

Iraq Occupying Powers Caught In Legal Vise

by Muriel Mirak-Weissbach

The urgency of implementing Lyndon LaRouche's exit strategy from Iraq—"Get Paul Bremer out; get the United States troops out; get the United Nations in"—is reinforced by several developments. The escalating guerrilla warfare being waged against American troops will not abate following the killing of Saddam Hussein's two sons on July 23. The United States has demonstrated its inability to provide the services required under international law, to the civilian population under occupation. Thirdly, there is no way, within the context of international law, for the occupying powers to take the steps required to reconstruct the country.

As reported on July 23 in the *Financial Times*, the fact that the United States and Britain officially designated themselves as "occupying powers," in a UN Security Council resolution in May, means that they assumed a legal liability, which could lead to civil and even criminal legal actions being taken by Iraqi citizens against both nations. "Occupation law," codified in the Fourth Geneva Convention in 1949, was designed to "constrain an occupying military power and thus discourage aggression and permanent occupation," wrote David Scheffer, a former U.S. ambassador-at-large for war crimes. In his article, "A Legal Minefield for Iraq's Occupiers," he states that the "liability trap deepens every day" that America and Britain fail to meet certain obligations under this law, including preventing looting of critical facilities and cultural sites; deploying adequate soldiers to establish security and effective law enforcement; restoring and maintaining water, sewage, and electricity for the population; and ensuring employment. Daily reports from Iraq document all these failures.

And thus far, Russia, Germany, France, India, and other nations have insisted upon a UN mandate as a precondition for adding their troops to this occupying force. In the same issue of the *Financial Times*, Stephen White, a top British police official now in Iraq, said that plans to deploy 6,000-8,000 troops as police were being held up by exactly the same barrier—unless the United States and Britain send them.

Nations Unlikely to Recognize 'Governing Council'

The Bush and Blair governments, in avoiding the UN route, have set up a quisling government of handpicked Iraqis. Following the establishment of this "Iraqi Governing Council," UN envoy Sergio Vieira de Mello took a trip through the region in mid-July, meeting with Saudi Crown Prince

Abdullah and Syrian President Bashar al-Assad. In remarks to the press, he said he was seeking "recognition and support" for the new body. In Iran, de Mello met Foreign Minister Kamal Kharrazi and President Mohammed Khatami. Khatami was explicit in defining conditions for any support: "The formation of the Governing Council in Iraq, if it leads to the establishment of a popular government, is a step towards guaranteeing people's demands, but this council must not justify the occupation to continue."

No government has recognized the quisling government, or is likely to, unless the matter is turned over to the UN. In a sly maneuver, the Coalition Provisional Authority, under Paul Bremer, sent a delegation from the "governing council," to the UN on July 22, evidently hoping the three U.S.-chosen "representatives" would be recognized and seated where the Iraqi mission used to be. Instead, UN Secretary General Kofi Annan, though dubbing the council's foundation "an important first step toward the full restoration of Iraqi sovereignty," denied recognition to the delegation.

The only way that a legitimate, sovereign Iraqi government can be formed, in the current situation, is through free and democratic elections, which, at this point, must be overseen by the UN. The occupying powers, by international law, have no right to form any government. As international law expert Dieter Blumenwitz explained to the German daily *Die Welt* on July 20, "Out of the temporary nature of the occupying power, it follows that the occupying force does not represent the Iraqi people, has no right to exercise sovereignty; rather that the Iraqi people remain in control of territorial sovereignty. . . . The removal of the government of the enemy state or the appointment of a new government for the occupied territory—often called a puppet or quisling government—exceeds the authority of the occupying power. Such a government is not even to be considered a *de facto* government; rather, as an organ of the occupying power. Measures taken by such a government which exceed the rights of the occupying power, are in violation of international law. The Iraqi post-war government can be established only by the Iraqi people, possibly with the support of the UN."

This has implications militating against the legality of the contracts for oil—especially foreign investment in the Iraqi oil industry—which the occupation powers have begun to establish. On July 25, London's *Financial Times* reported that oil company executives told American officials that they refuse to make big investments, expressing "concern about the lack of political legitimacy for the U.S.-backed authority in Iraq." Then there is the U.S. Export-Import Bank's campaign to securitize future Iraqi oil receipts to pay for the reconstruction work of foreign contractors; the new "Trade Bank of Iraq," which Paul Bremer announced by decree in a press conference July 22 in Washington; and so forth.

Increasingly, pressure is being put on Washington and London—by Russia, European governments, and also Asian powers—to get the UN in, and in charge.