rejection.¹⁴ The National Assembly may override a presidential veto with two-thirds support in both chambers.¹⁵

If finance legislation passes one chamber and the other chamber rejects the changes within two months of the start of the fiscal year, the President of the Senate convenes a session of both Finance Committees to settle the legislation.¹⁶ If the limited joint session fails, the House of Representatives and the Senate consider the budget in joint session.¹⁷

Legal Advantages and Disadvantages of Extensive Powers for the Federation Council: Many states with a federal structure, such as that in Iraq, opt for a bicameral parliament in which the upper house has legislative authority in order to provide representation for the regions. In such systems, the legislators in the lower chamber can vote according to the interests of their constituency, either a single-member district or the nation as a whole in proportional representation systems, and the upper chamber can represent the interests of the constituent regions. In a constitution that guarantees powers and rights to the regions, the upper chamber is a forum to exercise those powers and rights. Some consider the upper legislative chamber a check on the powers of the lower chamber.¹⁸ Because many upper chambers have traditionally been smaller in size with less rigid rules of procedure, they allow slower and more purposeful deliberation on the issues.

¹¹ NIGERIA CONST. art. 48.

¹² NIGERIA CONST. art. 49.

¹³ *Nigeria, Sénats du Monde*, FRENCH SENATE, at <http://www.senat.fr/senatsdumonde/english/nigeria.html> (last visited Feb. 5, 2007).

¹⁴ *Nigeria, Sénats du Monde*, FRENCH SENATE.

¹⁵ *Nigeria, Sénats du Monde*, FRENCH SENATE.

¹⁶ *Nigeria, Sénats du Monde*, FRENCH SENATE.

¹⁷ *Nigeria, Sénats du Monde*, FRENCH SENATE.

¹⁸ George Thomas Kurian, ed., *Second Chambers*, WORLD ENCYCLOPEDIA OF PARLIAMENTS AND LEGISLATURES 849.

The most significant disadvantages of an upper chamber with legislative authority are inefficiency and cost. With two separate chambers of the legislature, it takes more time to debate legislation and there is a greater chance that both chambers will not adopt the legislation, thus delaying the adoption of laws. With a second chamber, there are additional staff members and legislators to pay, and government resources may be strained.

A strong second chamber could promote the interests of the regions and governorates in Iraq. If the Council of Representatives operates like the National Assembly and represents national interests, then a strong Federation Council could protect local and regional interests.

Sample Language for Extensive Powers for the Federation Council

Powers

*Option – Language of Constitution Provision on Council of Representatives is Rewritten to Include the Federation Council*¹⁹

The legislative authority in Iraq shall be competent in the following:²⁰

First: Enacting federal laws.

Second: Monitoring the performance of the executive authority.

Third: Electing the President of the Republic

Fourth: Regulating the ratification process of international treaties and agreements by a law, to be enacted by a two-thirds majority of the members of the Council of Representatives [and Federation Council].

Fifth: Approving the appointment of the following:

- A. The President and members of the Federal Court of Cassation, the Chief Public Prosecutor, and the President of Judicial Oversight

¹⁹ This option is the powers of the Council of Representatives, from art. 61 of the Iraq Constitution, rewritten to grant equal powers to the Federation Council. In legislatures with strong upper chambers, the constitution typically lists the powers of the legislature as a whole, rather than separately by chamber. *See e.g.* UNITED STATES CONST. art. I, sec. 8; AUSTRALIA CONST. § 51. If the leaders of Iraq wish to create a strong Federation Council, with powers equal to the Council of Representatives, it may be desirable to amend the Constitution to include a provision listing the powers of the parliament. If the powers of the Federation Council are defined in a normal law, and the powers of the Council of Representatives are defined in the constitution, the Federation Council will be weaker symbolically and legally.

Bracketed sections of the sample language are changed from the Iraq Constitution to reflect the participation of a second legislative chamber.

²⁰ IRAQ CONST. art. 61.

Commission by an absolute majority based on a proposal from the Higher Juridical Council,.

- B. Ambassadors and those with special grades, based on a proposal from the Council of Ministers.
- C. The Iraqi Army Chief of Staff, his assistants and those of the rank of division commander and above, and the director of the intelligence service, based on a proposal from the Council of Ministers.

Sixth:

- A. Questioning the President of the Republic, based on a petition with cause, by an absolute majority of the members [in both Councils].
- B. Relieving the President of the Republic by an absolute majority of [members of both Councils] after being convicted by the Supreme Federal Court in one of the following cases:
 - 1- Perjury of the constitutional oath.
 - 2- Violating the Constitution.
 - 3- High treason.

Seventh:

- A. [Members of both Councils] may direct questions to the Prime Minister and the Ministers on any subject within their specialty and each of them shall answer the Members' questions. Only the member who has asked the question shall have the right to comment on the answer.
- B. At least twenty-five members of the Council of Representatives [or ten members of the Federation Council] may raise a general issue for discussion in order to inquire about a policy and the performance of the Council of Ministers or one of the Ministries and it shall be submitted to the Speaker of the Council of Representatives [Speaker of the Federation Council], and the Prime Minister or the Ministers shall specify a date to come before the [inquiring council] to discuss it.
- C. A member of the Council of Representatives, with the agreement of twenty-five members [or a Federation Council member with the agreement of ten Federation Council members], may direct an inquiry to the Prime Minister or the Ministers to call them to account on the issues within their authority. The debate shall not be held on the inquiry except after at least seven days from the date of submission of the inquiry

Eighth:

- A. The [legislature] may withdraw confidence from one of the Ministers by an absolute majority [of both Councils] and he shall be considered

resigned from the date of the decision of withdrawal of confidence. A vote of no confidence in a Minister may not be held except upon his request or on the basis of a request signed by fifty members after the Minister has appeared for questioning before the Councils. The [legislature] shall not issue its decision regarding the request except after at least seven days from the date of its submission.

