

COMMENT: A transitional law worth fighting for

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The US-led coalition in Iraq is engaged in belated pacification on two fronts. On one, it has been fighting Ba'athists, including members of Saddam Hussein's presidential guard, in Fallujah and the "Sunni triangle". On the other, it is pressing for the surrender and disbanding of Moqtada al-Sadr's "Mahdi Army" in predominantly Shia suburbs and cities.

It is not fighting a pan-Iraq nationalist front with widespread popular support. Syrian-backed Ba'athists and Iranian-sponsored Shia paramilitaries are no blood brothers. But they have a shared interest in chaos: in particular, both want to smash the interim constitution.

The Transitional Administrative Law was unanimously agreed by Iraq's Governing Council on March 8 after protracted bargaining. As part of an international advisory team working for Kurdistan's negotiators, I break no confidences by declaring that its tortuous manufacture recalls Bismarck's saying that it is best not to know how either sausages or legislation are made.

An ill-informed occupation authority with one eye on the US presidential election clock supervised the TAL's construction. It emerged without democratic deliberation and after viciously provocative bombs in Erbil, Karbala and Baghdad. But despite this inauspicious start, the TAL is the only worthwhile cross-community law available to

Iraq and must be supported by the democratic international community.

The TAL is republican, liberal, federal and democratic, and can become the foundation of a voluntary union of nationalities. It repudiates the destructive regime of the Ba'athists. It puts the armed forces under civilian controls. Individual and women's rights are protected; so are minority linguistic and religious rights. Islam is merely a source of legal inspiration, and its impact on law-making may be less than that phrase suggests.

The TAL blocks the drive for a Shia theocracy and stops Iraq becoming a client-state of Iran's ayatollahs. This is because Kurdish, Sunni Arab and Shia Arab voters in zones where they are territorially concentrated (in any three of Iraq's 18 "governorates") have a de facto veto over the ratification of the permanent constitution. It is this ratification procedure that infuriates Iran and Mr Sadr - who unilaterally proclaimed his "government" last October with a ministry for the "promotion of virtue and punishment of vice".

The TAL has other merits, too. It establishes a fair process for resolving the legacy of Mr Hussein's expulsions, appropriations and demographic engineering in oil-rich and ethnically contested Kirkuk (and elsewhere).

The target of 25 per cent female participation in the federal assembly not only benefits women but also ensures that a proportional representation electoral system must be agreed on. This is because any other feasible system would entail quotas, violating provisions in the bill of rights. Proportional representation will reduce the threat of one-party domination.

There are, of course, problems with the TAL. Arab negotiators and the Americans wanted too centralised a federation. A federal monopoly on natural resources (despite obfuscatory language), and federal preponderance in both monetary and fiscal policy jointly recreate the dangers of a rentier-oil despotism. These powers may prevent well-run regions from flourishing. Kurdistan works; the point should be to let the rest of Iraq reach its standards, rather than impose foolish uniformity.

Second, the constitution's executive institutions may need reform. There is nothing to ensure that the federal cabinet reflects Iraq's diversity. The three-person presidency is too weak and the prime minister may have too much power if a hegemonic Shia party emerges. That is not to say that the collective presidency is a bad idea; but the election of three presidents on a common platform that must have the support of two-thirds of the federal assembly creates problems.

Third, the TAL is an uncertain compromise between those who wanted a "non-ethnic federation" and those who wanted a "pluri-national federation". The former wanted a majoritarian, centralised federation built around one nation; they sought to use Mr Hussein's governorates to undermine the integrity of Kurdistan, and to prevent the emergence of "Sunnistan" or "Shiastan". Iraq's pluralists, by contrast, wanted a federation supported by all its nationalities, not just Arabs.

Fourth, the reconstruction of security and the disbanding of paramilitary organisations are palpably live issues. Kurdistan's right to its own police and internal security insures it against the recurrence of genocidal mistreatment by Baghdad-based forces, but security in the rest of Iraq remains a profound problem. The TAL's provisions remain to be clarified.

Last, the TAL specifies neither an electoral law nor who should form a transitional government in the run-up to elections. These matters must be resolved quickly and equitably. The transitional government should comprise a reduced but representative governing council.

But for all its flaws, the TAL is the only constitutional game in town. When the UN returns, as it should, it must not unravel what has been done. That would appease Ba'athist thugs and Shia authoritarians, and produce utter chaos. It should advise on electoral administration and resume its development and post-conflict programmes, but Iraq's constitutional renewal should be in local hands under the TAL - with coalition troops holding the ring at least until the permanent constitution is ratified.

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