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August 30, 2005

A CONSTITUTION FOR IRAQ: DOES IT MATTER?

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The birth-pangs of Iraq's new constitution are symptomatic of the deep crisis afflicting the country, and even if an agreed document is eventually produced, it may not only fail to resolve the country's underlying problems but could actually make them worse. After all, in its eighty-five years of existence, Iraq has had no fewer than six constitutions. The first was imposed in 1925 by the British authorities and it remained in effect for thirty-three years. But despite (or perhaps because of) the fact that it bore all the hallmarks of western democracy, that constitution never struck roots in Iraqi society or dictated political processes there, and it was abolished along with the Iraqi monarchy in 1958. The four subsequent constitutions of 1963, 1964, 1968 and 1970 were all defined as temporary instruments and lasted only as long as the regimes that promulgated them.

In fact, no Iraqi constitution ever became the authoritative framework to regulate political processes or determine the country's identity and orientation. Instead, they all served only one purpose: to legitimize the regime in power. And there is no certainty that the sixth constitution, presented to the Iraqi parliament on August 27, will succeed where all of its predecessors have

failed. True, this one was not imposed by a foreign power or local dictator but instead enjoys the apparent advantage of having been negotiated by representatives of the two largest communities in the country – the Shi'ites and the Kurds, who together make up about 80% of the population. And the result is the product of lengthy consultations, compromises and mutual concessions. However, the drafting process, like the elections of January 2005, has left the Sunnis feeling marginalized and further strengthened their opposition to the emerging order. And now that the draft document has been submitted to Parliament, the Sunnis are threatening to torpedo it, either by invoking the right of veto given in the interim constitution to any group of at least three provinces or by sheer violence.

The threat of a procedural veto is only the most visible of the problems likely to emerge on the road to a ratification vote in October. The main stumbling blocks concern the most substantive issues: the identity, character and structure of state and regime, the distribution of resources, and Iraq's political orientation. While Shi'ites and Kurds remain divided on these issues, they appear to have reached agreement – at least on paper – if only in order to alter the fundamental

Published by TEL AVIV UNIVERSITY

The Jaffee Center for Strategic Studies & The Moshe Dayan Center for Middle Eastern and African Studies
through the generosity of Sari and Israel Roizman, Philadelphia

www.tau.ac.il/jcss/

www.dayan.org/

balance of power in the state, prevent a Sunni restoration, and correct what they perceive as the injustices done to them in the past. But the Sunnis now see themselves as the main victims of the substantive changes. For example, Article I of the draft constitution declares that "The Republic of Iraq is a sovereign and independent state whose government is republican, parliamentary, democratic and federal." That outrages Sunnis who view any reference to federalism as a prescription for the disintegration of a unitary state. Federalism is particularly threatening to them because it might deprive them of the exclusive control they have had since the creation of Iraq over oil and other natural resources, most of which are actually found in the Kurdish north and the Shi'ite south.

Another article arousing Sunni fury is the one that defines the Arabs of Iraq, rather than the entire state, as part of the Arab nation. Those who traditionally depicted Iraq as the incarnation of Arabism and the vanguard of the pan-Arab cause view this article as a trick to expunge the state's Arab identity and to elevate Kurdish and Shi'ite identities at their expense. Indeed, the Sunni discourse is bitterly resentful of the constitutional provision that Kurdish be made an official language throughout Iraq and not just in the Kurdish region. And the Shi'ites are also viewed with suspicion as a foreign element, not authentically Arab, which will sooner or later link up with Iran. These fears explain the panicked Sunni calls for help from the Arab world and even from the United Nations to fight against this proposed constitutional order.

These two issues illustrate a whole host of other problems under discussion. Cardinal questions such as religion and the state, the public role of clergy, sources of law, the status of women, treatment of former Ba'thists, division of power between center and periphery, the role of the

army and para-military forces, and the status of Kirkuk suffuse debates over all 139 articles of the constitution, and almost any one of them could produce an explosive outcome.

In fact, the real test of this constitution, as of all previous constitutions, will not be in the drafting of the document but rather in the relations of forces on the ground. Consequently, any celebrations by the Shi'ites, the Kurds and their American allies over the promulgation of a draft constitution are, at best, premature. In practice, nation-building and state-building in Iraq are proceeding in very erratic ways. On the one hand, Kurds and Shi'ites are pulling in the direction of identity-construction that takes Iraq further and further away from the vision of a unified state. On the other hand, Sunnis are waging what looks like a desperate but increasingly futile struggle to restore an Iraq that no longer exists. But the Sunni war against the constitution and against the stabilization of the situation on the ground may go on for a long time; despite their weakened state since the collapse of the Ba'th regime, they still have considerable capacity to sabotage developments not to their liking. Moreover, there is no functioning center, and social and economic trends do not promise an easy evolution of the new Iraq envisaged by its founders.

The new Iraqi constitution as presented to Parliament is not the outcome of long-term social and political processes leading to a social contract agreed among large segments of the population. Instead, it is the result of hasty acts, various internal and external pressures, and the constraints of time and place. Even if it is approved by Iraqis in October, there is therefore no assurance that it be a major factor in the formulation of the character of the country.

KEYWORD: Iraq