

U.S. Lays Down 'The Law' In Iraq: Who Will Obey?

by Muriel Mirak-Weissbach

At long last, the so-called interim agreement for Iraq was signed on March 8, in Baghdad. Although U.S. proconsul Paul Bremer could be heard sighing with relief, there was little for the occupying forces to be happy about. First, the signing ceremony had been twice postponed: once, following the atrocities committed against Shi'ites on March 2; and again, following political complications raised by Shi'ite leaders, on March 5. And, even after having succeeded in bringing all sides to the table, Bremer had to face the fact that several of those who had signed, had done so more as a formality than as a sign of firm commitment. The "Law of Administration for the State of Iraq for the Transitional Period" is a piece of paper, and not worth much more than that.

The agreement is an outrageous piece of imperial pretension, delivered with the combination of arrogance and ignorance that has characterized the occupying powers' behavior since the war. Politically, they hailed the ceremony as a great historic breakthrough, in Washington as in Baghdad; but the deadlock among members of the Iraqi Governing Council (IGC), regarding important principles in the document, has not been broken. And for good reason. During the negotiations, led by Bremer, disunity and internal conflict among the 25 IGC members had reached such a pitch, according to sources close to the body, that Bremer had to hold one-on-one meetings, then try to patch together some agreement. When the IGC did meet as a body, disagreement over crucial issues led to a walkout of the Shi'ite members. After this had been papered over, and the signing ceremony scheduled for March 5, again the Shi'ite side rethought its position, and the ceremony was once again delayed for three days.

These shifts and postponements demonstrated that the leading Shi'ite authority, Grand Ayatollah Ali al-Husseini al-Sistani, is the most powerful national institutional force whom the occupying powers have to reckon with. It was al-Sistani's guidance throughout the process which shaped the Shi'ites' stance, and which stamped "Dead Letter" on the final document, once it had been signed.

Al-Sistani had made known his rejection of the entire process Bremer had thought up, back in November 2003, after an agreement had been announced between the Coalition Provisional Authority (CPA) and the IGC. At the time, al-Sistani issued a religious edict (*fatwa*), saying that any governing body, or constitutional assembly, which were not

elected democratically, would be illegitimate. This led to the abandonment, on the U.S. side, of the plan to hold unelected regional caucuses to select a body to draft a constitution.

However, the U.S. government went ahead with the draft of the law for administration of Iraq, known as "The Law," incorporating clauses which were not acceptable to al-Sistani. The two major clauses which were rejected relate to the role and power of the Kurds (or other minorities) and the shape of a future government. Both complaints derive from the fact that the clauses violate the principle of democratic elections. They also provide the basis for a future partition of the country.

This partition scenario was laid out explicitly by Henry Kissinger, in a commentary in the German weekly *Welt am Sonntag* on Feb. 15. Noting that Iraq, like Yugoslavia, was "created for geostrategic reasons," he said that the country "cannot be held together by representative institutions which desire an autocratic regime or which break up into groups." Thus, "events could make the partition in three states necessary."

What Is 'The Law'?

"The Law" states that there are two phases to the transitional period: First, is "the formation of a fully sovereign Iraqi Interim Government that takes power on 30 June 2004. This government shall be constituted in a process of extensive deliberations and consultations with cross-sections of the Iraqi people conducted by the Governing Council and the Coalition Provisional Authority and possibly in consultation with the United Nations." In short, an unelected body, and therefore unacceptable to al-Sistani.

The second phase is to begin "after the formation of the Iraqi Transitional Government, which will take place after elections for the National Assembly." The elections should be held by December 2004 or, at the latest, Jan. 31, 2005. This phase is to end once an Iraqi government has been formed, "pursuant to a permanent constitution."

This National Assembly, of 275 members, should be elected according to "an electoral law and a political parties law" not yet in existence. This body is to elect, from its membership, a president and two deputy presidents of the Assembly. Furthermore, "The National Assembly shall elect a President of the State and two Deputies," which form "the Presidency Council." It is the National Assembly also which is to draft a permanent constitution.

