

Testimony of

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June 25, 2003

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The process of establishing a constitution for Iraq is complicated and fraught with difficulties. This is because of the divided and fractious nature of Iraqi society, its violent and authoritarian past and regional pressures exerted by neighboring countries. The process the United States has embarked on in rebuilding Iraq is unprecedented in the region and there is no model from the Arab or Islamic worlds that can be emulated. In what follows, I will present some of the broad guidelines that should inform the policy of the United States in this process.

The US should pursue a proscriptive rather than a prescriptive policy. In other words, we should delineate the parameters within which the constitution should be formulated and not dictate the specific details of the Iraqi constitution. The US, for example, must insist that Iraq be a democratic country, but it should not delve into such detailed issues as to whether the form of governance ought to be federal or unitary or the executive be presidential or parliamentary. Such questions should be resolved by the Iraqis themselves in a constitutional convention. Iraq has a very talented pool of individuals (jurists, academics and politicians), among the exiles and those who never left Iraq, and delineating the specifics of the constitution should devolve on them as they will be responsible ultimately for its success as well as its failure.

The various political groups that are now competing for a say in the future of Iraq are advocating a federal structure, one that would accommodate, in particular, the non-Arab Kurds (approximately 20% of the population), but also the Shiite Arabs (approx. 60% of the population) in the south and the Sunni Arabs (approx. 20% of the population). Federalism is an appealing formula because it would prevent one group dominating the others, a real prospect given Iraq's history and demographic realities. A constitutional parameter that must be established by the United States is that no one of the three dominant groups should be allowed to dominate the others, as the Sunni Arabs have done until the defeat of Saddam Husain's regime. By the same token, however, the United States must endeavor to prevent the constitution from enshrining Iraqi politics along ethnic (Kurd vs. Arab) and/or confessional (Sunni vs. Shii) lines. The example of Lebanon is important to keep in mind in this regard. Here the constitutional setup cements confessional rule and this has prevented the emergence of secular political formations and allegiances that cut across religious divides. As a result, Lebanese nationalism and institutions have remained weak and all politics is confessional--a sure recipe for future strife. Clearly there is a tension between establishing a power sharing arrangement among the three major groups in Iraq and allowing the system to function and evolve on a non-ethnic and non-confessional basis. There is no ready formula for resolving this tension but below are some ideas about how one can think about accomplishing this.

There are a number of ways to mitigate the political effects of the ethnic and confessional divisions in Iraq. The first is to prevent the electoral districts from being drawn purely on the basis of ethnic/confessional lines. The country should ideally be divided in accordance with territorial considerations (geography, demography, economic viability) and not ethnic or confessional ones. This would amalgamate different groups of Iraqis together, forcing them to make compromises and allegiances that cut across their divisions. Despite the commonly accepted tri-partite division of Iraq into a Shii south, a Sunni Arab middle and west and a Kurdish north, the country's population is more mixed ethnically and in terms of religion. Therefore, it would be possible to create some constituent units that have a mixed population. In this regard, it would prove beneficial for all the parties concerned, the United States as well as the Iraqis, to organize a population census in order to obtain a real sense of the demographics.

Another unifying factor in Iraq is Islam, the religion of some 95% of all Iraqis. All the emerging signals from the Iraqis appear to indicate that they wish Islam to play a role in the future political framework of the country. The United States should not prevent this, especially if reference to Islam remains at the symbolic level such as an article in the constitution declaring Islam to be the official religion of Iraq or another that states that the Sharia (i.e., Islamic law) is

a source of law in the country. Both Malaysia and Yemen are good examples of countries in which Islam is accorded this symbolic role and yet both remain firmly anti-theocratic. The US should not fret about Iraq becoming a theocracy in the Iranian or Saudi mold--this is not going to happen. Except for a minority, the Shiis of Iraq do not think of Iran as a model to be emulated, and more importantly they could never realistically impose such a model on the remaining Sunni population. Furthermore, the Shiis of Iraq have a different history from those in Iran: in social and political terms they are organized differently and their clerics have traditionally competed with those in Qom in Iran. In addition, some of the dominant figures among the Iraqi Shiis (e.g., Ayatollah Sistani) are arguing for a quietist position, one in which the clerics remain formally outside all political institutions.

As in the case of the Shiis, the Sunnis of Iraq cannot impose a Sunni Islamist regime on the majority Shiis. The Sunnis are divided ethnically and are demographically in the minority. More importantly, and unlike the Iranian-backed Shiis, the Sunni Islamists have no ideological framework for ruling the country other than an ill-defined system of theocratic despotism. Only recently have Sunni Islamists (e.g., Muslim Brothers, Wahhabi-Salafis) emerged on the Iraqi political scene, and as such they remain an unknown quantity, except for al-Qaeda. Those who advocate violence must be fought militarily, whereas those who agree to participate through the peaceful means of electoral politics should be permitted to compete in the political process. The United States should proscribe all forms of theocratic rule, be it Sunni or Shii, but we should not deny Iraqis the desire to make appeal to Islam at the level of political symbolism and as a vague guideline for a just order. Permitting this will serve an important foreign policy goal.

We should bear in mind that the US project of rebuilding a democratic Iraq is being undertaken in the context of our wider policy aims in the Arab and Muslim worlds. This endeavor is being closely monitored by the Arabs in the region, many of whom are arguing for seeing an equivalence between the Israeli occupation in the Palestinian territories and the US occupation of Iraq. We must attempt to break this linkage whenever possible. Allowing Iraqis to make appeal to Islam in their constitution is one way of doing this, because it undermines Osama Bin Laden's false claim that the United States is at war with Islam.

It is important to bear in mind that there are secular political forces in Iraq and these should neither be sidelined nor for that matter be unduly privileged. The Kurds, for instance, are represented by secular parties and many of the Iraqi exiles are secular. Furthermore, the dominant ideology of Iraq since the early 1960s, the Baath, had been nationalist and secular in orientation and this is bound to have left some impression on the political consciousness of the Iraqi people. It remains to be seen what weight the secularist forces will have in the country once matters have settled down further. Nonetheless, it is unlikely that any radical secular program will take hold in Iraq. A majority of Muslim Iraqis will not agree to abandon the Sharia in matters relating to personal status law (i.e., marriage, divorce, inheritance). Nor will non-Muslim Iraqis (Assyrians, Chaldeans, Armenians) abandon their religious courts in the same areas of the law. Religion therefore will remain a political factor, hopefully one relegated to the personal or private realm; a feature that should not prove unfamiliar to us in the United States.

Finally, Iraq has had a period of political pluralism (albeit limited) under the Hashimite monarchy and during which a constitution was written, in 1925. This document as well as the historical memories and practices of the pre-Baath period must be invoked and revived at the present moment. At the very least, this would give the efforts of the United States a legitimizing historical backdrop and would make the attempt of reforming and rebuilding Iraq appear less contrived.