- B.
- 1- The President of the Republic may submit a request to the Council of Representatives to withdraw confidence from the Prime Minister.
 - 2- The Council of Representatives may withdraw confidence from the Prime Minister based on the request of one-fifth of its members. This request shall not be submitted except after an inquiry directed at the Prime Minister and after at least seven days from the date of submitting the request.
 - 3- The Council of Representatives may decide to withdraw confidence from the Prime Minister by an absolute majority of the number of its members.
- C. The Government is deemed resigned in case of withdrawal of confidence from the Prime Minister.
- D. In case of a vote of withdrawal of confidence in the Council of Ministers as a whole, the Prime Minister and the Ministers continue in their positions to run everyday business for a period not to exceed thirty days until a new Council of Ministers is formed in accordance with the provisions of Article 76 of this Constitution.
- E. [Either Council] may question independent commission heads in accordance with the same procedures related to the Ministers. The [legislature] shall have the right to relieve them by absolute majority [of both Councils].

Ninth:

- A. To consent to the declaration of war and the state of emergency by a two-thirds majority [in both Councils], based on a joint request from the President of the Republic and the Prime Minister.
- B. The state of emergency shall be declared for a period of thirty days, which can be extended after approval each time.
- C. The Prime Minister shall be delegated the necessary powers which enable him to manage the affairs of the country during the period of the declaration of war and the state of emergency. These powers shall

be regulated by a law in a way that does not contradict the Constitution.

- D. The Prime Minister shall present to [both Councils] the measures taken and the results during the period of declaration of war and within 15 days from the date of its end.

Option – Same Powers as Council of Representatives; Powers not Enumerated
The Federation Council shall have the same powers as the Council of Representatives.

Option – Powerful Legislature with Limited Jurisdiction

For legislation within the jurisdiction of the Federation Council to become law, the Federation Council must adopt the legislation by a majority vote. The jurisdiction of the Federation Council is defined in the following section entitled **Jurisdiction**.

Option – Federation Council only has Overridable Delay Veto

The Federation Council may vote to delay legislation adopted by the Council of Representatives. The Federation Council, with a simple majority of its members, may object to a bill adopted by the Council of Representatives. An objection shall delay adoption of the bill for 30 days. The Council of Representatives may, by an absolute majority of its members, override the objection imposed by the Federation Council, and pass the bill immediately. Should two-thirds of the members of the Federation Council support the objection, a two-third majority of all members of the Council of Representatives may vote to override the objection.

Jurisdiction of the Federation Council

While the power of the legislature refers to a chamber's authority to affect legislation, jurisdiction refers to the specific issues or types of legislation over which the chamber may exercise those powers. In federal systems, the jurisdiction of the upper chamber is sometimes limited to issues affecting the regions and fundamental issues such as constitutional amendments. Upper chambers in other states have broad jurisdiction equal to that of the lower chamber. Jurisdiction issues are relevant to both advisory and legislative bodies.

Limited Legislative Jurisdiction

In federal systems, the jurisdiction of the upper chamber is often limited to issues that affect regional and local governance. Egypt and Germany have

different state and government structures, but both have upper legislative chambers with limited jurisdiction. In both states, the national constitution defines the subjects over which the upper chamber has jurisdiction. The constitutional purposes for the upper chambers differ. In Egypt, the *Shoura* Assembly is intended to preserve revolutionary principles, while the German *Bundesrat* is designed to represent the interests of the regions at the national level.

Egypt: The *Shoura* Assembly in Egypt has limited jurisdiction. The Egyptian constitution provides general guidance to the *Shoura*:

The Shoura Assembly is concerned with the study and proposal of what it deems necessary to preserve the principles of the July 23, 1952 Revolution and the May 15, 1971 Revolution, to consolidate national unity and social peace, to protect the alliance of the working forces of the people and the socialist gains as well as the basic constituents of society, its supreme values, its rights and liberties and its public duties, and to deepen the democratic socialist system and widen its scope.²¹

The Constitution further enumerates the areas of legislation on which the *Shoura* may offer its opinion, including proposals for the amendment of one or more articles of the Constitution; draft laws complementary to the Constitution; draft of the general plan for social and economic development; peace treaties, alliances and all treaties affecting the territorial integrity of the State or those concerning sovereignty rights; draft laws referred to the Assembly by the President of the Republic; and matters referred to the Assembly by the President of the Republic relative to the general policy of the State or its policy regarding Arab or foreign affairs.²²

The President frequently refers bills to the *Shoura* for study or debate.²³ The power to refer legislation from the executive branch to the legislature is more common in systems like Egypt where the upper chamber exists to serve other government bodies.

²¹ EGYPT CONST. art. 194.

²² EGYPT CONST. art. 195.

²³ *Jurisdiction of Shoura Assembly*, EGYPTIAN SHOURA ASSEMBLY, at http://www.shoura.gov.eg/joursdiction_of_the_shoura_assem.htm (last visited Feb. 5, 2007).

