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Iraq: Constitutional Process Goes Awry

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After several missed deadlines, Iraq's constitutional process has yet to produce a draft acceptable to Shiites, Kurds, and Sunni Arabs, and prospects are bleak. Both process and content, currently, are highly problematic. The U.S. government intervened early with two imperatives: to gain consensus support of the final draft; and to adhere strictly to the timetable prescribed by the Transitional Administrative Law (TAL), i.e., a final draft by August 15, a popular referendum by October 15, and general elections by December 15.

As the process reached its apparent denouement on September 13, the Bush administration evidently sacrificed the principle of inclusiveness for the sake of an arbitrary deadline. Sunni Arabs, fifteen of whose representatives had been added to the Constitutional Committee in July but were then sidelined after negotiations moved from the committee to an informal leadership council of Kurds and Shiites, refused to embrace a document they saw as inimical to their interests. The Shiites and Kurds then declared the draft final and submitted it to the national assembly.

The only hope now lies in the fact that the process may still be open, at least until October 15. That deadline is truly immutable to a U.S. administration set on a major troop rotation in January and a partial drawdown shortly afterwards.

Is compromise possible? Perhaps, assuming strong U.S. pressure on the drafters to achieve it. With Kurds and Shiites broadly in agreement, the key lies in accommodating fundamental Sunni Arab concerns. As the new underdog after decades of lording it over Iraq's other communities, they can only indicate their red lines, all three of which were crossed in the current draft:

- *Federalism*: Sunni Arabs now accept the idea of a Kurdish region (along pre-April 2003 boundaries) but see the possibility of a Shiite “super” region as leading to the break-up of Iraq, leaving them landlocked and bereft of resources. A possible compromise: besides the Kurdish region, decentralize power in the rest of Iraq by existing governorates and create a fixed formula for the fair distribution of oil wealth.

- *The Baath Party*: By outlawing the “Saddamist Baath,” the draft judges Iraqis not by past conduct but by mere membership in a party the regime had commandeered as an instrument of political control. Sunni Arabs protest that this blanket ban can be used to exclude or otherwise punish them arbitrarily. A possible compromise: ban the party but indicate that the criterion for disqualification from managerial positions or public office will be crimes committed, not mere party membership.
- *National Identity*: Iraq, the draft says, is part of the Islamic world, “and is a founding member of the Arab League and is committed to its charter.” This language reflects a demand from the Kurds, whose long suffering has made them allergic to all things Arab, but infuriates Sunni Arabs (and also some Shiites), who read it as a denial of Iraq's identity and thus as ratification of the country's inevitable break-up. A possible compromise: simply omit this phrase as too divisive. The problem remains, however, that the draft fails to emphasize an Iraqi identity to which all three major communities can subscribe.

Two scenarios present themselves as October 15 approaches. One is a doomsday scenario in which no compromise is reached, the constitution is adopted largely in its current form, and a government is elected that will lack a social compact underpinning its legitimacy (even if Sunni Arabs decide to participate in the elections this time). The country will slowly dissolve into civil war and disintegrate amidst scenes of horrific sectarian and ethnic “cleansing” in the many areas of mixed population, including Baghdad and Kirkuk. Unfortunately, this scenario now seems likely. Those who pin their hopes on Sunni Arabs' ability to muster a two-thirds majority in three governorates to vote down the constitution should think again. The community is too divided—over whether to vote and thereby legitimize the process or stay home and suffer a constitution harmful to their interests—to be able to mobilize sufficient turnout. And while other disaffected Iraqis, such as Moqtada Al Sadr's followers, may well come out in droves to vote no, they are largely absent in predominantly Sunni Arab governorates. Furthermore, they, along with the Sunni Arabs, are unlikely to clear the over fifty percent threshold needed nationwide to defeat the constitution.

A more promising scenario would involve a re-energized U.S. diplomatic effort at bringing the three sides around the table to forge a durable compact. Even then, a constitution embraced by Shiites, Kurds, and Sunni Arabs, while necessary for stabilizing the country, would be insufficient. Iraq's new rulers would have to take concrete steps to tackle growing sectarian strife and find a broadly acceptable solution to the question of Kirkuk. One hopes they will do so and succeed, as the alternative is dire.

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