

Is the formulation of a permanent constitution a chance to get out of the dilemma?

Ghassan Atiyyah — Baghdad, 15 June 2005

If the way in which the [Iraqi] general elections of January 30, 2005 did not succeed in putting an end to the civil war, and made it more severe, the constitutional process and the formulation of a new constitution may create an opportunity to get out of the impasse. However, there is a need to review the whole electoral process and benefit from its lessons. Stressing the importance of the [elections] timing, rather than its true value, led the government (and the American Administration) to lose an opportunity to trade-in vast participation of various Arabs, the Sunnis in particular, for temporary postponement. If this was adopted it would have saved the present government the problem of Sunni Arab participation in writing a constitution, as reflected by the formation of a 55 member parliamentary constitutional committee, which included only two Sunni Arabs.

The American Administration recognized such fault. It asked its Secretary of State, during her last visit to Baghdad (May last), to ensure a better representation of the Sunni Arabs, but without proposing the means. The American Administration, as well as the previous government refused an Arab proposal in Sharam el- Sheikh on November last, to hold a national Iraqi dialogue conference, as stipulated for in U.N. resolution # 1546. Nonetheless, the same U.S. Minister of State, who calls for a better representation of the Sunni Arabs, insists, in the meantime, on preparing a draft constitution by mid August, at the latest. So, the government which took more than 12 weeks to be formed is asked to prepare a draft constitution in less than two months.

The Jaafari government falls in the same contradiction. While it calls in its political agenda, for “comprehensive national participation and dialogue between various political, religious, factional and national groups”, it insists, in the meantime on “quick and timely formulation of a permanent draft constitution for the country”, without benefiting from its right to extend the process 6 more months, according to the present Transitional Administration law.

Article 60 of the Iraqi Transitional Administration Law stipulates that the General Assembly shall formulate a permanent draft constitution for Iraq and shall assume this responsibility in various ways, including promoting discussion on the constitution through holding public, explicit, and periodical national meetings, mass media discussions, and receipt of Iraqi suggestions on this issue”. The question is whether the government will be able to implement this process in few weeks, amidst the current civil war atmosphere, knowing that no constitution in the world has been

formulated and survived within an atmosphere of civil war.

There is a big difference between a constitutional process and formulation of a constitution. The constitutional process in a country newly immersing out of war or political revolution requires more time (two years in Germany, 5 years in South Africa, and more than eight years in the United States) to ensure involvement of various components of the society in a comprehensive national dialogue. This would allow discussing the controversial issues in order to establish a common ground and understanding which would lay the foundation for a political contract (to be developed by a technical committee) that would be turned into a constitution honored by various parties to the contract.

The proposals discussed by the parliamentary committee to increase Arab representation remain hasty or selective. Candidature by a Sunni party will be refused by another party. Also, selective choice of candidates will be contested by other groups and considered illegal as long as the candidates are not chosen by direct election. There, also, remains the difference in authority between an elected and an appointed member of the parliamentary committee as the role of the latter will be under the best- case scenario a consultative one.

In addition, the time currently spent to choose or select additional names (Sunni Arabs) will be at the expense of the remaining time for the constitutional process. Thus, participation in the parliament by those who are still unknown will be at best cosmetic and marginal.

Part of the responsibility for our present problem falls on those who called for boycotting the elections and preventing participation even through resorting to arms. However, some were unable to participate because of the extraordinary conditions which the occupation authorities and the government failed to handle.

One of the lessons of the past elections is the adverse effects resulting from the stand of the Shiite cleric authorities which took sides supporting certain groups, and consequently creating sectarian polarization which affected the unity of the Iraqi Arabs. This was met by a similar Sunni stand which aggravated the problem.

The American Administration and the present and past governments are responsible for the present impasse. This can only be surpassed by any of the following:

First alternative: The National Assembly will only adopt general constitutional principles relating to the basics freedoms, the rule of the law, and citizenship, as well as other common human rights stipulated for in the Transitional Administration Law, and in the meantime leaving the controversial issues to be dealt with by the National Assembly to be elected later after adoption of such constitutional project. In other words, the Constitution will be developed in 2 stages: In the first stage, acceptable

and common grounds (including amendment of the electoral law to make the governorate and electoral unit instead of Iraq as one electoral unit) are established. This will widely open the door in front of an extensive national dialogue, which paves the way for civil peace, and comprehensive free elections without the mistakes of the past. The second stage will follow through the formulation of the Constitution by the new parliament.

Second Alternative: Adoption of the election principle and participation of various components and parties unrepresented in the Parliament in committees, etc...and leaving the fate of the Constitution to be decided by a free and, fair polls. In such case, the “boycotting” governorate might find, through free polls conducted according to the Transitional Administration Law, a chance to remedy the situation. If the governorate succeeds in mobilizing two thirds of the participants (in three governorates) against the proposed constitution, the constitution will not only be rejected, but also the government would resign and new parliamentary elections are called at the end of the year with full participation of the citizens (no absence or boycott). This might well restore the confidence of the marginalized groups and facilitate their participation in the electoral game, benefiting from the mistakes of the previous boycott.

The problem here is who will supervise the poll and guarantee its integrity. The United Nations is not ready to assume such role. The possibility of applying pressure or depriving certain regions participating in the poll is much easier than pushing them to participate. All what is needed is to engineer an assassination or explosion process without need to forge the results. In such case, a governorate would, under any pretext, contest any results not in its favor such as assuming that the elections are forged. Consequently, we will go back again to the starting point. Instead of turning the constitutional process into a key to the solution, it will be turned into a justification for renewed fighting, exactly as the elections failed to calm down the situation.

Any attempt to force convictions on the others might be passed as previous constitutions were passed in Iraq. However, it will not be binding or applicable.

What is Behind the American Hurry to formulate a New Constitution for Iraq?

The American insistence on abiding by the dates specified in the Transitional Administration Law, and refusal of any potential postponement, regardless of the adverse effects, raises many questions concerning the U.S. intentions. The former U.S. Secretary of State, Mr. Collin Powell used to say, even before the occupation of Iraq, “if you break it, you own it”. In other words, “if you topple a regime, you will be responsible for running the country”. The present American behavior suggests that the U.S. is willing to quit such responsibility, through informal measures such as “Transfer of sovereignty to a transitional government”, “elections”, and last the

formulation of a “constitution”, so that Washington would announce the “success” of democracy in Iraq, at a time when the Iraqi people are suffering poverty, chaos, and bloodshed.

Washington might think that it can safeguard its strategic interests by keeping military bases outside cities and supporting local allies: Two Kurdish parties to keep security in North Iraq, and a pro- Iranian Shiite party to ensure security in the South (The government’s decision to “merge” the militias with the army instead of disbanding them is a step in that direction), and finding a Sunni Arab party to assume responsibility in West Iraq. And, as long as the parties remain scrupulous of each other, Washington will remain a necessity for them.

The American weariness of the burden of the occupation of Iraq is understood and justified. However, the solution is not by running forward, through creating a second Afghanistan in Iraq. Also, I am not calling for extending American occupation of Iraq, I am asking Washington to collaborate with the international community in finding a way for the Iraqi people out of the dilemma.

I suggest, here, the formation of an international working group, comprising members of the U.N., in addition to the donor countries, to share the Iraqi burden, financially and in manpower, to administer the Iraqi crisis, instead of restricting the case to the greatest pole that refuses to admit its failure.

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