Germany: Germany is a federal state with a bicameral legislature. The *Bundestag* is the lower chamber. The *Bundesrat* is the upper chamber of the legislature and responsible for protecting the interests of the regions, locally known as *Land*. Regional officials serve as delegates to the *Bundesrat*, and regional delegates must vote as a bloc.²⁴ German legislation falls into three categories: (1) constitutional amendments; (2) simple laws; and (3) consent laws.²⁵ To be enacted, Constitutional amendments must be approved by a two-thirds majority in both the *Bundestag* and *Bundesrat*.²⁶ Simple laws must be adopted by the *Bundestag* to become law and are subject to a veto to suspend in the *Bundesrat*.²⁷ Simple laws are not considered to directly affect the responsibilities of the regions, and therefore the power of the *Bundesrat* over them is limited. The *Bundesrat* can delay the passage of a simple law with an objection.²⁸ The *Bundestag* may overrule the *Bundesrat's* delay by an absolute majority.²⁹ If two-thirds of the *Bundesrat* object to a simple law, the support of two-thirds of those present in the *Bundestag*, and an absolute majority, is needed to overrule the objection.³⁰ Consent laws must be adopted by the *Bundesrat* to become law.³¹ Consent laws are those considered to directly affect the responsibilities of the regions, and therefore the *Bundesrat* has the power of an absolute veto over them. Consent laws currently include: remuneration and pensions of members of the public service at regional and local level;³² amendments to the constitution;³³ general administrative rules;³⁴ execution of federal laws by the regions;³⁵ funded mandates where regions must provide more than a quarter of the grant;³⁶ and federal tax laws, where the revenue accrues wholly or in part to the regions.³⁷ Although its role is constitutionally limited, the German *Bundesrat* has substantial jurisdiction.³⁸

²⁴ GERMANY CONST. art. 51(3).

²⁵ *Germany*, WORLD ENCYCLOPEDIA OF PARLIAMENTS AND LEGISLATURES 272.

²⁶ *Germany*, WORLD ENCYCLOPEDIA OF PARLIAMENTS AND LEGISLATURES 272.

²⁷ *Germany*, WORLD ENCYCLOPEDIA OF PARLIAMENTS AND LEGISLATURES 272.

²⁸ *Germany*, WORLD ENCYCLOPEDIA OF PARLIAMENTS AND LEGISLATURES 272.

²⁹ *Germany*, WORLD ENCYCLOPEDIA OF PARLIAMENTS AND LEGISLATURES 272.

³⁰ *Germany*, WORLD ENCYCLOPEDIA OF PARLIAMENTS AND LEGISLATURES 272.

³¹ *Germany*, WORLD ENCYCLOPEDIA OF PARLIAMENTS AND LEGISLATURES 272.

³² GERMANY CONST. art. 74a(2).

³³ GERMANY CONST. art. 79(2).

³⁴ GERMANY CONST. art. 84(2).

³⁵ GERMANY CONST. art. 84(1). This provision is the basis of more than 70% of the legislation before the *Bundesrat*.

³⁶ GERMANY CONST. art. 104a(3).

³⁷ GERMANY CONST. art. 105(3).

³⁸ Though the jurisdiction of the *Bundesrat* is not universal, currently over 50% of all bills are consent bills requiring its approval. Because of constitutional amendments, the number of

Legal Advantages and Disadvantages of Limited Jurisdiction for the Federation Council: In a federal legislature with limited jurisdiction, the regions and governorates may protect their interests while retaining more of the efficiency and expediency of a unicameral legislature. In Iraq, limited legislative jurisdiction for the Federation Council could provide a voice to regional interests and may not significantly delay the legislative process. Limited jurisdiction could also provide the Council of Representatives greater power on issues that do not affect local and regional interests while permitting the Federation Council to adopt or reject legislation on issues important to local interests. The promotion of regional interests could be accomplished by electing members of the Federation Council at the governorate or regional level and constitutionally limiting the areas of legislative authority in the manner Germany has done. Constitutional amendments, organization of government, taxes, and financial or administrative requirements of the regions and governorates are issues that most directly affect the regions and governorates.

Sample Language for Limited Jurisdiction for the Federation Council

Jurisdiction

Option – Limited Jurisdiction

The Federation Council shall have jurisdiction over:

- Amendments to the Constitution of Iraq;³⁹
- Peace treaties, alliances and all treaties affecting the territorial integrity of the State or those concerning sovereignty rights;⁴⁰
- Organization of the federal, regional, governorate or local government;⁴¹
- Federal laws requiring implementation by the regions or governorates not organized in regions;⁴²
- Laws to be executed by the regions or governorates not organized in regions;⁴³
- Matters referred to the Federation Council by the President of Iraq or the Prime Minister of Iraq; and
- Matters referred to the Federation Council by the Council of Representatives.⁴⁴

consents bills today is a three-fold increase over the number of bills at the time of adoption of the constitution in 1949.

³⁹ See e.g. EGYPT CONST. art. 195; GERMANY CONST. art. 79(2).

⁴⁰ EGYPT CONST. art. 195.

⁴¹ GERMANY CONST. art. 84(1).

⁴² GERMANY CONST. art. 104a(3).

⁴³ GERMANY CONST. art. 84(1).

⁴⁴ The Council of Representatives may want the opinion of the regions on controversial matters.

The Council of Representatives shall have sole jurisdiction over all other matters within the competence of the legislature.

Broad Legislative Jurisdiction

An upper chamber with broad jurisdiction acts with authority over all the same issues as the lower chamber. All laws require the consent of both chambers of the legislature. Granting broad jurisdiction eliminates the need to determine if a matter is within the jurisdiction of the upper chamber.

Nigeria: In Nigeria, both the Chamber of Representatives and the Senate must ratify all national legislation before it passes to the executive for approval. Both chambers have equal power and jurisdiction.

Legal Advantages and Disadvantages of Broad Jurisdiction for the Federation Council: The advantages and disadvantages of broad legislative jurisdiction are similar to the advantages and disadvantages of a powerful legislature. The greater the jurisdiction over legislation in an upper chamber, the greater the chance for delay or dispute between the chambers. Additionally, broader jurisdiction requires more committees in the legislature and a larger staff, thus using more government resources.

An upper chamber with broad jurisdiction could increase the power of the Iraqi regions and governorates by giving representatives of the regions and governorates influence over more issues. A Federation Council with broad jurisdiction may limit the influence of a Council of Representatives, which acts with a national perspective.

