

East Meets West, at Least on Paper

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BEIRUT — It was a rare scene of historical redemption on Monday when Sayyed Muhammad Bahr al-Uloum, a 76-year-old religious scholar and one of the first Iraqis imprisoned and exiled by the Baathist regime in the 1960's, presided over the Iraqi Governing Council as it unanimously approved the country's interim Constitution. But beyond the symbolism of Mr. Uloum's role, the document should be seen as an important text for the entire world: in it, East and West meet in an unprecedented manner; it incorporates a salute to Islamic law along with the adoption of federalism and Western-style personal rights for citizens.

Perhaps the most important phrase in the Constitution is in the preamble: the people of Iraq "reject violence and coercion in all their forms, and particularly when used as instruments of governance." Agreement on this principle, so contrary to an inordinately cruel 35-year rule, is the most remarkable achievement of the members of the Governing Council. If it holds in their future dealings, and is respected by their followers in power, then Iraq will have achieved its democratic transition.

However, having read the entire 62-article text in Arabic, I have a few problems. It may seem minor, but the language lacks literary elegance, which is particularly unfortunate considering the richness of the classical tradition. It is vital that the final Constitution incorporate phrasing that takes into account the unique Mesopotamian contributions to world legal history — from Hammurabi's tablets to the Iraq Civil Code of 1953, which incorporated concepts and rules of both secular and Islamic law.

As for the document's content, the West's main concern should not be about the prevalence of Islam — it and all other religions of the Iraqi population are protected against excesses and provocations. Nor should one worry that federalism is not sufficiently stressed — it is frequently mentioned in the text and has been a shared desire of most of Iraq's new leaders since at least 1992, when their colleagues at the University of London demonstrated to them how Malaysia and Nigeria were strengthened as nation-states by the adoption of federalism. So long as the Kurdish political leaders, who have enjoyed de facto autonomy for the last decade, accept that federalism means a single nation-state, the risk of the issue turning sour is limited.

What most concerns me, however, is the fuzziness and uncertainty over the transition to a permanent and democratically elected government. Sovereignty is to be returned to the Iraqis at the end of June, but there will be no elections this year and no referendum on a final Constitution until 2006. Who will rule in the interim?

The new document mentions the emergence of a government to be decided upon after "wide consultations." This body will adopt a series

of laws for the creation of a National Assembly of 275 members, to be elected before February 2005. But the text does not further specify how electoral law will be organized. With no stated criteria and no models better than the one that led to the emergence of the unelected Governing Council, how can we hope for smooth and fair elections?

Once the 275-member Assembly is created, not only will it have to do the long work of drafting a final Constitution, it will also choose a "presidency council" of three officials, who will decide on a variety of matters including the appointment of a temporary government and prime minister.

Those familiar with the Iraqi opposition in its long exile have seen this sort of leadership structure before. The Iraqi National Congress, the umbrella group of exile organizations created in Vienna in 1992, had a leadership council of three men, who chose an "executive committee" with a president. The Iraqi National Congress fell apart because of personal dissension at the top, and the onset of the civil war among the two main Kurdish factions in 1993. Is it truly sensible to resurrect this power-sharing scheme?

In addition, Article 37 of the Constitution holds that once this Presidency Council is chosen, it can rule only by unanimous decision. That apparently means one man can effectively paralyze the council.

Two weeks ago in Baghdad I talked with several Governing Council members about my concerns. It became clear to me, if not to them, that disbanding the council and dismissing the governmental ministers in June will create uncertainty and tension that will far outweigh the benefits gained from forging a more representative body.

It is hard to advocate any shift from the vision of this wonderful new Constitution. But in the interest of Iraq's stability, it would seem wise to abandon the vague plan for new interim bodies and simply have the Governing Council continue to carry out its task for another year. This would allow each of the 25 Governing Council members to get a chance to hold the rotating presidency, including the three women waiting their turns. It would enhance the strength of the Governing Council, allow the return of sovereignty to Iraqis, and remove the stigma of continued occupation. And it is likely the best way to ensure that the Iraqi people will have a chance to vote on the truly democratic government and final Constitution they need.