Although Iraq is supposed to remain united, there are extraordinary powers allocated to the Kurds. For example, although the Law states in Article 27 (B): "Armed forces and militias not under the command structure of the Iraqi Transitional Government are prohibited, except as provided by Federal law," in Article 54 (A), it states: "The Kurdistan Regional Government shall retain regional control over police forces and internal security, and it will have the right to impose taxes and fees within the Kurdistan region." Further-



Proconsul Paul Bremer, though greatly relieved when he finally succeeded in “getting an unelected body to sign a dead letter,” the so-called Iraqi constitution, has actually won a Pyrrhic victory. The real question is still: Will the U.S. transfer authority to the UN to allow election of a government; or try to stay and face a growing national resistance?

more, (B) states: “With regard to the application of Federal laws in the Kurdistan region, the Kurdistan National Assembly shall be permitted to amend the application of any such law within the Kurdistan region. . . .”

In short, Kurdistan remains an autonomous entity. Not only: There are also provisions for altering the demographic composition of the region. Article 58 (A) states: “The Iraqi Transitional Government, and, especially the Iraqi Property Claims Commission and other relevant bodies, shall act expeditiously to take measures to remedy the injustice caused by the previous regime’s practices in altering the demographic character of certain regions, including Kirkuk, by deporting and expelling individuals from their places of residence,” etc. To remedy this, the ITG should “restore the residents to their homes and property. . . .” This means that major centers, like Kirkuk, which the Kurds claim as part of “Kurdistan,” and which is inhabited by a mixed population including a large percentage of Turkmen, is to be ethnically altered to have a Kurdish majority.

Finally, there is a clear veto power given to the Kurds over the constitution. The permanent constitution, which the elected National Assembly is supposed to draft by no later than August 2005, should be presented to the population in a referendum no later than Oct. 15, 2005. Article 61 (C) states: “The general referendum will be successful and the draft constitution ratified if a majority of the voters in Iraq approve and if two-thirds of the voters in three or more provinces do not reject it.” Then, if it is approved, elections for a permanent government are slated for Dec. 15, 2005 at

latest, and the new government should enter office no later than Dec. 31, 2005.

This Article 61 (C) is what triggered first the Shi’ite walkout, then, the postponement of the March 5 ceremony, and then, the *post factum* reservations. The article means that if two-thirds of the electorate in three provinces *reject* the constitution, then it is not passed. The three provinces immediately in question are those making up the Kurdistan region. If the Kurds were to exercise this veto power, then the National Assembly would be dissolved, and new elections would be held for it, and a new government would have to be formed. Thereafter, the new National Assembly would start again with drafting a constitution, and the process would be repeated. If, again, no constitution were completed by Aug. 15, 2005, and no extension of the deadline were requested by the National Assembly, the process would be repeated again.

This formulation of veto rights for the Kurds, theoretically making it possible to postpone a constitution *ad infinitum*, is what al-Sistani rejected outright. When the Shi’ite members of the IGC refused to sign on March 5, the reason given was the Kurdish issue.

Hamed al-Bayati, an advisor to one of the Shi’ite parties that refused to sign, pointed out, with reference to the Kurdish veto: “Some of these provinces have only 400,000 or 500,000 people. We cannot have that number of people rejecting a constitution for 25 million people.” An al-Sistani representative, Sheikh Abdel-Mehdi al-Kerbalai, reflected the concerns on March 5: “There is one article that gives a specific party the right to veto the permanent constitution if it fails to meet their demands, and this is a dangerous thing,” he said.

It should be added, that this is not an ethnic issue: The Law speaks of any three provinces, which means also that three Sunni provinces could shoot down the constitution.

Shi’ite IGC members held lengthy talks with al-Sistani March 6-7, after which they appeared at the signing ceremony and, at least *pro forma*, did their part. The reason was that, particularly in the wake of the bombing attacks against Shi’ite worshippers one week earlier, which had been orchestrated in an attempt to trigger civil war, the Shi’ite leadership (flanked by its Sunni counterparts) wanted to do everything possible to prevent such civil strife. In the name of national unity, al-Sistani recommended that the Shi’ite IGC members sign.

But, with reservations and conditions. Council member

Ibrahim al-Jaafari read a statement signed by 12 of the 13 Shi'ite council members, in which they stated: "We say here our decision to sign the document is pegged to reservations," centering on the Kurdish veto. Other Shi'ite IGC members said these contested clauses would be subject to further negotiations, and might be amended in an addendum to the interim constitution

A statement issued by al-Sistani's office made clear that his stance had not changed. It said: "His Eminence has previously clarified his reservation regarding the 15 of November accord, that any law drafted for the transitional period will not gain legitimacy unless it is approved by the elected national assembly. In addition, this law places obstacles to arriving at a permanent constitution for the country that preserves its unity and the rights of its people from all ethnicities and sects."