Sample Language for Broad Jurisdiction for the Federation Council **Jurisdiction**

Option – Broad Jurisdiction

The Federation Council shall have the same jurisdiction over legislative issues as the Council of Representatives.

Membership in the Federation Council

The third significant issue in relation to the Federation Council is membership. Membership issues include the size and nature of the districts represented by legislators and the respective selection process.

Legislative Districts

The Constitution provides that the Federation Council will include “representatives from the regions and the governorates that are not organized in a region.”⁴⁵ States provide a range of models for the election of members to the upper chamber. One option is for each legislator to represent a sub-regional geographic district. Typically these small districts are used in the lower legislative chamber, such as in the House of Representatives in the United States. Seats in the Council of Representatives in Iraq will be distributed using proportional representation in governorate constituencies.⁴⁶ Forty-five additional compensatory seats will be allocated to better replicate the results of a single, nation-wide constituency.⁴⁷ Although the election law suggests more of a regional focus than during the January 2005 elections, the history of the National Assembly suggests it may maintain a national focus for the Council of Representatives. The National Assembly operated as a national body and it may continue this perspective. Therefore, even if the Federation Council uses governorate constituencies, its focus may differ from the Council of Representatives.

A second option is to base legislative constituencies on the regions and governorates not organized in regions. The constitutional language “representatives from the regions and the governorates that are not organized in a region”⁴⁸ supports this option. There are different ways to distribute seats to regions and governorates. One way is to divide the seats without regard to population. In this method, each region would get an equal number of seats and all governorates not organized in regions would receive an equal number of seats. The United States uses this method, providing each region, known locally as a State, with two Senators.⁴⁹ Equal distribution of seats among regions in the upper chamber most commonly accompanies a lower chamber with small geographic

⁴⁵ IRAQ CONST. art. 65.

⁴⁶ Elections Law art. 15 (Iraq), *at*

<http://www.ieciraq.org/final%20cand/ELECTORAL%20LAW%20FINAL%20gazetted.pdf>.

⁴⁷ Elections Law, art. 16.

⁴⁸ IRAQ CONST. art. 65.

⁴⁹ UNITED STATES CONST. art. I, § 3.

seats based on population. The proportional representation based on governorates used in the Council of Representatives could balance this extra representation. Another way to divide seats is to base the number of legislators on the population of the region. In Germany and Austria the representation of each region in the second chamber depends on its population, but each region is guaranteed a minimum number of legislators.⁵⁰

Method of Selection of Legislators

The method of selecting members of the Federation Council necessarily shapes the interests the members represent and the role the chamber will play. Selection methods include indirect election, direct election, appointment, and *Ex Officio*, meaning by virtue of other office.

Indirect Election: Although very rare for the lower chamber of legislatures, indirectly-elected upper chambers are relatively common. Early constitutional architects considered indirect elections desirable as a method of limiting the unruly nature of lower chambers, and protecting the interests of the aristocratic class (hence the term upper chamber). In indirect systems, municipal or regional legislatures or councils usually elect the legislators. In some systems, such as that of Morocco, however, professional and trade groups on both the local and national levels share electoral power with the local councils.⁵¹

Indirect Election – Morocco: Morocco is a constitutional monarchy with a unitary power structure. The legislature consists of a 325-member House of Representatives and a 270-member House of Counsellors. The House of Representatives is directly elected. Local and national electoral colleges elect the Counsellors.⁵² The electoral colleges consist of local councils, professional associations, and trade unions.⁵³ Local and regional councils elect 162

⁵⁰ Nicholas Baldwin and Donald Shell, eds., *SECOND CHAMBERS* (2001) at 22.

⁵¹ Art. 38 of the Constitution reads: “For 3/5 of its membership, the House of Counsellors shall consist of members elected in each region by electoral colleges made up of elected members of trade chambers as well as members elected at the national level by an electoral college consisting of wage-earners' representatives.”

http://www.mincom.gov.ma/english/generalities/state_st/constitution.htm (last visited Feb. 5, 2007).

⁵² *Legislature: Morocco*, UNDP-POGAR, at

<http://www.pogar.org/countries/legislature.asp?cid=12> (last visited Feb. 5, 2007).

⁵³ MOROCCO CONST. art. 38.

Counsellors.⁵⁴ Trade unions and representatives of industry and agriculture elect the other 108 Counsellors.⁵⁵ The term of a Counsellor is nine years, with one-third of the House standing for election every three years.

Direct Election: In direct elections, the public votes for the legislators. Experts consider direct elections the most democratic method of filling the upper chamber of a legislature.⁵⁶ Members of the Nigerian Senate are elected through direct elections.

Direct Election – Nigeria: The Nigerian Constitution requires that each region, known as a State, be divided into three senatorial districts, each represented by one Senator.⁵⁷ The capital territory also elects one Senator, resulting in a total of 109 senators.⁵⁸ Citizens cast votes directly for the candidates to these offices. Electoral districts for the Chamber of Representatives are population based, while in the Senate, the number of seats per region is fixed.⁵⁹

Appointment: Appointment by other government officials is another method of selecting upper chamber legislators. In some federal systems, regional or local officials make the appointments. The Iraq Constitution indicates that the Federation Council will include local and regional representatives, so this guide will not address appointments by central governments. Appointment by local government is similar to indirect election by local government, though the power to appoint tends to be based in the local executive rather than the local legislature. In the United Arab Emirates, for example, each Emirate appoints members of the Federal National Council.⁶⁰

Appointment – United Arab Emirates: In the United Arab Emirates, each federal region, known as an Emirate, appoints its members of the advisory body, the Federal National Council. The distribution of seats among regions is predetermined.⁶¹ The Constitution does not provide for a method of appointment

⁵⁴ *Elections: Morocco*, UNDP-POGAR, at <http://www.pogar.org/countries/elections.asp?cid=12> (last visited Feb. 5, 2007).

⁵⁵ *Elections: Morocco*, UNDP-POGAR.

⁵⁶ See e.g. *Second Chambers*, WORLD ENCYCLOPEDIA OF PARLIAMENTS AND LEGISLATURES 851.

⁵⁷ NIGERIA CONST. art. 71(a).

⁵⁸ NIGERIA CONST. art. 48.

⁵⁹ NIGERIA CONST. arts. 48-49.

⁶⁰ *United Arab Emirates*, WORLD ENCYCLOPEDIA OF PARLIAMENTS AND LEGISLATURES 693.

⁶¹ *United Arab Emirates*, WORLD ENCYCLOPEDIA OF PARLIAMENTS AND LEGISLATURES 693.

and leaves the matter to the discretion of the each Emir.⁶² The only requirements are the members: (1) be citizens or permanent residents; (2) be 25 years or older; (3) be well reputed and possess all civil rights; (4) have no criminal record; (5) be literate; and (6) not hold any government position.⁶³ Although they are appointed by a regional leader, the members are required to also serve the interests of the UAE as a whole.⁶⁴

Ex Officio – Selection of Members from Government Offices

Selection of legislators based on other public office is unusual but utilized by some states. This is called *Ex Officio* selection and is used in the German *Bundesrat*.

Ex Officio – Germany: Membership in the *Bundesrat* derives from government office in the regions. Only the heads of the regional governments and regional ministers may serve in the *Bundesrat*.⁶⁵ Each region is represented in the *Bundesrat* by one of its local officials. In regions composed of one city, such as Berlin, mayors and senators are members of the *Bundesrat*. *Bundesrat* members serve as both regional and federal officials. Composition of the *Bundesrat* changes when the regional government changes. Members of the *Bundesrat* are constrained by the requirement that a region must cast its votes as a group. Therefore, the members act more like proxies than independent representatives.

Legal Advantages and Disadvantages of Membership Selection Methods for the Federation Council: From the language of the Constitution, it is possible that the drafters envisioned a Federation Council with electoral districts matching the regions and governorates not organized in regions. An alternative is to create special districts that may be smaller than the regions or governorates for the purpose of electing Members of the Federation Council. If the Council of Representatives decides to use proportional representation for the Federation Council then larger districts would probably be needed, because proportional representation cannot practically be used in small, local districts. Either districts with one representative or proportional representation at the regional level would

⁶² *Legislature: United Arab Emirates*, UNDP-POGAR, at <http://www.pogar.org/countries/legislature.asp?cid=21> (last visited Feb. 5, 2007).

⁶³ *UAE: Legislative System*, UNDP-POGAR, at <http://www.pogar.org/countries/more.asp?ADctry=12&ADinst=3> (last visited Feb. 5, 2007).

⁶⁴ *UAE: Legislative System*, UNDP-POGAR.

⁶⁵ *Germany*, WORLD ENCYCLOPEDIA OF PARLIAMENTS AND LEGISLATURES 277-78.

complement the large constituencies of the Council of Representatives and increase the power of the regions and governorates.

The different electoral methods could have implications for the role of the Federation Council in Iraq. Direct elections could convey a more democratic image for the body. Given Iraq's past, a more democratic institution may be appealing. Indirect elections could strengthen regional control over the Federation Council. Appointment by regional leaders may also strengthen the regional and governorate governments, and could prevent extremists from holding seats in the Federation Council. Similarly, *Ex Officio* membership in the Federation Council could strengthen the regional and governorate governments by forcing members to take actions that serve both their regional and national posts. Additionally, the upper chamber is often seen as a check on the powers of the lower chamber, which may be a helpful tool in combating extremism in the lower chamber.⁶⁶

Sample Language for Member Selection in the Federation Council

Selection of Members

Option

Each Regional Government or Governorate Council of a governorate not organized in a region shall choose the method by which it distributes its seats in the Federation Council.

Option

The voters of each region or governorate not organized in a region shall directly elect their Councilors by secret ballot.

Option

Each Regional Government or Governorate Council of a governorate not organized in a region shall elect its Councilors.

Replacement of Members

In case of death, resignation, or dismissal:

Option

Each Regional Government or Governorate Council of a governorate not organized in a region shall replace its member by means of its own choosing.

⁶⁶ *In Support of Arab Democracy: Why and How*, 21, COUNCIL ON FOREIGN RELATIONS, at http://www.cfr.org/content/publications/attachments/Arab_Democracy_TF.pdf (last visited Feb. 5, 2007).

Option

Each region or governorate not organized in a region shall hold a special direct by-election to fill the vacant seat.

Types of Implementing Acts

In creating the Federation Council, the Council of Representatives may use either legislation adopted with a two-thirds majority or a constitutional amendment. The Constitution provides that “A law, enacted by a two-thirds majority of the members of the Council of Representatives, shall regulate the formation of the Federation Council, its membership conditions, its competencies, and all that is connected with it.”⁶⁷ The Constitution further requires that constitutional amendments not concerning basic rights and freedoms be supported by two-thirds of members of the Council of Representatives, have the support of the people in a referendum, and endorsement of the president within seven days.⁶⁸ Thus, the difference between a constitutional amendment and other legislative act is the referendum.

Establishing the Federation Council through legislation eliminates the cost and preparation required to hold a referendum. A supermajority of Representatives is required to adopt legislation, thus protecting the interests of the citizens. Constitutional amendments, however, are more permanent and carry more authority than a legislative act because of the referendum requirement. Basic organization and responsibilities of the legislature are typically defined in the constitution. A referendum might ensure that the Council of Representatives is not given unlimited authority to define its sibling institution. Moreover, there may be additional calls for referenda relating to the Constitution, and therefore, it may be possible to put several amendments on one referendum and limit costs.