Following al-Sistani's statement, the leading Shi'ite on the IGC, Abdel-Aziz al-Hakim, who is head of the Supreme Council for the Islamic Revolution in Iraq (SCIRI), expressed his reservations to a press conference on March 9. "Our main problem lies with the imposition of restrictions set by an unelected body on an elected body," he said. He will be working on amendments to the document.

Another senior Shi'ite cleric from the holy city of Kerbala, Ayatollah Mohammed Taqi al-Modaresi, also criticized clauses pertaining to federalism in the document. He said the federalist system would be "a time bomb that will spark a civil war in Iraq if it goes off."

There is no exaggeration in this latter remark. Although al-Sistani's carefully worded declarations have avoided mention of disintegration of the nation, clearly this is the concern uppermost in his mind. If one studies the Law in detail, one notes that there are provisions for new "regions" to be formed, when "any group of not more than three governates outside the Kurdistan region, with the exception of Baghdad and Kirkuk," so desire, and approve by referendum.

This implies the possibility of setting up several "regions," which then would become independent. It is precisely this scenario that Kissinger has been promoting.

'Sovereign' But Occupied Iraq?

One Arab source close to the Shi'ite community in Iraq, told *EIR* that, in his view, the interim agreement would not change anything, in itself. According to international law, it is utterly illegal, since it has been drafted by an occupying power and agreed to by a body, the IGC, set up by the same. Furthermore, it has de facto been declared a dead letter. The real issue, he said, is the occupation: Will the U.S. leave or stay? He noted that all the concessions the United States has made, thus far, have been made under the gun of the resistance, and the political power of al-Sistani.

According to press reports and official U.S. government statements, the new interim agreement is to hand over sov-

eignty to "the Iraqis," thus ending the occupation. However, the Law states in Article 59 (B) and (C), that "during the transitional period, the Iraqi Armed Forces will be a principal partner in the multi-national force operating in Iraq. . . ." And, "Upon its assumption of authority, and consistent with Iraq's status as a sovereign state, the elected Iraqi Transitional Government shall have the authority to conclude binding international agreements regarding the activities of the multi-national force," etc.

Nowhere in the Law is there mention of withdrawal of foreign troops. Indeed, there is no intention to do so anytime soon. On March 9, so much was stated by Brig. Gen. Carter F. Ham, the commander of Task Force Olympia, the 9,000-strong U.S. force that replaced the 101st Airborne Division in northern Iraq, headquartered in Mosul. In response to a question from *EIR*, Ham said that he didn't think his security mission would change much after the June 30 hand-over of sovereignty. Even after the hand-over, Ham said that he would still be getting his instructions from Combined Joint Task Force 7, the military command headed by Lt. Gen. Ricardo Sanchez. When Iraqi forces will take over the security mission, will depend on how quickly they are trained and equipped for the mission, he said.

Washington dreamers are moving ahead at breakneck speed to set up the new U.S. Embassy in Baghdad, said now to house 4,000 employees, making it the biggest embassy of any country anywhere in the world. It will be in Saddam Hussein's Presidential palace, inside the high-security "Green Zone." Meanwhile, the Iraqi resistance continues to develop new techniques, and launch audacious actions, including just prior to and during the ceremonious signing of the Law, when 11 rockets were launched against the Rashid Hotel, also inside the "safe" Green Zone.

The reality is, that the resistance will continue, and grow. The forces loyal to Ayatollah al-Sistani will appear to play along with the game, to see if elections will be held or not. They will not submit to phony elections; nor will they accept the occupation.

There is no way out of the Iraq quagmire, other than Lyndon LaRouche's call for the United States to officially announce its intention to withdraw, and hand over authority to the United Nations, to oversee the process of elections, and a constitution.

Scott Ritter, the former arms inspector who quit in protest against U.S. policy, echoed this view in an interview with the German publication *Junge Welt* on March 9. Asked how he thought the United States could restore its lost credibility in Iraq, Ritter said bluntly: "This war is already lost. My solution is then: Pull the troops out immediately! Consider Iraq like a burning nation, from top to bottom, east to west. The oil that is fuelling this fire, is the presence of American troops. In order to put out the fire, we have to cut off the oil."