Conclusion

The future Council of Representatives is granted significant constitutional power to determine the nature of the Federation Council. The Constitution includes few requirements on structure or responsibility. The Council of Representatives therefore has a range of options and models to look to in establishing the Federation Council. The Federation Council could have legislative

⁶⁷ IRAQ CONST. art. 65.

⁶⁸ IRAQ CONST. art. 126(3).

power or be merely advisory. Its powers could apply to all legislation or to only limited issues confronting the regions and governorates. In addition, the members of the Council could represent local districts or regions and governorates, and could be either be elected or appointed. These decisions could be implemented through either a constitutional amendment or through legislation with a two-thirds majority in the Council of Representatives.

Annex I – Sample Language for the Creation of the Federation Council

Number of Members

Option 1

The Federation Council shall consist of 65 members.⁶⁹

Option 2

The Federation Council shall consist of 4 members from each governorate. Each region shall have 4 seats for each governorate in the region.

Option 3

The Federation Council shall consist of one seat for every 400,000 Iraqi persons.

Distribution of Seats (*Requires Option 1 from Number of Members*)

Option for distributing a fixed number of seats among regions

Seats in the Federation Council shall be distributed to the governorates as follows:⁷⁰

Al-Anbar:	3 seats
Al-Basrah:	4 seats
Al-Multhanna:	1 seat
Al-Qadisiyah:	2 seats
An-Najaf:	2 seats
Arbil:	3 seats
As-Sulaymaniyah:	4 seats
At-Ta'mim:	2 seats
Babil:	4 seats
Baghdad:	16 seats
Dahuk:	1 seat
Dhi Qar:	4 seats
Diyala:	4 seats
Karbala:	2 seats
Maysan:	2 seats
Ninawa:	6 seats

⁶⁹ Sixty-five member system is comparable to the 69 members of the German *Bundesrat*.

⁷⁰ Seats are distributed based on the 2002 population using the Hamilton method (The national population is divided by the number of seats to develop the quota necessary for a governorate to receive one seat. A governorate's population is divided by that quota to determine seats. The remainders after this division are compared and the remaining seats are given to governorates in order of largest remainder). It is advisable to redistribute the seats using more recent population statistics reflecting internal migration following the end of the Saddam Hussein regime.

Salah ad-Din:	3 seats
Wasit:	2 seats

Changes to the distribution of seats shall occur by law.

Selection of Members

Option 1

Each Regional Governorate or Governorate Council of a governorate not organized in a region shall choose the method by which it distributes its seats in the Federation Council.

Option 2

The voters of each region or governorate not organized in a region shall directly elect their Councilors by secret ballot.

Option 3

Each Regional Government or Governorate Council of a governorate not organized in a region shall elect its Councilors.

Replacement of Members

In case of death, resignation, or dismissal:

Option 1

Each Regional Government or Governorate Council of a governorate not organized in a region shall replace its member by means of its own choosing.

Option 2

Each region or governorate not organized in a region shall hold a special direct by-election to fill the vacant seat.

Qualifications

To serve in the Federation Council, one:

- Must be an Iraqi citizen;⁷¹
- Must be at least ____ years old when sworn in;⁷²

⁷¹ Citizenship is a nearly universal requirement for national elective office.

⁷² A minimum age is a common prerequisite for national elective office. *See* JORDAN CONST. art. 65 (requiring a minimum age of 40 years for membership in the upper legislative council); *See also* http://www.arabianlook.com/FNC_Live/front/eBrief_Contents.asp (mandating that in the United Arab Emirates, members of the Federation National Council be at least 25 years old); *see also* UNITED STATES CONST. art. I, § 3 (dictating that in the United States, Senators must be at least 35 years old).

- Must be of good reputation and political experience, and known for his or her integrity, righteousness, fairness and loyalty to the homeland; and⁷³
- Must not have been convicted of a crime involving moral turpitude.⁷⁴

Term of Office

The term of office for members of the Federation Council shall be ____ years.

During the first session of the Federation Council, members shall be divided by lot into [two or three] classes, for the purpose of future elections. [One-third or one-half] of all members shall stand for election every ____ years.

Incompatibility

No member of the Federation Council shall hold any other official position or work.⁷⁵

Option for Ex Officio Membership

No member of the Federation Council shall hold any other official position or work, except for the position through which he is eligible for the Council.

Oath of Office⁷⁶

Prior to assuming his or her duties, each member shall take the following oath before the Council:

I swear by God Almighty to carry out my legal duties and responsibilities with devotion and integrity and preserve the independence and sovereignty of Iraq, and safeguard the interests of its people, and ensure the safety of its land, sky, water, wealth, and federal democratic system, and I shall endeavor to protect public and private liberties, the independence of the judiciary, and pledge to implement legislation faithfully and neutrally. God is my witness.

Immunity⁷⁷

Each member of the Federation Council shall enjoy immunity for statements made while the Council is in session, and the member may not be prosecuted before the courts for such.

⁷³ See IRAQ CONST. art. 68(3) (listing eligibility requirements of Iraqi President).

⁷⁴ See IRAQ CONST. art. 68(4) (listing eligibility requirements of Iraqi President).

⁷⁵ See IRAQ CONST. art. 49(6) (limiting combination of positions by members of the Council of Representatives).

⁷⁶ See IRAQ CONST. art. 50.

⁷⁷ See IRAQ CONST. art. 63.

A Federation Council member may not be placed under arrest during the legislative term of the Federation Council, unless the member is accused of a felony and the Federation Council members consent by an absolute majority to lift his immunity or if caught *in flagrante delicto* in the commission of a felony.

A Federation Council member may not be arrested after the legislative term of the Council, unless the member is accused of a felony and with the consent of the speaker of the Council to lift his immunity, or if he is caught *in flagrante delicto* in the commission of a felony.

Authenticity⁷⁸

The Federation Council shall decide, by a two-thirds majority, the membership authenticity of its members within thirty days from the date of filing an objection.

The decision of the Federation Council may be appealed before the Federal Supreme Court within thirty days from the date of its issuance.

Jurisdiction

Option 1 – Same Jurisdiction for Both Chambers

The Federation Council shall have the same jurisdiction over legislative issues as the Council of Representatives.

Tax and Appropriation Bills

All tax bills and appropriation bills must originate in the Council of Representatives, but require the consent of the Federation Council and the Council of Representatives to become law.⁷⁹

Option 2 – Limited Jurisdiction

The Federation Council shall have jurisdiction over:

- Amendments to the Constitution of Iraq;⁸⁰
- Peace treaties, alliances and all treaties affecting the territorial integrity of the State or those concerning sovereignty rights;⁸¹
- Organization of the federal, regional, or local government;⁸²

⁷⁸ See IRAQ CONST. art. 52.

⁷⁹ Constitutions often require tax and appropriation bills to originate in the lower chamber because it is considered the more democratic body and therefore gives more control over finance to the citizenry. See e.g. UNITED STATES CONST. art. I, § 7, cl. 1; AUSTRALIA CONST. § 53(1).

⁸⁰ See e.g. EGYPT CONST. art. 195; GERMANY CONST. art. 79(2).

⁸¹ EGYPT CONST. art. 195.

⁸² GERMANY CONST. art. 84(1).

- Federal laws requiring implementation by the regions or governorates not organized in regions;⁸³
- Laws to be executed by the regions or governorates not organized in regions;⁸⁴
- Matters referred to the Federation Council by the President of Iraq or the Prime Minister of Iraq; and
- Matters referred to the Federation Council by the Council of Representatives.⁸⁵

The Council of Representatives shall have sole jurisdiction over all other matters within the competence of the legislature.

Powers

*Option 1 – Language of Constitution Provision on Council of Representatives is Rewritten to Include the Federation Council*⁸⁶

The legislative authority in Iraq shall be competent in the following:⁸⁷

First: Enacting federal laws.

Second: Monitoring the performance of the executive authority.

Third: Electing the President of the Republic

Fourth: Regulating the ratification process of international treaties and agreements by a law, to be enacted by a two-thirds majority of the members of the Council of Representatives [and Federation Council].

Fifth: Approving the appointment of the following:

- A. The President and members of the Federal Court of Cassation, the Chief Public Prosecutor, and the President of Judicial Oversight Commission by an absolute majority based on a proposal from the Higher Juridical Council,.

⁸³ GERMANY CONST. art. 104a(3).

⁸⁴ GERMANY CONST. art. 84(1).

⁸⁵ The Council of Representatives may want the opinion of the regions on controversial matters.

⁸⁶ Option 1 is the powers of the Council of Representatives, from art. 61 of the Iraq Constitution, rewritten to grant equal powers to the Federation Council. In legislatures with strong upper chambers, the constitution typically lists the powers of the legislature as a whole, rather than separately by chamber. *See e.g.* UNITED STATES CONST. art. I, sec. 8; AUSTRALIA CONST. § 51. If the leaders of Iraq wish to create a strong Federation Council, with powers equal to the Council of Representatives, it may be desirable to amend the Constitution to include a provision listing the powers of the parliament. If the powers of the Federation Council are defined in a normal law, and the powers of the Council of Representatives are defined in the constitution, the Federation Council will be weaker symbolically and legally.

Bracketed sections of the sample language are changed from the Iraq Constitution to reflect the participation of a second legislative chamber.

⁸⁷ *See* IRAQ CONST. art. 61.

- B. Ambassadors and those with special grades, based on a proposal from the Council of Ministers.
- C. The Iraqi Army Chief of Staff, his assistants and those of the rank of division commander and above, and the director of the intelligence service, based on a proposal from the Council of Ministers.

Sixth:

- A. Questioning the President of the Republic, based on a petition with cause, by an absolute majority of the members [in both Councils].
- B. Relieving the President of the Republic by an absolute majority of [members of both Councils] after being convicted by the Supreme Federal Court in one of the following cases:
 - 1- Perjury of the constitutional oath.
 - 2- Violating the Constitution.
 - 3- High treason.

Seventh:

- A. [Members of both Councils] may direct questions to the Prime Minister and the Ministers on any subject within their specialty and each of them shall answer the Members' questions. Only the member who has asked the question shall have the right to comment on the answer.
- B. At least twenty-five members of the Council of Representatives [or ten members of the Federation Council] may raise a general issue for discussion in order to inquire about a policy and the performance of the Council of Ministers or one of the Ministries and it shall be submitted to the Speaker of the Council of Representatives [Speaker of the Federation Council], and the Prime Minister or the Ministers shall specify a date to come before the [inquiring council] to discuss it.
- C. A member of the Council of Representatives, with the agreement of twenty-five members [or a Federation Council member with the agreement of ten Federation Council members], may direct an inquiry to the Prime Minister or the Ministers to call them to account on the issues within their authority. The debate shall not be held on the inquiry except after at least seven days from the date of submission of the inquiry

Eighth:

- A. The [legislature] may withdraw confidence from one of the Ministers by an absolute majority [of both Councils] and he shall be considered resigned from the date of the decision of withdrawal of confidence. A vote of no confidence in a Minister may not be held except upon his request or on the basis of a request signed by fifty members after the Minister has appeared for questioning before the Councils. The

[legislature] shall not issue its decision regarding the request except after at least seven days from the date of its submission.

- B.
- 1- The President of the Republic may submit a request to the Council of Representatives to withdraw confidence from the Prime Minister.
 - 2- The Council of Representatives may withdraw confidence from the Prime Minister based on the request of one-fifth of its members. This request shall not be submitted except after an inquiry directed at the Prime Minister and after at least seven days from the date of submitting the request.
 - 3- The Council of Representatives may decide to withdraw confidence from the Prime Minister by an absolute majority of the number of its members.
- C. The Government is deemed resigned in case of withdrawal of confidence from the Prime Minister.
- D. In case of a vote of withdrawal of confidence in the Council of Ministers as a whole, the Prime Minister and the Ministers continue in their positions to run everyday business for a period not to exceed thirty days until a new Council of Ministers is formed in accordance with the provisions of Article 76 of this Constitution.
- E. [Either Council] may question independent commission heads in accordance with the same procedures related to the Ministers. The [legislature] shall have the right to relieve them by absolute majority [of both Councils].

Ninth:

- A. To consent to the declaration of war and the state of emergency by a two-thirds majority [in both Councils], based on a joint request from the President of the Republic and the Prime Minister.
- B. The state of emergency shall be declared for a period of thirty days, which can be extended after approval each time.
- C. The Prime Minister shall be delegated the necessary powers which enable him to manage the affairs of the country during the period of the declaration of war and the state of emergency. These powers shall be regulated by a law in a way that does not contradict the Constitution.
- D. The Prime Minister shall present to [both Councils] the measures taken and the results during the period of declaration of war and within 15 days from the date of its end.

Option 2 – Same Powers as Council of Representatives, Powers not Enumerated
The Federation Council shall have the same powers as the Council of Representatives.

Option 3 – Powerful Legislature with Limited Jurisdiction

For legislation within the jurisdiction of the Federation Council to become law, the Federation Council must adopt the legislation by a majority vote. The jurisdiction of the Federation Council is defined by the section **Jurisdiction**.

Option 4 – Federation Council only has Overridable Delay Veto

The Federation Council may vote to delay legislation adopted by the Council of Representatives. The Federation Council, with a simple majority of its members, may object to a bill adopted by the Council of Representatives. An objection shall delay adoption of the bill 30 days. The Council of Representatives may, by an absolute majority of its members, override the objection imposed by the Federation Council, and pass the bill immediately. Should two-thirds of the members of the Federation Council support the objection, a two-third majority of all members of the Council of Representatives may vote to override the objection.

Option 5 – Federation Council as an Advisory Body

The Federation Council shall be an advisory body. The President of the Republic, the Prime Minister of the Republic, and the Council of Representatives may offer legislation to the Federation Council for its opinion.

Bylaws

The Federation Council shall adopt bylaws governing its operation.

Legislative Term

The Federation Council shall have one annual term with two legislative sessions totaling eight months. The bylaws shall define the method of convention. The session in which the general budget is being presented shall not end until its approval.⁸⁸

First Session

The first session of the Federation Council shall be chaired by its oldest member.

⁸⁸ See IRAQ CONST. art. 57. This provision is appropriate if the Federation Council and Council of Representatives have equal powers.

The Federation Council shall elect in its first session its president, then first and second deputy, by an absolute majority of the total number of the Council members, by direct secret ballot.⁸⁹

Quorum⁹⁰

A quorum of the Federation Council shall be fulfilled by an absolute majority of its members.

Decisions shall be made by a simple majority of votes after quorum is fulfilled, unless otherwise required by Constitution, law, or bylaw.

Meetings

Sessions of the Federation Council shall be public unless the Council requires otherwise.⁹¹

Minutes of the sessions shall be published in means regarded appropriate by the Council.⁹²

⁸⁹ IRAQ CONST. art. 55.

⁹⁰ IRAQ CONST. art. 59(1).

⁹¹ IRAQ CONST. art. 53(1).

⁹² IRAQ CONST. art. 53(2).

About the Public International Law & Policy Group

The Public International Law & Policy Group, a 2005 Nobel Peace Prize nominee, is a non-profit organization, which operates as a global pro bono law firm providing free legal assistance to states and governments involved in peace negotiations, drafting post-conflict constitutions, and prosecuting war criminals. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution.

PILPG's four primary practice areas are:

- **Peacebuilding**
- **War Crimes**
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To provide pro bono legal advice and policy formulation expertise, PILPG draws on the volunteer services of over sixty former legal advisors and former Foreign Service officers from the US Department of State and other foreign ministries. PILPG also draws on pro bono assistance from major international law firms including Covington & Burling; Curtis, Mallet-Prevost, Colt and Mosle; DLA Piper Rudnick; Steptoe & Johnson; Sullivan & Cromwell; Vinson & Elkins; Wilmer, Cutler & Pickering; and graduate international affairs and law students at American University and Case Western Reserve Schools of Law. Annually, PILPG is able to provide over \$2 million worth of pro bono international legal services.

Frequently, PILPG sends members in-country to facilitate the provision of legal assistance and its members often serve on the delegations of its clients during peace negotiations. To facilitate this assistance, PILPG is based in Washington, D.C. and has points of contact in New York City, Boston, Seattle, Cleveland, London, Paris, Rome, The Hague, Stockholm, Belfast, Krakow, Budapest, Zurich, Tbilisi, Kabul, and Nairobi.

PILPG was founded in London in 1995 and moved to Washington, D.C. in 1996, where it operated under the auspices of the Carnegie Endowment for International Peace for two years. PILPG currently maintains an association with American University in Washington, D.C., and Case Western Reserve University in Cleveland, Ohio. In July 1999, the United Nations granted official Non-Governmental Organizations status to PILPG.

In January 2005, a half dozen of PILPG's pro bono clients nominated PILPG for the Nobel Peace Prize for "significantly contributing to the promotion of peace throughout the globe by providing crucial pro bono legal assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice."