

TEIL II

VERFASSUNG(EN) UND VERFASSUNGSENTWÜRFE

Die folgende Zusammenstellung soll als Quellensammlung für alle am Prozess der irakischen Verfassungsgebung Interessierten dienen. Es sind dies typische Internet-Dokumente, von denen bis auf eines (C), keine bindende Wirkung ausgeht. Allerdings wurden die Entwürfe A (A1 und A2) von den meisten westlichen Beobachtern und Analytikern der Entwicklung im Irak als Arbeitsgrundlage herangezogen. Ein Verfassungsentwurf (B) und ein Kommentar (D) wurden von Prof. Brown übersetzt bzw. geschrieben, dem ich an dieser Stelle noch einmal für das Recht zur Veröffentlichung danke.

A Kurdische Verfassungsentwürfe

Bei beiden unter A.1 und A.2 vorgelegten Entwürfen handelt es sich um englische Übersetzungen. Leider konnte nicht festgestellt werden, ob die Originalentwürfe in kurdischer oder arabischer Sprache verfasst worden sind. Beide Entwürfe sind auf der Internetseite der kurdischen Regionalregierung www.krg.org abrufbar.

A.1 Entwurf für eine kurdische Regionalverfassung

http://www.krg.org/docs/K_Const.asp

CONSTITUTION OF THE IRAQI KURDISTAN REGION

PREAMBLE

The Kurds are an ancient people who have lived in their homeland of Kurdistan for thousands of years, a nation with all the attributes that entitle it to practice the right of self-determination similar to other nations

and peoples of the world. This is a right that was recognized for the first time in Woodrow Wilson's Fourteen Points issued at the end of World War I and the principles of which have since become entrenched in international law.

In spite of the 1920 Treaty of Sevres that recognized the right of self-determination in articles 62-64, international interests and political expediency prevented the Kurds from enjoying and practising this right. In contradiction to what that Treaty had offered, Southern Kurdistan was annexed in 1925 to the newly created state of Iraq, which had been created four years earlier in 1921, without consideration of the will of its people, although it was stipulated that officials of Kurdish origin should be appointed to the administration of their own land and that Kurdish should be the language of education, the courts and for all services rendered. Since that time this part of Kurdistan has been known as Iraqi Kurdistan. On December 25, 1922, the British and Iraqi governments made a joint official statement that admitted the right of the Kurds to set up a government of their own and asked that the representative of the Kurds negotiate the form of that government, the geographic boundaries, and the nature of the political and economic relations with Iraq.

When Iraq was admitted to the League of Nations it was conditional on Iraq issuing a statement, which it made on May 30, 1932. The statement includes a number of international obligations and sets out guarantees for the rights of the Kurds that Iraq is not allowed to amend or abolish without a majority vote from the members of the League of Nations in accordance with Article 10 of the above-mentioned statement. These obligations have been transferred to the United Nations organization and are still in effect to this day.

The interim Constitution for the Republic of Iraq issued in 1958 stated in Article 3 that Arabs and Kurds are partners in the Iraqi state and then on March 11, 1970 an agreement was reached between the Kurdish leadership and the Government of Iraq that recognized autonomy for the people of Kurdistan within the Iraqi Kurdistan Region as the constitutional means for their rights in Iraq. In spite of this, successive Iraqi governments have turned their backs on these obligations to the Kurds and instead have practised a racist and chauvinistic policy of ethnic cleansing

and destruction by all political and military means. They have altered the demographic reality through forcible deportation of the Kurds and changing their national identity to Arab. They have even gone as far as using internationally prohibited chemical weapons in such areas as the city of Halabja, Balisan and parts of the Duhok Province. They have razed some 4,500 towns and villages while driving tens of thousands of unarmed civilian Kurds, among them Faylis and Barzanis, into an unknown future. This was followed by other campaigns of collective destruction that became known as the Anfal in the process of which 182,000 unarmed civilians were the victims.

On April 5, 1991, the Security Council voted on Resolution 688 setting up the Safe Haven for the Kurds by the Allies following the second Gulf War thus acting to prevent the Kurds from facing an ominous future. The Kurds used this opportunity to elect their first parliament on May 19, 1992 and to establish the Kurdistan Regional Government. By a unanimous vote of the Iraqi Kurdistan National Assembly, the "Parliament," the people of the Kurdistan Region were able to practice their right in choosing the form of future constitutional relationship with the Iraqi government and hence decided on federalism as the constitutional basis for the Government of Iraq whereby the Iraqi Kurdistan Region would comprise one of the future regions of the Federal Republic of Iraq.

The federalism formula is seen as an ideal solution for the ethnically pluralistic Iraqi society that would safeguard its unity and would, to a large degree, satisfy the legitimate aspirations of the people of Iraqi Kurdistan as this formula will guarantee their participation in the making of decisions while protecting the integrity and unity of Iraq. It is for these reasons that the preparation of this draft constitution attempts to embody the decision by the Iraqi Kurdistan National Assembly on federalism. It is to be guided also by the principles and values of democracy, pluralism and respect of human rights, and in accordance with international agreements and conventions related to civil and political rights and international convention on social, economic and cultural rights of 1966 to which Iraq became a signatory on January 25, 1971. Choosing the above alternative is also in harmony with the principles of the New World Order. The peoples and nations that have chosen the road of fed-

eralism have achieved great success, such as in the United States of America, Canada, Belgium, and others, whereby participation is afforded all nationalities, groups, and constituents in the governance and decision making at the federal level, hence making possible the actual embodiment of democracy and its practise in a real sense. Moreover it would bring about internal independence to the people of the regions and so the federal solution is seen as the best guarantee for maintaining the integrity of the country.

The people of Kurdistan have always supported a peaceful solution to their problem and have positively reacted to all the calls of successive Iraqi governments for negotiation and the establishment of peace. However, they have repeatedly met lack of faith and renegeing of those governments on their promises and national and international obligations. Therefore, no constitutional document alone can guarantee proper implementation or endurance in a practical way unless there are sufficient international guarantees so that all sides to the agreement will abide by it and respect its terms. This past ten year's experiment has proven the value of international protection that has afforded the people of Kurdistan to enjoy their freedom and their national rights in an environment that is safe and free from persecution and oppression. It is therefore deemed necessary that such protection is seen as a crucial element until a final, just, enduring and internationally guaranteed solution is reached.

PART I - GENERAL MATTERS

Article 1

As a region of the Federal Republic of Iraq, the Kurdistan Region shall have a multi-party, democratic, parliamentary, republican political system.

Article 2

The Kurdistan Region consists of the Provinces of Kirkuk, Sulaimaniyah and Erbil in their administrative boundaries prior to 1970 and the Prov-

ince of Duhok along with the districts of Aqra, Sheikhan, Sinjar and the sub-district of Zimar in the Province of Ninevah, the district of Khaniqin and Mandali in the Province of Diyala, and the district of Badra in the Province of Al-Wasit.

Article 3

Power is inherent in the people as they are the source of its legitimacy.

Article 4

The people of the Kurdistan Region consist of the Kurds and the national minorities of Turkmen, Assyrians, Chaldeans, and Arabs and this Constitution recognizes the rights of these minorities

Article 5

The city of Kirkuk shall be the capitol of the Kurdistan Region.

Article 6

There shall be a special flag for the Kurdistan Region in addition to the flag of the Federal Republic of Iraq and this shall be regulated by law.

Article 7

- i) Kurdish shall be the official language of the Kurdistan Region.
- ii) Official correspondence with the federal and regional authorities shall be in both Arabic and Kurdish.
- iii) The teaching of Arabic in the Kurdistan Region shall be compulsory.
- iv) The Turkmen language shall be considered the language of education culture for the Turkmen in addition to the Kurdish language. Syriac shall be the language of education and culture for those who speak it in addition to the Kurdish language.

PART II - BASIC RIGHTS AND RESPONSIBILITIES

Article 8

- i) Citizens of the Kurdistan Region are equal before the law in their rights and responsibilities without discrimination due to race, color, sex, language, ethnic origin, religion, or economic status.
- ii) Women shall have equal rights with men.
- iii) The family unit is the natural and fundamental group of the society. The protection of mothers and children shall be guaranteed. Government and society have a duty to care for youth and to protect the basic moral and ethical values, and the heritage of the people of Kurdistan and that shall be regulated by law.

Article 9

- i) Punishment is personal. Nothing can be treated as a crime, nor can any punishment be ordered and carried out unless defined in the law. No act is punishable unless it is considered to be a crime at the time of commission. No punishment can be administered that is greater than what is written in the law.
- ii) The accused is presumed innocent until proven guilty in a court of law.

Article 10

- i) The right to legal defence is guaranteed at all stages of an investigation and trial in accordance with the law.
- ii) Trial proceedings shall be open unless otherwise declared secret by the court.

Article 11

- i) The sanctity of the home and its contents shall be protected and cannot be entered or searched except in accordance with procedures laid out in the law.

- ii) Individuals or their possessions cannot be searched except under conditions defined in the law.
- iii) The integrity of the individual shall be protected and all types of torture, physical or psychological, are prohibited.

Article 12

The privacy of postal, cable and telephone communications is guaranteed and cannot be disclosed except when deemed necessary to serve the needs of justice and security in accordance with the parameters and procedures laid out in the law.

Article 13

The right of ownership is guaranteed and movable and immovable property cannot be confiscated except in accordance with the law. Property cannot be expropriated except where required to serve the public interest in accordance with the law and with fair compensation paid.

Article 14

Citizens of the Kurdistan Region cannot be prevented from travelling abroad or returning to their homes. No restrictions shall be placed on the movement of people or the location of their residence except where stipulated in the law.

Article 15

Freedom of expression, publication, printing, press, assembly, demonstration, and forming of political parties, unions and associations shall be guaranteed by law.

Article 16

Freedom of religion, belief, and the practice of religious duties is guaranteed provided they do not conflict with provisions of this Constitution or the Federal Constitution or with federal laws and provided they do not go against general moral and ethical standards.

Article 17

Political refugees shall not be extradited.

Article 18

- i) Primary education in the Kurdistan Region is compulsory and shall be regulated by law.
- ii) The government shall combat illiteracy, guarantee for their citizens the right to a free education in all its stages of primary, secondary, and university, and guarantee the development of technical and vocational studies.

Article 19

The right of academic research shall be guaranteed. Outstanding achievement, innovation and creativity shall be encouraged and rewarded.

Article 20

- i) Work is a right and duty of every citizen and the regional government shall make efforts to create work opportunities for every capable citizen.
- ii) The regional government shall guarantee good working conditions, work towards raising the standard of living as well as the skills and knowledge of all working individuals. The regional government shall provide social security benefits in cases of illness, disability, unemployment, or old age.
- iii) No individual shall be forced to carry out a job unless the purpose is to carry out a public service according to the law or in the case of emergency or natural disaster.

Article 21

The regional government guarantees to protect public health through consistent efforts to provide medical services in the fields of prevention, treatment and medication.

Article 22

Paying taxes is a duty of every citizen and such taxes shall not be levied, collected or amended except by law.

Article 23

Citizens have the guaranteed right to raise complaints and write petitions to the proper authorities and the authorities shall consider these within a reasonable period of time.

Article 24

The judiciary in the Kurdistan Region is the source of the protection of rights mentioned in this part. The Courts will decide what punishment and/or fine is warranted from any of the parties concerned.

PART III - KURDISTAN REGIONAL AUTHORITIES

CHAPTER 1 - LEGISLATIVE AUTHORITY—KURDISTAN REGIONAL ASSEMBLY

Article 25

The Kurdistan Regional Assembly is the legislative authority in the region and consists of the representatives of the people elected through direct secret, general ballot.

Article 26

- i) The electoral process for the election of the members of the Kurdistan Regional Assembly, procedures (timing, proportional representation, and qualifications of candidates and voters) shall be regulated by law.
- ii) In the composition of the Assembly, fair representation of national minorities shall be observed.

Article 27

- i) The term of the Parliament is five years beginning with the first session.
- ii) The Assembly shall be convened at the request of the President of the Kurdistan Region within 15 days from the announcement of the final election results and the Assembly shall convene at the end of the above-mentioned period if there is no call.

Article 28

The Assembly shall convene its first session presided over by the oldest member and through secret ballot a president, vice-president and secretary shall be elected.

Article 29

Members of the Assembly shall swear the following oath of office:

“I swear by God Almighty to protect the interest of the people of Kurdistan, their honor and rights and to carry out my duties as a member impartially, faithfully and sincerely.”

Article 30

- i) A quorum in the Regional Assembly shall be reached when a majority of members are in attendance and decisions made by a simple majority of those present shall be carried out unless otherwise stipulated by law.
- ii) Proposals for legislation, on other than financial matters, can be brought forward by ten members of the Assembly.

Article 31

Salaries and stipends of the president of the Assembly and the members shall be regulated by law.

Article 32

Procedural guidelines for conducting the business of the Assembly's ordinary and special sessions as well as rules and procedures of membership and filling of vacancies shall be regulated by internal rules of the Assembly.

Article 33

The Regional Assembly shall exercise the following responsibilities:

- i) Amending the Regional Constitution with a 2/3 majority of its members
- ii) Legislating laws, amending, or abolishing them
- iii) Giving vote of confidence to the cabinet, its members and withdrawing such confidence from them
- iv) Approving the general budget for the Kurdistan Region and carrying out the necessary transfers and approving unexpected expenditures not included in the general budget
- v) Levying, amending or abolishing taxes and duties
- vi) Approving agreements that are made by the regional executive authority with other regions of the Federal Republic of Iraq, as well as foreign parties and the federal regions of other states in the areas of economic, development, culture, education, humanitarian, finance, security, and border issues
- vii) Authenticating membership in the Assembly
- viii) Issuing the necessary decisions for filling vacancies that occur within the Assembly according to the law
- ix) Supervising the work of the executive authority for the Kurdistan Region
- x) Drawing up the internal rules of the Assembly, deciding the staffing requirements, preparing the Assembly budget, appointing staff and designating salaries
- xi) Forming investigative committees for matters that the Assembly deems necessary

Article 34

- i) A member of the Assembly enjoys parliamentary immunity. He/she has the right to express views and opinions within the limits of the internal rules of the Assembly.
- ii) A member of the Assembly may not be investigated or arrested or have his/her rights and freedoms restricted, nor can he/she be put under surveillance or searched during a parliamentary session without the prior consent of the Assembly except in cases where there is no doubt that a crime or offence has been committed according to the law.
- iii) A member of the Assembly may not be put under surveillance or arrested while not attending a parliamentary session without the permission of the president of the Assembly except where there is no doubt that a crime or offence has been committed according to the law, in which case, the Assembly must be immediately informed of the measures taken.

Article 35

- i) The Assembly may dissolve itself with a 2/3 majority of its members.
- ii) The Assembly can be dissolved by a decree of the Regional President in the following cases:
 - a. If more than half of the Assembly's members resign.
 - b. If a legal quorum cannot be met within 45 days from the date the Assembly calls for a session.
 - c. If the Assembly does not give a vote of confidence to the Council of Ministers in three successive votes.
 - d. If the election laws of the Assembly are changed and the period remaining in the term of that Parliament is less than six months.

Article 36

When the Parliament is dissolved or its term of office comes to an end, there shall be new general elections to elect a new Assembly within a period that is no longer than two months.

Article 37

If the Parliamentary term of office comes to an end, the Assembly shall remain in office until a new Assembly has been elected and has convened its first session.

CHAPTER 2 - EXECUTIVE AUTHORITY

Section 1 - President of the Kurdistan Region

Article 38

The region has a President called the President of the Kurdistan Region. He/she is the highest executive authority and he/she represents the President of the Federal Republic of Iraq in the region and substitutes for him/her on state occasions and coordinates between the federal and regional authorities.

Article 39

The President of the Kurdistan Region is elected by direct, secret, general ballot by the people of the region.

Article 40

The manner in which the President of the Kurdistan Region is elected, candidate qualifications, the manner he/she can be indicted or tried, have his/her term of office terminated shall be regulated by law.

Article 41

The President of the Kurdistan Region, prior to assuming his/her responsibilities shall resume the following constitutional oath of office in front of the Kurdistan Regional Assembly:

“I swear by God Almighty that I shall protect the rights, achievements and interests of the people of Kurdistan and respect the Constitution of

the Federal Republic of Iraq and of the Kurdistan Region and to carry out my duties faithfully with impartiality and sincerity.”

Article 42

The term of office of the President of the Kurdistan Region is five years.

Article 43

The salary and allowances of the President of the Kurdistan Region shall be designated by law.

Article 44

The President of the Kurdistan Region shall assume the following responsibilities:

- i) Proclaiming into law legislation passed by the Regional Assembly
- ii) Issuing the call for general elections for the Regional Assembly
- iii) Issuing the call to convene the normal or special sessions of the Regional Assembly
- iv) Issuing the formal announcement of the Cabinet after it has received a vote of confidence from the Regional Assembly
- v) Calling the Council of Ministers to session which he/she may chair or attend and requesting reports from the ministers
- vi) Preparing draft laws and submitting them to the Regional Assembly for debate
- vii) Issuing decisions that have the power of law following consultation with the President of the Regional Assembly and the Council of Ministers in cases where the Kurdistan Region, its political system, its general security, or its constitutional institutions face danger that may threaten its existence and at a time when it is difficult for the Regional Assembly to meet
- viii) Declaring states of emergency in accordance with the law
- ix) Using the powers that are delegated to him by the President of the Federal Republic of Iraq
- x) Issuing decrees and decisions proposed by the Council of Ministers

- xi) Mobilizing the Armed Forces and Internal Security Forces within the region
- xii) Supervising and directing the Federal Security Forces operating temporarily or permanently within the region
- xiii) Issuing the decree that formally announces the resignation of the Cabinet or a minister following withdrawal of confidence
- xiv) Issuing decrees that accept the resignations of the Cabinet or a minister in the case where they were asked to do so and requesting that they remain in office until the formation of a new Cabinet or the appointment of a new minister
- xv) Requesting the resignation of the Cabinet or a minister
- xvi) Granting special amnesty to prisoners
- xvii) Approving the death sentence or commuting it to life imprisonment
- xviii) Appointing, dismissing or retiring judges, the regional chief prosecutor, regional general prosecutors and their deputies, heads of administrative units, and individuals to special positions in accordance with the law
- xix) Conferring military ranks on officers of the Internal Security and dismissing or retiring them according to the law
- xx) Conferring medals and awards as specified by law

Article 45

An Office for the President of the Kurdistan Region shall be established, the requirements and structure of which shall be laid out in a law.

Article 46

- i) In the case of the resignation, demise, or permanent disability of the President of the Kurdistan Region, a successor shall be elected in the same manner.
- ii) When the position of the President of the Kurdistan Region becomes vacant, the President of the Kurdistan Regional Assembly shall assume responsibilities of the President until such time as a new President is elected.
- iii) When the President of the Kurdistan Region is absent or on leave, the Regional Prime Minister shall assume the responsibilities of the President in an acting capacity.

Section 2 - Kurdistan Region Council of Ministers (Cabinet)

Article 47

The Kurdistan Region Council of Ministers is the highest executive and administrative authority in the region; it carries out its executive responsibilities under the supervision and guidance of the Kurdistan Regional President.

Article 48

- i) The Council of Ministers is made up of the Prime Minister, his deputies and a number of ministers, whose number shall not be less than 15.
- ii) The President of the Kurdistan Region shall ask a member of the Kurdistan Regional Assembly to form the cabinet.
- iii) The Prime Minister designate shall choose his deputies and his/her ministers from among the members of the Kurdistan Regional Assembly or others who meet the necessary qualifications for membership in the Assembly.
- iv) The Prime Minister designate shall present his/her cabinet to the Regional President for approval.
- v) The Prime Minister designate following the approval of the Regional President shall present his/her cabinet to the Regional Assembly seeking a vote of confidence and when given a formal decree for the formation of the cabinet shall be issued.

Article 49

Within the makeup of the Kurdistan Region's Council of Ministers representation of the national minorities, Turkmen, Assyrians, and Chaldeans, shall be taken into consideration.

Article 50

The members of the cabinet are collectively responsible to the Kurdistan Regional Assembly with regard to the work of the cabinet while each minister is individually responsible for the work of his/her ministry.

Article 51

The Council of Ministers shall assume the following responsibilities:

- i) Carrying out the laws, regulations, and decisions while protecting regional security and public property.
- ii) Setting general policy for the Kurdistan Region in cooperation with the President of the Kurdistan Region.
- iii) Preparing the economic development plans and securing the necessary means for their implementation.
- iv) Preparing the general budget for the region.
- v) Supervising, directing, following and coordinating the work of the ministries, institutions, and public facilities in the Kurdistan Region as well as abolishing or amending their decisions.
- vi) Issuing executive and administrative decisions in accordance with the laws and regulations.
- vii) Preparing draft laws and issuing regulations.
- viii) Appointing, promoting, dismissing, or retiring staff and setting salaries according to the law.
- ix) Making loans and special agreements in the economic development, cultural, and humanitarian fields with the institutions of the federal government or foreign parties.

Article 52

The minister is directly responsible for all the affairs of his/her ministry.

Article 53

- i) The cabinet shall be considered to have resigned if the Regional Assembly withdraws confidence from it.
- ii) The minister shall be considered to have resigned if the Regional Assembly withdraws confidence in him/her.

Article 54

The manner in which the Prime Minister, his/her deputies or his/her ministers are made accountable or are indicted and tried and the matter of setting their salaries and allowances shall be regulated by a law.

CHAPTER 3 - THE JUDICIARY

Article 55

The Kurdistan Region's judicial authority is made up of the region's court system in all its levels.

Article 56

The judiciary has general jurisdiction over all public and private entities and individuals except those that stipulated in a law.

Article 57

The judiciary is independent with no power above it except the law itself.

Article 58

The judiciary in the region, in all its levels and types, its structure and conditions under which its members are appointed, transferred, or held accountable shall be regulated by law.

Article 59

The general prosecutor represents the society by defending general rights and ensuring justice.

Article 60

The non-Muslim communities have the right to establish religious, "spiritual," legal bodies in accordance with a special law. These bodies

shall have the right to look into all personal matters of citizens belonging to those communities, matters which are not included in the competence and responsibility of the “Muslim” religious courts.

Article 61

Sentences and decisions of the judiciary are passed in the name of the people.

PART IV - ADMINISTRATION AND MUNICIPAL COUNCILS

Article 62

The administrative divisions of the Kurdistan Region shall be formed by regional law in a manner that does not contradict the terms of this Constitution.

Article 63

A province, “governorate,” may be created, its administrative center and name may be designated or changed, and its boundaries may be altered by annexation or separation of its districts and/or sub-districts. Districts and/or sub-districts can be added to another province and all of the above shall be in accordance with a regional decree proposed by the Minister of Interior and approved by the Council of Ministers.

Article 64

Districts may be created, their administrative centers and names may be designated or changed, and their boundaries may be altered by annexation or separation of sub-districts. Sub-districts may be added to another a district. Sub-districts may be created, their administrative centers and names may be designated or changed, and their boundaries may be designated. All of the above shall be in accordance with a regional decree proposed by the Minister of Interior and approved by the Council of Ministers.

Article 65

Each center of a province, district, sub-district, and a village with a population no less than 3,000, shall have a municipality with a Council and will render public services to the population.

Article 66

- i) The head and the members of the Municipal Councils are elected from among the people of their communities through direct, general, secret ballot.
- ii) In the formation of these Municipal Councils, fair representation of the national minorities of the Kurdistan Region shall be taken into consideration.

Article 67

The municipalities, the method of electing their heads and members of the Municipal Councils, their powers, duration of office and all matters shall be regulated by a law.

PART V - FISCAL MATTERS

Article 68

Taxes or duties cannot be levied, amended, or waived except by a law.

Article 69

The regional authorities can levy and collect taxes and duties within the region, amend or abolish them taking. Such taxes and duties should be levied in a just and equitable manner comparable to the situation of the citizens of the Federal Republic of Iraq. Export and import duties (customs) are the responsibility of the federal authority.

Article 70

Revenues of the Kurdistan Region are made up of:

- i) Taxes, duties, and public service fees, as well as taxes from corporations and institutions within the region
- ii) The Kurdistan Region's share of natural resources, in particular, oil, and revenue from the sale of its products in and outside the country, as well as grants, aid, foreign loans made to the Federal Republic of Iraq in a proportion based on the relation of the region's population to the total population of Iraq.
- iii) Grants, endowments and proceeds of lotteries, and other public income
- iv) Internal and external loans intended specifically for the Kurdistan Region

Article 71

From a fiscal point of view, the Kurdistan Region shall be a successor to the federal authorities in matters pertaining to financial debt, and tax and duty arrears that are related to the region.

Article 72

The fiscal year shall be designated by a law.

Article 73

Each fiscal year, the budgetary law that will consist of the estimated revenues and expenditures for the Kurdistan Region shall be passed.

PART VI - MISCELLANEOUS

Article 74

Any law, regulation, decision, or decree that undermines or sets a limit to the legitimate national rights of the Kurdish people or the citizens of the Kurdistan Region or if they contradict the terms of this Constitution shall be null and void.

Article 75

The structure of the entity and the political system of the Federal Republic of Iraq cannot be changed without the consent of the Kurdistan Regional Assembly. Action contrary to this shall afford the people of the Kurdistan Region the right of self-determination.

Article 76

If constitutional conflict or disagreement arises between the Kurdistan Regional authorities and the authorities of the Federal Republic of Iraq or the Arab regional authority, they shall be referred to the Federal Constitutional Court for adjudication.

Article 77

If there is difference in the interpretation of the terms of this Constitution between the Kurdistan regional authorities, they shall be referred to the Cassation Court of the Kurdistan Region for adjudication.

A.2 Kurdischer Entwurf für einen Föderalstaat Irak

http://www.krg.org/docs/Federal_Const.asp

CONSTITUTION OF THE FEDERAL REPUBLIC OF IRAQI [sic!]

PREAMBLE

It may be said that the new Iraqi state from the time of its creation following World War I has not enjoyed peace and security. To a great extent, this goes back to a fault in its constitutional makeup and the nature of its political system. The basic law of 1925, which was the constitutional make up of the new state of Iraq, up to the constitution of July 16, 1970, were characterized by a high degree of centralization.

Centralization in government has lost its appeal even within simple and homogenous communities. It has especially lost its rationale for being resorted to in communities that are of a pluralist nature made up of various nationalities, religious groups and languages, such as the Iraqi community. This high degree of centralization and the indifference of decision makers to the presence of the special characteristics of the Kurdish people are among the basic reasons for the Kurds being deprived of their legitimate rights under the successive Iraqi governments, which came to power under both the monarchy and the republic. This style of restricting authority in the centre and the unwillingness to share it with the Kurds on a practical basis, even after the March 11, 1970 autonomy agreement, has been the hallmark of the role of the Iraqi state.

In light of the past painful experiences that have continued since the establishment of the new Iraqi State in 1921 until the present time, which has resulted in a great loss to Iraqis in terms of life and property, and opportunity for progress, it is necessary to put an end to this constitutional disorder by changing the structure of the Iraqi state and the nature of its political system from a unitary state based on total centralization to a federal system based on federalism and the division of powers among the federal government and the regional ones in a manner that would be more consistent with the pluralist nature of the Iraqi community made up

of the two primary nationalities, Arabs and Kurds, in addition to other national minorities present among the population. We are encouraged in this by the successful experiment of other countries such as the United States of America, Switzerland, Canada, Belgium, India and others, which have successfully adopted the federal system. We have thus seen that federalism is the most appropriate system of government for Iraq as it is consistent with the pluralist nature of the Iraqi community and it is a suitable basis for solving the Kurdish problem in Iraq. It affords the Kurdish people the enjoyment of their legitimate national rights and internal independence within the region of Kurdistan and within the framework of a single Iraqi state and without disrupting the unity of that state. This will also safeguard Iraq's existence, as it will contribute to Iraq's national unity and deepening of Arab and Kurdish brotherhood, something that will put an end to the concerns of Iraq being divided up.

Federalism and democracy are inseparable concepts because federalism cannot grow and prosper in the shadow of any dictatorial, authoritarian system; therefore, the implementation of a democratic system is made urgent and indispensable for a federal Iraq. For the purpose of the embodiment and entrenchment of democracy in that country, the basic requirements of democracy must be present. Democracy requires democratic freedoms including that of expression, belief, organization, assembly, and others. It assumes that power can be transferred peacefully through the holding of free elections at the ballot box. It recognizes the principles of a multi-party system and the concept of an opposition. It consolidates the principles of the separation of powers and protects the independence of the judiciary by giving it the last word in settlement of constitutional disagreements that may occur between the federal government and the regional government or between the institutions of the federal government itself and this in turn will consolidate the rule of law.

We must emphasize that democracy in Iraq will not be complete without giving women their full rights and providing the necessary opportunities for them to practice their historic role in the development process and in forwarding the Iraqi people in various fields which cannot be realized without recognition of their equality with men under the law and in their rights and duties.

In order to strengthen national loyalty and to deepen social harmony, national religious tolerance must be recognized and human rights and freedoms of the individual must be respected in accordance with the provisions of the Universal Declaration of Human Rights and other related international treaties and conventions. The various civil institutions of the community must be allowed to practice their necessary role in development and progress. Violence and extremism must be abandoned while combating terrorism in all its forms. All of this will give further strength and immunity to the state founded on a democratic, parliamentary, federal system and will enable it to reach a level of compatibility and national development as it moves away from violence and extremism and avoids internal conflict which is something that will enable it to play its positive role in the Arab region, and the regional and the international domains.

With belief in the principles mentioned above and for the sake of establishing a federal, democratic, parliamentary, pluralistic Iraq that will enjoy peace and security and belief in the principles of equality, justice and equal opportunity and respect of human rights of the individual, characterized by national and religious tolerance and the brotherhood of Arabs and Kurds and other nationalities, we hereby promulgate this Constitution.

PART I - ESTABLISHING THE FEDERAL STATE

Article 1

Iraq is a federal state with a democratic, parliamentary, pluralistic, republican system that will be called the Federal Republic of Iraq.

Article 2

The Federal Republic of Iraq consists of two regions:

i) The Arabic Region that includes the middle and southern regions of Iraq along with the Province of Ninevah in the north excepting the dis-

tricts and sub-districts that have a Kurdish majority as mentioned in the item below.

ii) The Kurdish Region that includes the Provinces of Kirkuk, Sulaimaniyah and Erbil within their administrative boundaries before 1970 and the Province of Duhok and the districts of Aqra, Sheihkan, Sinjar and the sub-district of Zimar in the Province of Ninevah and the districts of Khaniqin and Mandali in the Province of Diyala and the district of Badra in the Province of Al-Wasit.

Article 3

Power is inherent in the people as they are the source of its legitimacy.

Article 4

The people of Iraq consist of the two principal Arabic and Kurdish nationalities and this Constitution affirms the national rights of the Kurdish people and their enjoyment of them within the Kurdistan Region based on federalism as it also affirms the legitimate rights of the minorities within the framework of the Federal Republic of Iraq.

Article 5

Baghdad shall be the capitol of the Federal Republic of Iraq.

Article 6

The Federal Republic of Iraq shall have a flag, an emblem, and a national anthem that shall reflect the union between the Kurds and the Arabs and that shall be regulated by law.

Article 7

The state religion is Islam.

Article 8

Arabic is the official language of the federal state and the Arab region. Kurdish shall be the official language of the Kurdistan Region.

PART II - BASIC RIGHTS AND RESPONSIBILITIES

Article 9

- i) Citizens are equal under the law without discrimination due to sex, race, color, language, religion, or ethnic origin.
- ii) All are guaranteed equal opportunity under the law.

Article 10

The family unit is the foundation of the community, the protection and support of which is guaranteed by the state. Mothers and children are also afforded protection under the law. The law upholds the basic moral and ethical values of the community among its citizens.

Article 11

- i) An accused person is presumed innocent until proven guilty in a court of law.
- ii) The right to legal defence is guaranteed at all stages of an investigation and trial in accordance with the law.
- iii) Trial proceedings must be open unless otherwise declared closed by the court.
- iv) Punishment is personal. Nothing can be treated as a crime, nor can any punishment be ordered and carried out unless defined in the law. No act is punishable unless it is considered to be a crime at the time of commission. No punishment can be administered that is greater than what is written in the law.

Article 12

- i) The integrity of the individual shall be protected and all types of torture, physical or psychological, are prohibited.
- ii) No one can be captured, detained, jailed, or searched except in circumstances defined in law.
- iii) The sanctity of the home shall be protected and cannot be entered or searched except in accordance with procedures laid out in the law.

Article 13

The privacy of postal, cable and telephone communications is guaranteed and cannot be disclosed except when deemed necessary to serve the needs of justice and security in accordance with the parameters and procedures laid out in the law.

Article 14

A citizen cannot be prevented from travelling abroad or outside the country nor prevented from returning home to the country. Movements within the country shall not be restricted unless specified in the law.

Article 15

Freedom of religion, belief, and the practice of religious duties is guaranteed provided they do not conflict with provisions of this Constitution and the Regional Constitutions or with federal laws and provided they do not go against general moral and ethical standards.

Article 16

Primary education is compulsory. The federal and regional governments shall combat illiteracy, guarantee for their citizens the right to a free education in all its stages of primary, secondary, and university, and guarantee the development of technical and vocational studies.

Article 17

The right of academic research shall be guaranteed. Outstanding achievement, innovation and creativity shall be encouraged and rewarded.

Article 18

Freedom of expression, publication, printing, press, assembly, demonstration, and forming of political parties, unions and associations shall be guaranteed by law.

Article 19

The right to political asylum for all those persecuted because of their political beliefs shall be guaranteed. Political refugees shall not be extradited.

Article 20

- i) Work is a right and duty of every citizen and the federal and regional governments shall make efforts to create work opportunities for every capable citizen.
- ii) The state shall guarantee good working conditions, work towards raising the standard of living as well as the skills and knowledge of all working individuals. The state shall provide social security benefits in cases of illness, disability, unemployment, or old age.
- iii) No individual shall be forced to carry out a job unless the purpose is to carry out a public service according to the law or in the case of emergency or natural disaster.

Article 21

The state and regional governments shall guarantee the right of ownership and this shall be regulated by law.

Article 22

The state guarantees to protect public health through consistent efforts to provide medical services in the fields of prevention, treatment and medication.

Article 23

Paying taxes is a duty of every citizen and such taxes shall not be levied, collected or amended except by law.

Article 24

Citizens have the guaranteed right to raise complaints and write petitions to the proper authorities and the authorities shall consider these within a reasonable period of time.

Article 25

The judiciary is the source of the protection of rights mentioned in this part. The Courts will decide what punishment and/or fine is warranted from any of the parties concerned.

PART III - FEDERAL GOVERNMENT AUTHORITIES

CHAPTER 1 - FEDERAL LEGISLATIVE AUTHORITY

Article 26

The federal legislative authority, the “federal parliament”, is made up of two chambers—the National Assembly (Chamber of Deputies) and the Assembly of the Regions.

Section 1 - National Assembly

Article 27

- i) The National Assembly is made up of representatives of the people within the two regions elected through direct, secret, general ballot as regulated by law.
- ii) Each citizen, 18 years of age or older, of sound mind and in good standing in the community has the right to vote.
- iii) Each citizen, 25 years of age or older, of sound mind and in good standing in the community has the right to stand for election to the National Assembly.

Article 28

The Federal Parliament has a five-year term commencing with the holding of its first session.

Article 29

The electoral process and its procedures shall be regulated by law.

Article 30

- i) No individual can hold a position in the National Assembly, the Assembly of the Regions, the Regional Parliament, or the local municipal and administrative councils, at the same time.
- ii) A member of the National Assembly cannot hold another public position or office at the same time.
- iii) A member of the National Assembly shall be considered to have resigned from any public position or office from the date that he/she swears the oath of office.

Article 31

The National Assembly shall hold its first session presided over by the oldest member. A president, vice president and secretary shall be elected from among its members through secret ballot.

Article 32

The National Assembly can meet with the presence of a simple majority of members present. Votes are also by simple majority.

Section 2 - The Assembly of the Regions

Article 33

The Assembly of the Regions is made up from representatives from each of the Arab and Kurdistan regions provided that the principle of equal representation is upheld.

Article 34

Each region evaluates the performance and can dismiss its representatives in accordance with the methods specified in the Regional Constitution and/or law.

Article 35

The Assembly of the Regions participates on an equal footing with the National Assembly in the practice of the federal legislative authority.

CHAPTER 2 - FEDERAL PARLIAMENT AUTHORITIES

Article 36

The Federal Parliament shall have the following authorities:

- i) Declare war and conclude peace where a 2/3 majority will be required
- ii) Amend the Federal Constitution
- iii) Ratify international treaties and agreements where a 2/3 majority will be required
- iv) Enact federal legislation
- v) Vote of confidence in the federal cabinet and its members as well as withdrawal of such confidence
- vi) Approve the federal budget

- vii) Levy, regulate, and abolish taxes and duties
- viii) Supervise the work of the federal executive authority
- ix) Draft internal rules and procedures for personnel and staffing, determine positions, appoint staff, determine salaries, and approve the budget of the Federal Parliament
- x) Look into and verify the membership in the National Assembly and the formation of the committees.

CHAPTER 3 - FEDERAL EXECUTIVE AUTHORITY

Section 1 - President of the Federal Republic of Iraq

Article 37

The President of the Federal Republic of Iraq is the head of state and the Commander-in-Chief of the Armed Forces.

Article 38

The President shall be elected through direct, general, secret ballot for a period of five years and may stand for re-election once.

Article 39

All candidates for President shall be:

- i) an Iraqi citizen whose parents must both have been born in Iraq
- ii) at least 40 years of age
- iii) a citizen in good standing in both his/her civil and political rights

Article 40

The President of the Federal Republic of Iraq shall take the following oath of office in the presence of a joint session of the Federal Parliament:

“I swear, by God Almighty, to respect the Constitution of the Federal Republic of Iraq, to defend the independence and sovereignty of the

country, and to work diligently for the realization of the interests of the people, freedom and honor.”

Article 41

In the case of the resignation, demise, or inability to perform the duties of the President of the Republic of Iraq, his/her deputy shall take over the duties of the presidency for the remainder of the term of office.

Article 42

The President of the Federal Republic of Iraq represents the federal state abroad and concludes treaties in its names and acknowledges and receives foreign diplomats and missions.

Article 43

The President of the Federal Republic of Iraq shall assume the following duties and responsibilities:

- i) Protecting the independence and territorial integrity, and the internal and external security of the Federal Republic of Iraq
- ii) Appointing the Vice President of the Federal Republic of Iraq after having been nominated by the Assembly of the Regions
- iii) Announcing the federal cabinet after it has won a vote of confidence from the National Assembly
- iv) Calling general elections for the National Assembly
- v) Proclaiming federal legislation
- vi) Appointing Iraqi diplomats and representatives to Arab and other foreign countries and to international organizations and conferences
- vii) Instructing the Armed Forces and Internal Security in accordance with national interests
- viii) Declaring states of emergency, which shall be regulated by law
- ix) Conferring military ranks on members of the Armed Forces and the Internal Security as well as dismissing or retiring members from those services
- x) Conferring medals or awards

xi) Appointing individuals of special ranks such as those in the judiciary, the chief prosecutor, general prosecutor and the deputies in the federal state

Article 44

The President of the Republic of Iraq shall be indicted by a 2/3 majority of the Federal Parliament and shall be put on trial in a joint session of the High Court and the Assembly of the Regions presided over by the President of the High Court and any sentence passed must be by a 2/3 majority.

Article 45

The President of the Republic of Iraq shall remain in office carrying out his/her duties during the period of his/her indictment and trial.

Section 2 - Council of Ministers (Cabinet)

Article 46

The Council of Ministers constitutes the highest executive authority in the Federal Republic of Iraq and practises its responsibilities under the supervision and guidance of the President of the Republic of Iraq.

Article 47

The Council of Ministers shall be made up the prime minister, his/her deputies and a number of ministers who shall represent both regions in proportion to the regions populations.

Article 48

Upon the election of the President of the Republic of Iraq from one region, the Prime Minister shall be appointed from the other.

Article 49

- i) The Prime Minister designate shall submit the names of his/her cabinet to the President of the Republic of Iraq for his/her approval.
- ii) Following approval by the President, the Prime Minister designate shall introduce his/her cabinet to both the National Assembly and the Assembly of the Regions for a vote of confidence following which the President shall issue the necessary decree for the formation of the cabinet.

Article 50

The Council of Ministers shall assume the following responsibilities:

- i) Carrying out federal legislation
- ii) Protecting the safety and security of the land
- iii) Preparing federal draft legislation and submitting it to the Federal Parliament
- iv) Preparing the federal budget
- v) Supervising the federal ministries, institutions and public agencies
- vi) Issuing federal orders and regulations
- vii) Concluding loans, grants and supervising financial affairs
- viii) Appointing, promoting, and retiring federal civil servants

Article 51

The President of the Republic of Iraq may chair meetings of the Council of Ministers and request special performance reports from the Council and the Ministries.

Article 52

- i) The Federal Parliament may withdraw confidence from
 - a. The cabinet and it shall be considered no longer in office from the date of the withdrawal of confidence;
 - b. A minister and he/she shall be considered no longer in office from the date of the withdrawal of confidence.
- ii) The cabinet shall continue in office until a new cabinet is formed.

CHAPTER 4 - HIGH COURT (CONSTITUTIONAL COURT)

Article 53

The High Court shall consist of a number of members, persons of high integrity, qualifications, and experience, chosen from among the judiciary and law professors teaching at universities who have had at least 20 years of practice or teaching and each region shall designate half of the members of the Court.

Article 54

The President of the High Court shall be on a rotational basis. Each member shall assume the presidency for a period of one year at a time.

Article 55

Members of the High Court cannot be dismissed except in the case of indictment due to lack of integrity. Their indictment, trial and sentencing shall be carried out by the Assembly of the Regions.

Article 56

Members of the High Court shall not be retired due to age unless there is a personal request to that effect.

Article 57

The High Court shall look into and adjudicate the following:

- i) Interpretation of the Constitution with regard to conflicts that arise in relation to the rights and duties of the federal institutions or conflicts within the various authorities;
- ii) Conflicts arising out of the implementation of the Constitution between the federal and regional levels;
- iii) Conflicts that arise out of the implementation of the Constitution or those that may occur among the regions.

Article 58

The High Court shall issue its decisions on a simple majority basis and, in the case of an even split, the President of the High Court shall decide.

CHAPTER 5 - RESPONSIBILITIES OF THE FEDERAL GOVERNMENT

Article 59

The federal government shall assume the following responsibilities:

- i) Declaring war and concluding peace
- ii) Setting out foreign policy and diplomatic and consular representations
- iii) Concluding international treaties and agreements
- iv) Defending the country by utilizing all branches of the Armed Forces
- v) Issuing currency and planning monetary and banking policy
- vi) Defining standards for weights and measures and designating salary policy
- vii) Drafting general economic planning aimed at development in the regions in the areas of industry, commerce and agriculture
- viii) Ordering federal general audits
- ix) Overseeing federal security affairs
- x) Citizenship, residency and foreigners' affairs
- xi) Oil resources
- xii) Nuclear power

PART IV - REGIONAL CONSTITUTIONAL STRUCTURE

Article 60

Each region shall draw up its own constitution taking into consideration the following:

- i) Shall adopt the republican system
- ii) shall not contradict the terms of this Constitution

Article 61

Citizens of the region shall, through direct, general and secret ballot, elect their representatives to the Regional Assembly, the “Regional Parliament,” and the electoral process and ratio of representation shall be regulated by a law.

Article 62

The responsibilities of the Regional Assembly and its relation with other authorities shall be set out in the Regional Constitution.

Article 63

The regional executive authority shall be made up of:

- i) Regional President
- ii) Regional Council of Ministers

Article 64

Citizens of the region shall elect a President, to be called the Regional President, and he/she shall be the head of the executive authority and he/she will also represent the President of the Federal Republic of Iraq within the region on official state occasions.

Article 65:

Rules and procedures for the election of the Regional President, his/her term of office, responsibilities, relationship to the Regional Council of Ministers, and to other public authorities in the region shall be designated in the Regional Constitution.

Article 66

The Regional Council of Ministers consists of the prime minister, his/her deputies and a number of ministers and the Council shall carry out its

regional executive responsibilities under the supervision and guidance of the Regional President.

Article 67

The rules and procedures to form the cabinet and its responsibilities and its relation to the Regional President shall be designated in the Regional Constitution.

Article 68

The independent judicial powers in the region that will consist of all levels of courts including the Regional Cassation Court which shall look into civil and criminal and other cases and this shall be regulated by a regional law.

Article 69

The region shall assume various responsibilities except those delegated to the federal government in accordance with this Constitution and in particular in Chapter 4 of Part III.

Article 70

Conflicts that may arise between the federal and regional authorities among the regional authorities in relation to the responsibilities designated in this Constitution shall be referred to the High Court, "Constitutional Court" for adjudication.

PART V - FISCAL RESPONSIBILITIES

Article 71

Taxes shall not be levied, collected or altered unless by a federal or regional law.

Article 72

The federal authorities alone may levy and collect export and import, “custom,” duties.

Article 73

The Regional authorities shall levy the following taxes:

- i) income
- ii) inheritance
- iii) agricultural land and property taxes
- iv) property registration fees
- v) court fees
- vi) licence fees
- vii) water and electricity charges

Article 74

Each region shall have a share of the revenues from the oil wealth, grants, and foreign aid and loans in proportion to their population in relation to that of the total population of the country.

PART VI - MISCELLANEOUS

Article 75

No changes to the borders of the two regions can be made except with the approval of the Assembly of the region concerned.

Article 76

i) Citizens of the Kurdistan Region shall be appointed to the various positions in the federal ministries and other bodies both inside and outside the country and in particular in the deputy minister, director general, or other high level positions according to the ratio of the regional population to the total population of the Federal Republic of Iraq.

- ii) The above-mentioned principle shall apply to the following:
- a. Appointment of ambassadors, members of diplomatic and consular corps and federal representatives in international and regional organizations and bodies
 - b. Appointment to the Armed Forces and Federal Security
 - c. Participation in official Iraqi delegations and negotiations for the purpose of concluding international treaties
 - d. Acceptance of students for fellowships and scholarships as well as study abroad
 - e. Admission of students to academies, military and police colleges, and training programs both inside and outside the country

Article 77

The peshmerga forces and their various divisions shall constitute a part of the Armed Forces of the Federal Republic of Iraq.

Article 78

Redress the effects of Arabization and deportations that took place in some parts of the Kurdistan Region. The deported Kurdish citizens from areas of the Province of Kirkuk and from Makhmoor, Sinjar, Zimar, Sheikhan, Khaniqin, Mandali, and others should return to their previous homes in those areas. As well, the Arab citizens who were brought by the authorities into those areas at any time since 1957 should return to their original homes.

Article 79

This Constitution shall be the highest law of the land and all other laws issued in contradiction to it shall be considered null and void.

Article 80

The terms of this Constitution cannot be amended unless through a 2/3 majority vote by members of both the Federal and Regional Assemblies.

Article 81

The Federal Republic of Iraq shall be accountable to the United Nations organization for guaranteeing the rights, the boundaries, and powers of the two regions designated in this Constitution and the Regional Constitutions.

Article 82

The structure of the Federal Republic of Iraq and its political system as laid out in this Constitution cannot be changed unless through a decision by the legislative authorities in the Federal and Regional levels. Action contrary to this shall afford the people of the Kurdistan Region the right of self-determination.

B Übergangsverfassung (Jänner 2004)

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<http://www.geocities.com/nathanbrown1/taldraftjan2004.html>

CHAPTER I — GENERAL PROVISIONS

Article 1

This law shall be called the “Law of Administering the Iraqi State for the Transitional Period.” Where the expression “this law” appears in this legislation, it shall mean the “Law of Administering the Iraqi State for the Transitional Period.”

Article 2

This law shall be effective in all provinces of Iraq and it may not be amended in the transitional period.

It is odd for amendments to be barred, and it is possible that this could lead to some complications. The first Iraqi constitution of 1925, for instance, required amendment shortly after promulgation because of some oversights in the drafting process. The ban would have the salutary effect of directing constitutional debates toward the permanent constitution.

Article 3

Iraq is an independent state possessing full sovereignty. Its capital is Baghdad. Its system is democratic, parliamentary, pluralist, and federal. The territory of Kurdistan shall remain in its current status in the transitional period. The central authority shall continue in Baghdad, exercising the following competencies:

1. Setting foreign policy and diplomatic representation
2. Defense affairs, including guarding the borders
3. Declaring war and concluding peace
4. Setting monetary policy, issuing currency, and establishing development policy
5. Establishing standards, weights, and measures and setting general policy for wages
6. Establishing the public budget for the state
7. Controlling citizenship affairs.

Article 4

Islam is the official religion and shall be considered a basic source among the sources of legislation. This law shall respect the Islamic identity of the majority of the Iraqi people and shall completely guarantee freedom, practice, and rites of the other religions.

This article will undoubtedly attract great attention because of the provisions for Islam and religious freedom. It is not clear, however, that it

will have much effect on the Iraqi constitutional and legal order. Designating Islam the official religion has tremendous symbolic importance and is standard in Arab constitutional documents, but the practical meaning of such a designation is probably quite limited.

The rest of the article is characterized by more innovative wording. It is common for Arab constitutions to declare “the principles of the Islamic shari‘a” to be “a” or “the” principle source of legislation. Even when Egypt adopted the stronger wording — making shari‘a the principle source — the legal effect has been limited. First, the provision sidesteps the question of who has authority to issue authoritative interpretations of Islamic law. The effect is to leave it to normal legislative organs (chiefly the parliament, but also the executive and the judiciary). Second, the provision has been interpreted to be prospective rather than retrospective in nature; that is, it requires that future legislative acts draw on the shari‘a but those adopted before the promulgation of the constitution are still valid and are to be brought into compliance with the shari‘a through the normal legislative process. As a result, the language in the Egyptian case has had limited effect.

This article in the Iraqi law is weaker than the Egyptian provision. It does not mention the shari‘a or its principles but only Islam. More significantly, this is only “a” source. Absent any structure that has the authority to issue authoritative interpretations of Islam, the article by itself will have little impact on the Iraqi legal order. It may, however, give significant symbolic support to those who call for a greater measure of Islamic legal influence, however.

In most current Arab legal systems, Islamic law leaves the realm of the symbolic and enters the realm of the practical in matters of personal status. All Arab countries draw from Islamic law in matters of marriage, divorce, and inheritance, though they do so in very different ways. Nothing in this document directly mentions personal status law, but the end of the Coalition Provisional Authority may have an important indirect effect: in January 2004, the Governing Council reportedly voted to repeal the relatively egalitarian Ba‘thist era law of personal status. Such a repeal has no effect so long as the Coalition Provisional Authority does

not endorse it. But restoration of Iraqi sovereignty might cause the measure to take effect.

The religious freedom provisions of Article 4 are placed on a communal rather than individual basis.

Article 5

The flag and emblem of the state shall be defined by law.

Article 6

The Arabic language shall be the official language in the country, while the current special situation in the territory of Kurdistan shall be respected.

In 1970, the Iraqi government negotiated an agreement with Kurdish leaders for regional autonomy. Talks on implementation of that agreement broke down, however. The Iraqi government did implement the agreement according to its interpretation, but it did so in a way that Kurdish leaders found extremely lacking; it also put down Kurdish challenges with tremendous brutality. In 1991, international protection for the Kurdish areas allowed leaders to implement their understanding of the agreement. The result has been effective autonomy for Kurdish areas. The status (and demarcation) of Kurdish areas in post-Ba’thist Iraq has been sharply contested. Among the issues debated has been the degree of autonomy and the extent to which Kurdish areas are to be treated as a unit (rather than as separate provinces). In general, this document allows for a significant level of federalism, but only on a provincial basis. Articles 3 and 6 depart from that pattern, however, by treating Kurdistan as a unit. Article 6 does so for language policy; Article 3 provides for the continuation of current arrangements (which allow for very significant autonomy) in the transitional period.

Chapter II—Basic Principles

Article 7

The people are the source of authorities.

The word “authorities” here refers not simply to political authority in the abstract but also to the three branches of government: executive, legislative, and judicial.

The al-Qabas draft skips from article 7 to article 9.

Article 9

Iraqis are equal in rights and duties. With respect to sex, nationality, sect, and race, they are equal before the law.

The provision for gender equality is very generous. Indeed, it is far more generous than in the United States (where an equal rights amendment was not ratified). However, other Arab countries with similar provisions (such as Kuwait) have not always implemented them fully. Kuwait bars women from voting in a manner that almost certainly violates its constitution. Yet it took over three decades for a court case to be raised challenging the ban, and the Kuwaiti courts have thus far escaped from ruling on the matter because of technical deficiencies in the cases that have been raised.

Article 10

Public and private freedoms are sacrosanct. The people have the right to freely express [themselves], organize, meet, move, and publish, and they have the right to demonstrate and strike in accordance with the provisions of law.

The rights to demonstrate and strike would seem to depend on necessary legislation (and the legislation in effect from the Ba‘thist period would likely be extremely restrictive). The other rights seem to be absolute, though (in contrast to article 11) they are offered to “the people” as opposed to individuals. It is not clear that this distinction would have any practical meaning.

Article 11

The individual has the right to education, well-being, work, and security and the right to a fair public trial.

Article 12

The various nationalities are fraternal in service to the homeland, with the framework of a federal, united Iraq.

Article 13

The judiciary is independent from the legislative and executive branches in accordance with the principle of separation of powers.

The Coalition Provisional Authority has already issued a law establishing a fairly independent Council of Judges.

Article 14

Private property shall be preserved. It shall not be taken from its owner except for public benefit in return for just and swift compensation. This appropriation shall be regulated by law. An Iraqi citizen has ownership rights in all areas of Iraq.

The last sentence grants rights to Iraqi citizens but not foreigners; in most Arab countries, ownership of land by foreigners is a sensitive issue. The article clearly establishes a principle, but gives little guidance on how to settle property claims that have already arisen in post-Ba`thist Iraq. For instance, in areas in the north, populations moved in the wake of the establishment of Kurdish autonomy in 1991. Additionally, Palestinian refugees — who are generally not citizens — sometimes were awarded seized property.

Article 15

The first task of the army is to preserve the integrity of the lands of the country. It may not intervene in politics.

Iraqi military intervention has a long history — from 1936 until 1941 it was the main arbiter of political power. From 1958 until 1979 every Iraqi president came from the military.

Article 16

It shall be forbidden to carry weapons for self-defense except by permit issued according to law.

The Coalition Provisional Authority has already issued a firearms law.

Article 17

There shall be no tax, crime, or punishment except by law.

Article 18

- a. An Iraqi national may not be deprived of Iraqi citizenship.
- b. Political refugees may not be surrendered.
- c. It is forbidden to torture someone accused of a violation, misdemeanor, or felony in any manner of physical or psychological torture.

By including psychological as well as physical torture, the Iraqi constitution closes a potentially important loophole. It still leaves two others. First, the Egyptian constitution bars the use of evidence obtained under torture; this document has no such provision. Second, torture is not barred for those not accused of any crime.

Separate article.

In accordance with the agreement signed 15 November 2003 between the president of the Governing Council and the administrator of the Coalition Provisional Authority, a security agreement between the Governing Council and the said Authority shall be concluded, provided that it is signed by both of them before the end of March 2004. This security agreement shall be presented to the Transitional National Assembly for approval in the month of June 2004.

It is not clear why this is not a numbered article. But while the article lacks a number, it does not want importance.

First, it clearly is designed to ensure that any security agreement between the Coalition Provisional Authority and the current Governing

Council binds the sovereign Iraqi government. It therefore answers an American concern that the restoration of Iraqi sovereignty at the end of June 2004 not terminate the American security and military presence.

Second, it introduces a ratification procedure for a security agreement, and brings the Transitional National Authority — a body not yet created—into the process.

Third, it suggests the drafters are students of history. A virtually identical procedure was used to conclude an Anglo-Iraqi treaty in 1924: an Iraqi constituent assembly was elected to issue a constitution; the British also insisted that the body ratify a treaty. That step led some Shi‘i leaders to boycott elections to the assembly. The assembly finally did approve the treaty but did so only after a British ultimatum.

Anyone aware of this history, however, would also note that the British success in predicating sovereignty on negotiation of security arrangements was successful in the short term only in a way that undermined the longterm viability of those arrangements and the governments that acquiesced to them. What was reluctantly accepted in Iraq and elsewhere the 1920s became unpalatable in later decades; regimes that agreed to security arrangements often found their legitimacy undermined.

CHAPTER III — THE TRANSITIONAL LEGISLATIVE AUTHORITY

Article 19

During the transitional phase, there shall be formed a transitional legislative authority for the state of Iraq, called the “Transitional National Assembly.” Among its chief tasks shall be legislation of laws and oversight over the work of the executive branch.

This chapter is devoted largely to the formation of the National Assembly; very little is devoted to its duties and authorities.

Article 20

The Transitional National Assembly shall be composed of members representing all the provinces of Iraq, so that for every 100,000 inhabitants, there will be one member, according to the census.

Article 21

- a. A committee will be formed immediately called the “Organizing Committee” in each province of Iraq, consisting of fifteen members. Five of them shall be appointed by the Governing Council; five of them shall be appointed by the provincial council; and five of them shall be appointed by the local councils of the five largest cities in the province with one member from each of these councils.
- b. Decisions in the Committee shall be taken by a majority of eleven votes.
- c. Members of the Committee may not be candidates for the Transitional National Council.

Article 22

The Organizing Committee shall receive, in times that it sets and announces, candidacies for the Transitional National Assembly from political parties and civil society institutions such as professional and civil unions and syndicates, university faculties, religious and tribal associations, and independents as well. Members of the Governing Council similarly have the right of candidacy for the Transitional National Assembly.

Article 23

A candidate for the Transitional National Assembly must meet the following conditions:

1. Be not less than thirty years of age.
2. Not belong to the dissolved Ba‘th Party or be affiliated with the agencies of repression or have contributed to the oppression of citizens.
3. Not have illegitimately been enriched at the expense of the people and public funds.
4. Not have been convicted of a crime of moral turpitude and be known for good conduct.
5. Have a degree.

Article 24

The Organizing Committee, in cooperation with the Coalition Provisional Authority, shall undertake to examine if the candidates have met the conditions specified in article 23 for the purpose of certifying their qualification for nomination. Then the Committee shall be open for appeals according to the procedure it has prepared for that purpose.

Article 25

The work of the Organizing Committee shall be conducted under Iraqi judicial supervision and the monitoring of representatives of the United Nations if feasible.

In several ways, this article is an innovation in constitutional procedures in the Arab world. First, many documents simply do not mention any oversight body, generally leaving control over elections to the Ministry of Interior. Second, when some judicial supervision is allowed (as in Egypt), it is generally restricted to balloting itself. This article extends it to the entire electoral process. Third, international monitoring is rare (though not unknown) in the region, and there has never been any constitutional provision mentioning it.

However, it must be added that the Organizing Committee is not conducting an election but overseeing "electoral assemblies," the term chosen in article 27 for caucuses.

Article 26

The Organizing Committee shall operate to make the number of nominees within the bounds of a reasonable number according to the specified standards the Committee has established for this purpose, including meeting the conditions for nomination expressed in article 23 and likewise realizing a balance among various groups.

This clause seems to grant the Organizing Committee extremely vague authority to discourage candidacies (and perhaps encourage them) with an eye to an undefined appropriate number. Similarly, the sort of balance among groups that is desired is completely undefined.

Article 27

The Organizing Committee shall invite the eligible candidates to an electoral assembly to be held in the headquarters of the province on a date that it sets and announces. There it shall select representatives of the province to the Transitional National Assembly, doing so under the supervision of the Committee itself and whoever assists it from the Iraqi men of the judiciary, representatives of the Coalition Provisional Authority, and monitors from the United Nations. The number of these representatives shall be in accordance with article 20.

The Coalition Provisional Authority plays a direct role in the process (according to articles 24 and 27) in a way that could provoke some criticism in Iraq and perhaps undermine the legitimacy of the outcome in some quarters.

Article 28

The Transitional National Assembly formed from the representatives selected in accordance with article 27 shall assemble and its first session shall be held no later than 31 May 2004.

Article 29

This Transitional National Assembly shall establish its standing orders. Its sessions shall be public unless necessity dictates otherwise in accordance with what is stipulated in its standing orders.

Article 30

A member of the Transitional National Assembly shall not be questioned on opinions expressed in its sessions during his performance of official duties, nor shall it be allowed to prosecute him judicially or arrest him when the Assembly is in session without its permission except in flagrante delicto nor is it permitted when [the Assembly] is not in session without permission from its speaker except in flagrante delicto.

CHAPTER IV — THE TRANSITIONAL EXECUTIVE AUTHORITY

Article 31

The executive authority is composed of the president of the state and the cabinet. It, along with the Transitional National Assembly, shall complete the establishment of a temporary Iraqi government with full sovereignty and qualified for international recognition at a time no later than 30 June 2004.

While there are provisions for the cabinet below, there are no provisions in this draft for the selection of a president, suggesting that the drafting process is incomplete.

Article 32

The transfer of complete sovereignty and authority to the Iraqis in the time defined in article 31 shall dissolve the Coalition Provisional Authority and end the work of the Governing Council.

Article 33

The Presidency of the state shall appoint a prime minister as well as the ministers at the suggestion of the prime minister. The government must obtain the confidence of the Transitional National Assembly before assuming its duties.

The document refers generally to the Presidency rather than the President, suggesting the possibility of — but not requiring — a multimember body.

The document seems to use the term “government” and “cabinet” [literally, council of ministers] interchangeably. This is common not only in many parliamentary systems but also generally in the Arab world.

Article 34

The government (its chairman [i.e., the prime minister] and members) is responsible to the Transitional National Assembly. The Assembly may withdraw confidence from it or from one of its members.

Article 35

The responsibility of the government is a collective responsibility. This article seems to be in tension with the possibility of removing confidence from an individual minister stipulated in article 34.

Article 36

The government shall establish an internal regulation for its work and undertake the issuing of the necessary regulations to implement effective laws. It shall raise draft laws to the Transitional National Assembly so that they may be legislated after the agreement of the Presidency. The appointment of civil servants in the special grades and the appointment of deputies for the ministries and ambassadors shall be by nomination from the relevant ministry, the agreement of the cabinet, and the approval of the Presidency. All decisions of the cabinet shall be connected to the agreement of the presidency.

This article leaves some critical matters ambiguous. First, it contains the only detailed provisions for legislation, but it does not make clear whether all legislation must be introduced by the government. Article 19 assigns legislative authority to the Transitional National Assembly, suggesting — but hardly requiring — that the Assembly has the authority to initiate legislation on its own. If the Assembly does have such an authority, there is no provision that its laws can only be promulgated after presidential approval.

Second, the final sentence seems to indicate that the cabinet can take no action without presidential approval, dramatically increasing the importance of the presidency. But I am aware of no country that has experimented with such a provision. Without it, the draft leans very heavily towards a parliamentary rather than a presidential system (at least on paper — the precise balance of power among parliament, cabinet, and head of state often depends not only on the constitutional text but also on other factors such as the party system and is thus very difficult to predict).

CHAPTER V — THE JUDICIAL BRANCH

Article 37

The judiciary is independent, and there is no authority over it except the law.

Article 38

The judicial apparatus shall be organized according to law.

Article 39

No judge shall be dismissed except by a decision from the cabinet and the agreement of the presidency of the state, acting on a recommendation from the council of the judiciary.

Most Arab states have a judicial council and the Coalition Provisional Authority has issued a law on the subject. Oddly, this passing mention in article 39 is the only constitutional mention of the body.

Article 40

A court called “The Supreme Court” shall be formed by virtue of a law issued for that purpose to observe that laws and regulations do not violate what is provided for by this Law [i.e. the interim constitution].

CHAPTER VI — THE PERMANENT STAGE

Article 41

The Transitional National Assembly shall issue a law for the press and for meetings and other laws.

Article 42

Elections shall be conducted according to the law of elections that the Provisional National Assembly shall issue. These elections shall have

the aim of forming a constitutional conference, charged with drafting the permanent constitution. This shall be completed by a date no later than 15 March 2004. This draft must include the provisions and basic principles included in the first and second chapter of this Law in addition to the following:

1. Establishment of a democratic, pluralist federal system including a unified Iraq and organizing the relationship between the territory of Kurdistan and the central government
2. Guaranteeing basic private and public freedoms
3. Protecting basic human rights
4. Confirmation of the principle of separation among the three powers: legislative, executive, and judicial
5. Defining the decentralized competencies of the provinces not included in the federation
6. Guaranteeing the rights of women to political participation and other rights in a manner that is equivalent to the rights of men in all of society

Article 43

The draft of the permanent constitution shall be published with the aim of promoting general discussion among the people. Its final text shall than be presented to a popular referendum for approval.

Article 44

After the permanent constitution is promulgated, a general election shall be conducted immediately for the legislative body in accordance with what that constitution stipulated, and that shall be on a date no later than 31 December 2004.

Article 45

This elected legislative body shall appoint by the abovementioned date the new Iraqi government that shall assume authority.

Article 46

At that time, the effectiveness of this law for the transitional period shall end.

C Irakische Übergangsverfassung (8. März 2004)

<http://www.cpa-iraq.org/government/TAL.html>

LAW OF ADMINISTRATION FOR THE STATE OF IRAQ FOR THE TRANSITIONAL PERIOD

8. March 2004

PREAMBLE

The people of Iraq, striving to reclaim their freedom, which was usurped by the previous tyrannical regime, rejecting violence and coercion in all their forms, and particularly when used as instruments of governance, have determined that they shall hereafter remain a free people governed under the rule of law.

These people, affirming today their respect for international law, especially having been amongst the founders of the United Nations, working to reclaim their legitimate place among nations, have endeavored at the same time to preserve the unity of their homeland in a spirit of fraternity and solidarity in order to draw the features of the future new Iraq, and to establish the mechanisms aiming, amongst other aims, to erase the effects of racist and sectarian policies and practices.

This Law is now established to govern the affairs of Iraq during the transitional period until a duly elected government, operating under a permanent and legitimate constitution achieving full democracy, shall come into being.

CHAPTER ONE – FUNDAMENTAL PRINCIPLES

Article 1

- (A) This Law shall be called the “Law of Administration for the State of Iraq for the Transitional Period,” and the phrase “this Law”

wherever it appears in this legislation shall mean the “Law of Administration for the State of Iraq for the Transitional Period.”

- (B) Gender-specific language shall apply equally to male and female.
- (C) The Preamble to this Law is an integral part of this Law.

Article 2

- (A) The term “transitional period” shall refer to the period beginning on 30 June 2004 and lasting until the formation of an elected Iraqi government pursuant to a permanent constitution as set forth in this Law, which in any case shall be no later than 31 December 2005, unless the provisions of Article 61 are applied.
- (B) The transitional period shall consist of two phases.
 - (1) The first phase shall begin with the formation of a fully sovereign Iraqi Interim Government that takes power on 30 June 2004. This government shall be constituted in accordance with a process of extensive deliberations and consultations with cross-sections of the Iraqi people conducted by the Governing Council and the Coalition Provisional Authority and possibly in consultation with the United Nations. This government shall exercise authority in accordance with this Law, including the fundamental principles and rights specified herein, and with an annex that shall be agreed upon and issued before the beginning of the transitional period and that shall be an integral part of this Law.
 - (2) The second phase shall begin after the formation of the Iraqi Transitional Government, which will take place after elections for the National Assembly have been held as stipulated in this Law, provided that, if possible, these elections are not delayed beyond 31 December 2004, and, in any event, beyond 31 January 2005. This second phase shall end upon the formation of an Iraqi government pursuant to a permanent constitution.

Article 3

- (A) This Law is the Supreme Law of the land and shall be binding in all parts of Iraq without exception. No amendment to this Law may be made except by a three-fourths majority of the members of the National Assembly and the unanimous approval of the Presidency Council. Likewise, no amendment may be made that could abridge in any way the rights of the Iraqi people cited in Chapter Two; extend the transitional period beyond the time-frame cited in this Law; delay the holding of elections to a new assembly; reduce the powers of the regions or governorates; or affect Islam, or any other religions or sects and their rites.
- (B) Any legal provision that conflicts with this Law is null and void.
- (C) This Law shall cease to have effect upon the formation of an elected government pursuant to a permanent constitution.

Article 4

The system of government in Iraq shall be republican, federal, democratic, and pluralistic, and powers shall be shared between the federal government and the regional governments, governorates, municipalities, and local administrations. The federal system shall be based upon geographic and historical realities and the separation of powers, and not upon origin, race, ethnicity, nationality, or confession.

Article 5

The Iraqi Armed Forces shall be subject to the civilian control of the Iraqi Transitional Government, in accordance with the contents of Chapters Three and Five of this Law.

Article 6

The Iraqi Transitional Government shall take effective steps to end the vestiges of the oppressive acts of the previous regime arising from forced displacement, deprivation of citizenship, expropriation of finan-

cial assets and property, and dismissal from government employment for political, racial, or sectarian reasons.

Article 7

- A) Islam is the official religion of the State and is to be considered a source of legislation. No law that contradicts the universally agreed tenets of Islam, the principles of democracy, or the rights cited in Chapter Two of this Law may be enacted during the transitional period. This Law respects the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights of all individuals to freedom of religious belief and practice.
- (B) Iraq is a country of many nationalities, and the Arab people in Iraq are an inseparable part of the Arab nation.

Article 8

The flag, anthem, and emblem of the State shall be fixed by law.

Article 9

The Arabic language and the Kurdish language are the two official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turcoman, Syriac, or Armenian, in government educational institutions in accordance with educational guidelines, or in any other language in private educational institutions, shall be guaranteed. The scope of the term “official language” and the means of applying the provisions of this Article shall be defined by law and shall include:

- (1) Publication of the official gazette, in the two languages;
- (2) Speech and expression in official settings, such as the National Assembly, the Council of Ministers, courts, and official conferences, in either of the two languages;

- (3) Recognition and publication of official documents and correspondence in the two languages;
- (4) Opening schools that teach in the two languages, in accordance with educational guidelines;
- (5) Use of both languages in any other settings enjoined by the principle of equality (such as bank notes, passports, and stamps);
- (6) Use of both languages in the federal institutions and agencies in the Kurdistan region.

CHAPTER TWO – FUNDAMENTAL RIGHTS

Article 10

As an expression of the free will and sovereignty of the Iraqi people, their representatives shall form the governmental structures of the State of Iraq. The Iraqi Transitional Government and the governments of the regions, governorates, municipalities, and local administrations shall respect the rights of the Iraqi people, including those rights cited in this Chapter.

Article 11

- (A) Anyone who carries Iraqi nationality shall be deemed an Iraqi citizen. His citizenship shall grant him all the rights and duties stipulated in this Law and shall be the basis of his relation to the homeland and the State.
- (B) No Iraqi may have his Iraqi citizenship withdrawn or be exiled unless he is a naturalized citizen who, in his application for citizenship, as established in a court of law, made material falsifications on the basis of which citizenship was granted.
- (C) Each Iraqi shall have the right to carry more than one citizenship. Any Iraqi whose citizenship was withdrawn because he acquired another citizenship shall be deemed an Iraqi.

- (D) Any Iraqi whose Iraqi citizenship was withdrawn for political, religious, racial, or sectarian reasons has the right to reclaim his Iraqi citizenship.
- (E) Decision Number 666 (1980) of the dissolved Revolutionary Command Council is annulled, and anyone whose citizenship was withdrawn on the basis of this decree shall be deemed an Iraqi.
- (F) The National Assembly must issue laws pertaining to citizenship and naturalization consistent with the provisions of this Law.
- (G) The Courts shall examine all disputes arising from the application of the provisions relating to citizenship.

Article 12

All Iraqis are equal in their rights without regard to gender, sect, opinion, belief, nationality, religion, or origin, and they are equal before the law. Discrimination against an Iraqi citizen on the basis of his gender, nationality, religion, or origin is prohibited. Everyone has the right to life, liberty, and the security of his person. No one may be deprived of his life or liberty, except in accordance with legal procedures. All are equal before the courts.

Article 13

- (A) Public and private freedoms shall be protected.
- (B) The right of free expression shall be protected.
- (C) The right of free peaceable assembly and the right to join associations freely, as well as the right to form and join unions and political parties freely, in accordance with the law, shall be guaranteed.
- (D) Each Iraqi has the right of free movement in all parts of Iraq and the right to travel abroad and return freely.

- (E) Each Iraqi has the right to demonstrate and strike peaceably in accordance with the law.
- (F) Each Iraqi has the right to freedom of thought, conscience, and religious belief and practice. Coercion in such matters shall be prohibited.
- (G) Slavery, the slave trade, forced labor, and involuntary servitude with or without pay, shall be forbidden.
- (H) Each Iraqi has the right to privacy.

Article 14

The individual has the right to security, education, health care, and social security. The Iraqi State and its governmental units, including the federal government, the regions, governorates, municipalities, and local administrations, within the limits of their resources and with due regard to other vital needs, shall strive to provide prosperity and employment opportunities to the people.

Article 15

- (A) No civil law shall have retroactive effect unless the law so stipulates. There shall be neither a crime, nor punishment, except by law in effect at the time the crime is committed.
- (B) Police, investigators, or other governmental authorities may not violate the sanctity of private residences, whether these authorities belong to the federal or regional governments, governorates, municipalities, or local administrations, unless a judge or investigating magistrate has issued a search warrant in accordance with applicable law on the basis of information provided by a sworn individual who knew that bearing false witness would render him liable to punishment. Extreme exigent circumstances, as determined by a court of competent jurisdiction, may justify a warrantless search, but such exigencies shall be narrowly construed. In the event that a warrantless search is carried out in the absence

of an extreme exigent circumstance, the evidence so seized, and any other evidence found derivatively from such search, shall be inadmissible in connection with a criminal charge, unless the court determines that the person who carried out the warrantless search believed reasonably and in good faith that the search was in accordance with the law.

- (C) No one may be unlawfully arrested or detained, and no one may be detained by reason of political or religious beliefs.
- (D) All persons shall be guaranteed the right to a fair and public hearing by an independent and impartial tribunal, regardless of whether the proceeding is civil or criminal. Notice of the proceeding and its legal basis must be provided to the accused without delay.
- (E) The accused is innocent until proven guilty pursuant to law, and he likewise has the right to engage independent and competent counsel, to remain silent in response to questions addressed to him with no compulsion to testify for any reason, to participate in preparing his defense, and to summon and examine witnesses or to ask the judge to do so. At the time a person is arrested, he must be notified of these rights.
- (F) The right to a fair, speedy, and open trial shall be guaranteed.
- (G) Every person deprived of his liberty by arrest or detention shall have the right of recourse to a court to determine the legality of his arrest or detention without delay and to order his release if this occurred in an illegal manner.
- (H) After being found innocent of a charge, an accused may not be tried once again on the same charge.
- (I) Civilians may not be tried before a military tribunal. Special or exceptional courts may not be established.

- (J) Torture in all its forms, physical or mental, shall be prohibited under all circumstances, as shall be cruel, inhuman, or degrading treatment. No confession made under compulsion, torture, or threat thereof shall be relied upon or admitted into evidence for any reason in any proceeding, whether criminal or otherwise.

Article 16

- (A) Public property is sacrosanct, and its protection is the duty of every citizen.
- (B) The right to private property shall be protected, and no one may be prevented from disposing of his property except within the limits of law. No one shall be deprived of his property except by eminent domain, in circumstances and in the manner set forth in law, and on condition that he is paid just and timely compensation.
- (C) Each Iraqi citizen shall have the full and unfettered right to own real property in all parts of Iraq without restriction.

Article 17

It shall not be permitted to possess, bear, buy, or sell arms except on licensure issued in accordance with the law.

Article 18

There shall be no taxation or fee except by law.

Article 19

No political refugee who has been granted asylum pursuant to applicable law may be surrendered or returned forcibly to the country from which he fled.

Article 20

- (A) Every Iraqi who fulfills the conditions stipulated in the electoral law has the right to stand for election and cast his ballot secretly in free, open, fair, competitive, and periodic elections.
- (B) No Iraqi may be discriminated against for purposes of voting in elections on the basis of gender, religion, sect, race, belief, ethnic origin, language, wealth, or literacy.

Article 21

Neither the Iraqi Transitional Government nor the governments and administrations of the regions, governorates, and municipalities, nor local administrations may interfere with the right of the Iraqi people to develop the institutions of civil society, whether in cooperation with international civil society organizations or otherwise.

Article 22

If, in the course of his work, an official of any government office, whether in the federal government, the regional governments, the governorate and municipal administrations, or the local administrations, deprives an individual or a group of the rights guaranteed by this law or any other Iraqi laws in force, this individual or group shall have the right to maintain a cause of action against that employee to seek compensation for the damages caused by such deprivation, to vindicate his rights, and to seek any other legal measure. If the court decides that the official had acted with a sufficient degree of good faith and in the belief that his actions were consistent with the law, then he is not required to pay compensation.

Article 23

The enumeration of the foregoing rights must not be interpreted to mean that they are the only rights enjoyed by the Iraqi people. They enjoy all the rights that befit a free people possessed of their human dignity, including the rights stipulated in international treaties and agreements,

other instruments of international law that Iraq has signed and to which it has acceded, and others that are deemed binding upon it, and in the law of nations. Non-Iraqis within Iraq shall enjoy all human rights not inconsistent with their status as non-citizens.

CHAPTER THREE – THE IRAQI TRANSITIONAL GOVERNMENT

Article 24

- (A) The Iraqi Transitional Government, which is also referred to in this Law as the federal government, shall consist of the National Assembly; the Presidency Council; the Council of Ministers, including the Prime Minister; and the judicial authority.
- (B) The three authorities, legislative, executive, and judicial, shall be separate and independent of one another.
- (C) No official or employee of the Iraqi Transitional Government shall enjoy immunity for criminal acts committed while in office.

Article 25

The Iraqi Transitional Government shall have exclusive competence in the following matters:

- (A) Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; formulating foreign economic and trade policy and sovereign debt policies;
- (B) Formulating and executing national security policy, including creating and maintaining armed forces to secure, protect, and guarantee the security of the country's borders and to defend Iraq;
- (C) Formulating fiscal policy, issuing currency, regulating customs, regulating commercial policy across regional and governorate boundaries in Iraq, drawing up the national budget of the State,

formulating monetary policy, and establishing and administering a central bank;

- (D) Regulating weights and measures and formulating a general policy on wages;
- (E) Managing the natural resources of Iraq, which belongs to all the people of all the regions and governorates of Iraq, in consultation with the governments of the regions and the administrations of the governorates, and distributing the revenues resulting from their sale through the national budget in an equitable manner proportional to the distribution of population throughout the country, and with due regard for areas that were unjustly deprived of these revenues by the previous regime, for dealing with their situations in a positive way, for their needs, and for the degree of development of the different areas of the country;
- (F) Regulating Iraqi citizenship, immigration, and asylum; and
- (G) Regulating telecommunications policy.

Article 26

- (A) Except as otherwise provided in this Law, the laws in force in Iraq on 30 June 2004 shall remain in effect unless and until rescinded or amended by the Iraqi Transitional Government in accordance with this Law.
- (B) Legislation issued by the federal legislative authority shall supersede any other legislation issued by any other legislative authority in the event that they contradict each other, except as provided in Article 54(B).
- (C) The laws, regulations, orders, and directives issued by the Coalition Provisional Authority pursuant to its authority under international law shall remain in force until rescinded or amended by legislation duly enacted and having the force of law.

Article 27

- (A) The Iraqi Armed Forces shall consist of the active and reserve units, and elements thereof. The purpose of these forces is the defense of Iraq.
- (B) Armed forces and militias not under the command structure of the Iraqi Transitional Government are prohibited, except as provided by federal law.
- (C) The Iraqi Armed Forces and its personnel, including military personnel working in the Ministry of Defense or any offices or organizations subordinate to it, may not stand for election to political office, campaign for candidates, or participate in other activities forbidden by Ministry of Defense regulations. This ban encompasses the activities of the personnel mentioned above acting in their personal or official capacities. Nothing in this Article shall infringe upon the right of these personnel to vote in elections.
- (D) The Iraqi Intelligence Service shall collect information, assess threats to national security, and advise the Iraqi government. This Service shall be under civilian control, shall be subject to legislative oversight, and shall operate pursuant to law and in accordance with recognized principles of human rights.
- (E) The Iraqi Transitional Government shall respect and implement Iraq's international obligations regarding the non-proliferation, non-development, non-production, and non-use of nuclear, chemical, and biological weapons, and associated equipment, materiel, technologies, and delivery systems for use in the development, manufacture, production, and use of such weapons.

Article 28

- (A) Members of the National Assembly; the Presidency Council; the Council of Ministers, including the Prime Minister; and judges and justices of the courts may not be appointed to any other posi-

tion in or out of government. Any member of the National Assembly who becomes a member of the Presidency Council or Council of Ministers shall be deemed to have resigned his membership in the National Assembly.

- (B) In no event may a member of the armed forces be a member of the National Assembly, minister, Prime Minister, or member of the Presidency Council unless the individual has resigned his commission or rank, or retired from duty at least eighteen months prior to serving.

Article 29

Upon the assumption of full authority by the Iraqi Interim Government in accordance with Article 2(B) (1), above, the Coalition Provisional Authority shall be dissolved and the work of the Governing Council shall come to an end.

CHAPTER FOUR – THE TRANSITIONAL LEGISLATIVE AUTHORITY

Article 30

- (A) During the transitional period, the State of Iraq shall have a legislative authority known as the National Assembly. Its principal mission shall be to legislate and exercise oversight over the work of the executive authority.
- (B) Laws shall be issued in the name of the people of Iraq. Laws, regulations, and directives related to them shall be published in the official gazette and shall take effect as of the date of their publication, unless they stipulate otherwise.
- (C) The National Assembly shall be elected in accordance with an electoral law and a political parties law. The electoral law shall aim to achieve the goal of having women constitute no less than one-quarter of the members of the National Assembly and of

having fair representation for all communities in Iraq, including the Turcomans, ChaldoAssyrians, and others.

- (D) Elections for the National Assembly shall take place by 31 December 2004 if possible, and in any case no later than by 31 January 2005.

Article 31

- (A) The National Assembly shall consist of 275 members. It shall enact a law dealing with the replacement of its members in the event of resignation, removal, or death.
- (B) A nominee to the National Assembly must fulfill the following conditions:
 - (1) He shall be an Iraqi no less than 30 years of age.
 - (2) He shall not have been a member of the dissolved Ba'ath Party with the rank of Division Member or higher, unless exempted pursuant to the applicable legal rules.
 - (3) If he was once a member of the dissolved Ba'ath Party with the rank of Full Member, he shall be required to sign a document renouncing the Ba'ath Party and disavowing all of his past links with it before becoming eligible to be a candidate, as well as to swear that he no longer has any dealings or connection with Ba'ath Party organizations. If it is established in court that he lied or fabricated on this score, he shall lose his seat in the National Assembly.
 - (4) He shall not have been a member of the former agencies of repression and shall not have contributed to or participated in the persecution of citizens.
 - (5) He shall not have enriched himself in an illegitimate manner at the expense of the homeland and public finance.

- (6) He shall not have been convicted of a crime involving moral turpitude and shall have a good reputation.
- (7) He shall have at least a secondary school diploma, or equivalent
- (8) He shall not be a member of the armed forces at the time of his nomination.

Article 32

- (A) The National Assembly shall draw up its own internal procedures, and it shall sit in public session unless circumstances require otherwise, consistent with its internal procedures. The first session of the Assembly shall be chaired by its oldest member.
- (B) The National Assembly shall elect, from its own members, a president and two deputy presidents of the National Assembly. The president of the National Assembly shall be the individual who receives the greatest number of votes for that office; the first deputy president the next highest; and the second deputy president the next. The president of the National Assembly may vote on an issue, but may not participate in the debates, unless he temporarily steps out of the chair immediately prior to addressing the issue.
- (C) A bill shall not be voted upon by the National Assembly unless it has been read twice at a regular session of the Assembly, on condition that at least two days intervene between the two readings, and after the bill has been placed on the agenda of the session at least four days prior to the vote.

Article 33

- (A) Meetings of the National Assembly shall be public, and transcripts of its meetings shall be recorded and published. The vote of every member of the National Assembly shall be recorded and made public. Decisions in the National Assembly shall be taken by simple majority unless this Law stipulates otherwise.

- (B) The National Assembly must examine bills proposed by the Council of Ministers, including budget bills.
- (C) Only the Council of Ministers shall have the right to present a proposed national budget. The National Assembly has the right to reallocate proposed spending and to reduce the total amounts in the general budget. It also has the right to propose an increase in the overall amount of expenditures to the Council of Ministers if necessary.
- (D) Members of the National Assembly shall have the right to propose bills, consistent with the internal procedures that drawn up by the Assembly.
- (E) The Iraqi Armed Forces may not be dispatched outside Iraq even for the purpose of defending against foreign aggression except with the approval of the National Assembly and upon the request of the Presidency Council.
- (F) Only the National Assembly shall have the power to ratify international treaties and agreements.
- (G) The oversight function performed by the National Assembly and its committees shall include the right of interpellation of executive officials, including members of the Presidency Council, the Council of Ministers, including the Prime Minister, and any less senior official of the executive authority. This shall encompass the right to investigate, request information, and issue subpoenas for persons to appear before them.

Article 34

Each member of the National Assembly shall enjoy immunity for statements made while the Assembly is in session, and the member may not be sued before the courts for such. A member may not be placed under arrest during a session of the National Assembly, unless the member is

accused of a crime and the National Assembly agrees to lift his immunity or if he is caught in flagrante delicto in the commission of a felony.

CHAPTER FIVE – THE TRANSITIONAL EXECUTIVE AUTHORITY

Article 35

The executive authority during the transitional period shall consist of the Presidency Council, the Council of Ministers, and its presiding Prime Minister.

Article 36

- (A) The National Assembly shall elect a President of the State and two Deputies. They shall form the Presidency Council, the function of which will be to represent the sovereignty of Iraq and oversee the higher affairs of the country. The election of the Presidency Council shall take place on the basis of a single list and by a two-thirds majority of the members' votes. The National Assembly has the power to remove any member of the Presidency Council of the State for incompetence or lack of integrity by a three-fourths majority of its members' votes. In the event of a vacancy in the Presidency Council, the National Assembly shall, by a vote of two-thirds of its members, elect a replacement to fill the vacancy.
- (B) It is a prerequisite for a member of the Presidency Council to fulfill the same conditions as the members of the National Assembly, with the following observations:
- (1) He must be at least forty years of age.
 - (2) He must possess a good reputation, integrity, and rectitude.
 - (3) If he was a member of the dissolved Ba'ath Party, he must have left the dissolved Party at least ten years before its fall.

- (4) He must not have participated in repressing the intifada of 1991 or the Anfal campaign and must not have committed a crime against the Iraqi people.
- (C) The Presidency Council shall take its decisions unanimously, and its members may not deputize others as proxies.

Article 37

The Presidency Council may veto any legislation passed by the National Assembly, on condition that this be done within fifteen days after the Presidency Council is notified by the president of the National Assembly of the passage of such legislation. In the event of a veto, the legislation shall be returned to the National Assembly, which has the right to pass the legislation again by a two-thirds majority not subject to veto within a period not to exceed thirty days.

Article 38

- (A) The Presidency Council shall name a Prime Minister unanimously, as well as the members of the Council of Ministers upon the recommendation of the Prime Minister. The Prime Minister and Council of Ministers shall then seek to obtain a vote of confidence by simple majority from the National Assembly prior to commencing their work as a government. The Presidency Council must agree on a candidate for the post of Prime Minister within two weeks. In the event that it fails to do so, the responsibility of naming the Prime Minister reverts to the National Assembly. In that event, the National Assembly must confirm the nomination by a two-thirds majority. If the Prime Minister is unable to nominate his Council of Ministers within one month, the Presidency Council shall name another Prime Minister.
- (B) The qualifications for Prime Minister must be the same as for the members of the Presidency Council except that his age must not be less than 35 years upon his taking office.

Article 39

- (A) The Council of Ministers shall, with the approval of the Presidency Council, appoint representatives to negotiate the conclusion of international treaties and agreements. The Presidency Council shall recommend passage of a law by the National Assembly to ratify such treaties and agreements.
- (B) The Presidency Council shall carry out the function of commander-in-chief of the Iraqi Armed Forces only for ceremonial and protocol purposes. It shall have no command authority. It shall have the right to be briefed, to inquire, and to advise. Operationally, national command authority on military matters shall flow from the Prime Minister to the Minister of Defense to the military chain of command of the Iraqi Armed Forces.
- (C) The Presidency Council shall, as more fully set forth in Chapter Six, below, appoint, upon recommendation of the Higher Juridical Council, the Presiding Judge and members of the Federal Supreme Court.
- (D) The Council of Ministers shall appoint the Director-General of the Iraqi National Intelligence Service, as well as officers of the Iraqi Armed Forces at the rank of general or above. Such appointments shall be subject to confirmation by the National Assembly by simple majority of those of its members present.

Article 40

- (A) The Prime Minister and the ministers shall be responsible before the National Assembly, and this Assembly shall have the right to withdraw its confidence either in the Prime Minister or in the ministers collectively or individually. In the event that confidence in the Prime Minister is withdrawn, the entire Council of Ministers shall be dissolved, and Article 40(B), below, shall become operative.

- (B) In the event of a vote of no confidence with respect to the entire Council of Ministers, the Prime Minister and Council of Ministers shall remain in office to carry out their functions for a period not to exceed thirty days, until the formation of a new Council of Ministers, consistent with Article 38, above.

Article 41

The Prime Minister shall have day-to-day responsibility for the management of the government, and he may dismiss ministers with the approval of a simple majority of the National Assembly. The Presidency Council may, upon the recommendation of the Commission on Public Integrity after the exercise of due process, dismiss the Prime Minister or the ministers.

Article 42

The Council of Ministers shall draw up rules of procedure for its work and issue the regulations and directives necessary to enforce the laws. It also has the right to propose bills to the National Assembly. Each ministry has the right, within its competence, to nominate deputy ministers, ambassadors, and other employees of special grade. After the Council of Ministers approves these nominations, they shall be submitted to the Presidency Council for ratification. All decisions of the Council of Ministers shall be taken by simple majority of those of its members present.

CHAPTER SIX – THE FEDERAL JUDICIAL AUTHORITY

Article 43

- (A) The judiciary is independent, and it shall in no way be administered by the executive authority, including the Ministry of Justice. The judiciary shall enjoy exclusive competence to determine the innocence or guilt of the accused pursuant to law, without interference from the legislative or executive authorities.

- (B) All judges sitting in their respective courts as of 1 July 2004 will continue in office thereafter, unless removed from office pursuant to this Law.
- (C) The National Assembly shall establish an independent and adequate budget for the judiciary.
- (D) Federal courts shall adjudicate matters that arise from the application of federal laws. The establishment of these courts shall be within the exclusive competence of the federal government. The establishment of these courts in the regions shall be in consultation with the presidents of the judicial councils in the regions, and priority in appointing or transferring judges to these courts shall be given to judges' resident in the region.

Article 44

- (A) A court called the Federal Supreme Court shall be constituted by law in Iraq.
- (B) The jurisdiction of the Federal Supreme Court shall be as follows:
 - (1) Original and exclusive jurisdiction in legal proceedings between the Iraqi Transitional Government and the regional governments, governorate and municipal administrations, and local administrations.
 - (2) Original and exclusive jurisdiction, on the basis of a complaint from a claimant or a referral from another court, to review claims that a law, regulation, or directive issued by the federal or regional governments, the governorate or municipal administrations, or local administrations is inconsistent with this Law.
 - (3) Ordinary appellate jurisdiction of the Federal Supreme Court shall be defined by federal law.

- (C) Should the Federal Supreme Court rule that a challenged law, regulation, directive, or measure is inconsistent with this Law, it shall be deemed null and void.
- (D) The Federal Supreme Court shall create and publish regulations regarding the procedures required to bring claims and to permit attorneys to practice before it. It shall take its decisions by simple majority, except decisions with regard to the proceedings stipulated in Article 44(B) (1), which must be by a two-thirds majority. Decisions shall be binding. the Court shall have full powers to enforce its decisions, including the power to issue citations for contempt of court and the measures that flow from this.
- (E) The Federal Supreme Court shall consist of nine members. The Higher Juridical Council shall, in consultation with the regional judicial councils, initially nominate no less than eighteen and up to twenty-seven individuals to fill the initial vacancies in the aforementioned Court. It will follow the same procedure thereafter, nominating three members for each subsequent vacancy that occurs by reason of death, resignation, or removal. The Presidency Council shall appoint the members of this Court and name one of them as its Presiding Judge. In the event an appointment is rejected, the Higher Juridical Council shall nominate a new group of three candidates.

Article 45

A Higher Juridical Council shall be established and assume the role of the Council of Judges. The Higher Juridical Council shall supervise the federal judiciary and shall administer its budget. This Council shall be composed of the Presiding Judge of the Federal Supreme Court, the presiding judge and deputy presiding judges of the federal Court of Cassation, the presiding judges of the federal Courts of Appeal, and the presiding judge and two deputy presiding judges of each regional court of cassation. The Presiding Judge of the Federal Supreme Court shall preside over the Higher Juridical Council. In his absence, the presiding judge of the federal Court of Cassation shall preside over the Council.

Article 46

- (A) The federal judicial branch shall include existing courts outside the Kurdistan region, including courts of first instance; the Central Criminal Court of Iraq; Courts of Appeal; and the Court of Cassation, which shall be the court of last resort except as provided in Article 44 of this Law. Additional federal courts may be established by law. The appointment of judges for these courts shall be made by the Higher Juridical Council. This Law preserves the qualifications necessary for the appointment of judges, as defined by law.
- (B) The decisions of regional and local courts, including the courts of the Kurdistan region, shall be final, but shall be subject to review by the federal judiciary if they conflict with this Law or any federal law. Procedures for such review shall be defined by law.

Article 47

No judge or member of the Higher Juridical Council may be removed unless he is convicted of a crime involving moral turpitude or corruption or suffers permanent incapacity. Removal shall be on the recommendation of the Higher Juridical Council, by a decision of the Council of Ministers, and with the approval of the Presidency Council. Removal shall be executed immediately after issuance of this approval. A judge who has been accused of such a crime as cited above shall be suspended from his work in the judiciary until such time as the case arising from what is cited in this Article is adjudicated. No judge may have his salary reduced or suspended for any reason during his period of service.

CHAPTER SEVEN – THE SPECIAL TRIBUNAL AND NATIONAL COMMISSIONS

Article 48

- (A) The statute establishing the Iraqi Special Tribunal issued on 10 December 2003 is confirmed. That statute exclusively defines its

jurisdiction and procedures, notwithstanding the provisions of this Law.

- (B) No other court shall have jurisdiction to examine cases within the competence of the Iraqi Special Tribunal, except to the extent provided by its founding statute.
- (C) The judges of the Iraqi Special Tribunal shall be appointed in accordance with the provisions of its founding statute.

Article 49

- (A) The establishment of national commissions such as the Commission on Public Integrity, the Iraqi Property Claims Commission, and the Higher National De-Ba'athification Commission is confirmed, as is the establishment of commissions formed after this Law has gone into effect. The members of these national commissions shall continue to serve after this Law has gone into effect, taking into account the contents of Article 51, below.
- (B) The method of appointment to the national commissions shall be in accordance with law.

Article 50

The Iraqi Transitional Government shall establish a National Commission for Human Rights for the purpose of executing the commitments relative to the rights set forth in this Law and to examine complaints pertaining to violations of human rights. The Commission shall be established in accordance with the Paris Principles issued by the United Nations on the responsibilities of national institutions. This Commission shall include an Office of the Ombudsman to inquire into complaints. This office shall have the power to investigate, on its own initiative or on the basis of a complaint submitted to it, any allegation that the conduct of the governmental authorities is arbitrary or contrary to law.

Article 51

No member of the Iraqi Special Tribunal or of any commission established by the federal government may be employed in any other capacity in or out of government. This prohibition is valid without limitation, whether it be within the executive, legislative, or judicial authority of the Iraqi Transitional Government. Members of the Special Tribunal may, however, suspend their employment in other agencies while they serve on the aforementioned Tribunal.

CHAPTER EIGHT – REGIONS, GOVERNORATES, AND MUNICIPALITIES

Article 52

The design of the federal system in Iraq shall be established in such a way as to prevent the concentration of power in the federal government that allowed the continuation of decades of tyranny and oppression under the previous regime. This system shall encourage the exercise of local authority by local officials in every region and governorate, thereby creating a united Iraq in which every citizen actively participates in governmental affairs, secure in his rights and free of domination.

Article 53

- (A) The Kurdistan Regional Government is recognized as the official government of the territories that were administered by that government on 19 March 2003 in the governorates of Dohuk, Arbil, Sulaimaniya, Kirkuk, Diyala and Neneveh. The term “Kurdistan Regional Government” shall refer to the Kurdistan National Assembly, the Kurdistan Council of Ministers, and the regional judicial authority in the Kurdistan region.
- (B) The boundaries of the eighteen governorates shall remain without change during the transitional period.
- (C) Any group of no more than three governorates outside the Kurdistan region, with the exception of Baghdad and Kirkuk, shall

have the right to form regions from amongst themselves. The mechanisms for forming such regions may be proposed by the Iraqi Interim Government, and shall be presented and considered by the elected National Assembly for enactment into law. In addition to being approved by the National Assembly, any legislation proposing the formation of a particular region must be approved in a referendum of the people of the relevant governorates.

- (D) This Law shall guarantee the administrative, cultural, and political rights of the Turcomans, Chaldo Assyrians, and all other citizens.

Article 54

- (A) The Kurdistan Regional Government shall continue to perform its current functions throughout the transitional period, except with regard to those issues which fall within the exclusive competence of the federal government as specified in this Law. Financing for these functions shall come from the federal government, consistent with current practice and in accordance with Article 25(E) of this Law. The Kurdistan Regional Government shall retain regional control over police forces and internal security, and it will have the right to impose taxes and fees within the Kurdistan region.
- (B) With regard to the application of federal laws in the Kurdistan region, the Kurdistan National Assembly shall be permitted to amend the application of any such law within the Kurdistan region, but only to the extent that this relates to matters that are not within the provisions of Articles 25 and 43 (D) of this Law and that fall within the exclusive competence of the federal government.

Article 55

- (A) Each governorate shall have the right to form a Governorate Council, name a Governor, and form municipal and local coun-

cils. No member of any regional government, governor, or member of any governorate, municipal, or local council may be dismissed by the federal government or any official thereof, except upon conviction of a crime by a court of competent jurisdiction as provided by law. No regional government may dismiss a Governor or member or members of any governorate, municipal, or local council. No Governor or member of any Governorate, municipal, or local council shall be subject to the control of the federal government except to the extent that the matter relates to the competences set forth in Article 25 and 43(D), above.

- (B) Each Governor and member of each Governorate Council who holds office as of 1 July 2004, in accordance with the law on local government that shall be issued, shall remain in place until such time as free, direct, and full elections, conducted pursuant to law, are held, or, unless, prior to that time, he voluntarily gives up his position, is removed upon his conviction for a crime involving moral turpitude or related to corruption, or upon being stricken with permanent incapacity, or is dismissed in accordance with the law cited above. When a governor, mayor, or member of a council is dismissed, the relevant council may receive applications from any eligible resident of the governorate to fill the position. Eligibility requirements shall be the same as those set forth in Article 31 for membership in the National Assembly. The new candidate must receive a majority vote of the council to assume the vacant seat.

Article 56

- (A) The Governorate Councils shall assist the federal government in the coordination of federal ministry operations within the governorate, including the review of annual ministry plans and budgets with regard to activities in the governorate. Governorate Councils shall be funded from the general budget of the State, and these Councils shall also have the authority to increase their revenues independently by imposing taxes and fees; to organize the operations of the Governorate administration; to initiate and implement province-level projects alone or in partnership with international,

and non-governmental organizations; and to conduct other activities insofar as is consistent with federal laws.

- (B) The Qada' and Nahiya councils and other relevant councils shall assist in the performance of federal responsibilities and the delivery of public services by reviewing local ministry plans in the aforementioned places; ensuring that they respond properly to local needs and interests; identifying local budgetary requirements through the national budgeting procedures; and collecting and retaining local revenues, taxes, and fees; organizing the operations of the local administration; initiating and implementing local projects alone or in conjunction with international, and non-governmental organizations; and conducting other activities consistent with applicable law.
- (C) Where practicable, the federal government shall take measures to devolve additional functions to local, governorate, and regional administrations, in a methodical way. Regional units and governorate administrations, including the Kurdistan Regional Government, shall be organized on the basis of the principle of decentralization and the devolution of authorities to municipal and local governments.

Article 57

- (A) All authorities not exclusively reserved to the Iraqi Transitional Government may be exercised by the regional governments and governorates as soon as possible following the establishment of appropriate governmental institutions.
- (B) Elections for governorate councils throughout Iraq and for the Kurdistan National Assembly shall be held at the same time as the elections for the National Assembly, no later than 31 January 2005.

Article 58

- (A) The Iraqi Transitional Government, and especially the Iraqi Property Claims Commission and other relevant bodies, shall act expeditiously to take measures to remedy the injustice caused by the previous regime's practices in altering the demographic character of certain regions, including Kirkuk, by deporting and expelling individuals from their places of residence, forcing migration in and out of the region, settling individuals alien to the region, depriving the inhabitants of work, and correcting nationality. To remedy this injustice, the Iraqi Transitional Government shall take the following steps:
- (1) With regard to residents who were deported, expelled, or who emigrated; it shall, in accordance with the statute of the Iraqi Property Claims Commission and other measures within the law, within a reasonable period of time, restore the residents to their homes and property, or, where this is unfeasible, shall provide just compensation.
 - (2) With regard to the individuals newly introduced to specific regions and territories, it shall act in accordance with Article 10 of the Iraqi Property Claims Commission statute to ensure that such individuals may be resettled, may receive compensation from the state, may receive new land from the state near their residence in the governorate from which they came, or may receive compensation for the cost of moving to such areas.
 - (3) With regard to persons deprived of employment or other means of support in order to force migration out of their regions and territories, it shall promote new employment opportunities in the regions and territories.
 - (4) With regard to nationality correction, it shall repeal all relevant decrees and shall permit affected persons the right to determine their own national identity and ethnic affiliation free from coercion and duress.

- (B) The previous regime also manipulated and changed administrative boundaries for political ends. The Presidency Council of the Iraqi Transitional Government shall make recommendations to the National Assembly on remedying these unjust changes in the permanent constitution. In the event the Presidency Council is unable to agree unanimously on a set of recommendations, it shall unanimously appoint a neutral arbitrator to examine the issue and make recommendations. In the event the Presidency Council is unable to agree on an arbitrator, it shall request the Secretary General of the United Nations to appoint a distinguished international person to be the arbitrator.
- (C) The permanent resolution of disputed territories, including Kirkuk, shall be deferred until after these measures are completed, a fair and transparent census has been conducted and the permanent constitution has been ratified. This resolution shall be consistent with the principle of justice, taking into account the will of the people of those territories.

CHAPTER NINE – THE TRANSITIONAL PERIOD

Article 59

- (A) The permanent constitution shall contain guarantees to ensure that the Iraqi Armed Forces are never again used to terrorize or oppress the people of Iraq.
- (B) Consistent with Iraq's status as a sovereign state, and with its desire to join other nations in helping to maintain peace and security and fight terrorism during the transitional period, the Iraqi Armed Forces will be a principal partner in the multinational force operating in Iraq under unified command pursuant to the provisions of United Nations Security Council Resolution 1511 (2003) and any subsequent relevant resolutions. This arrangement shall last until the ratification of a permanent constitution and the election of a new government pursuant to that new constitution.

- (C) Upon its assumption of authority, and consistent with Iraq's status as a sovereign state, the elected Iraqi Transitional Government shall have the authority to conclude binding international agreements regarding the activities of the multinational force operating in Iraq under unified command pursuant to the terms of United Nations Security Council Resolution 1511 (2003), and any subsequent relevant United Nations Security Council resolutions. Nothing in this Law shall affect rights and obligations under these agreements, or under United Nations Security Council Resolution 1511 (2003), and any subsequent relevant United Nations Security Council resolutions, which will govern the multinational force's activities pending the entry into force of these agreements.

Article 60

The National Assembly shall write a draft of the permanent constitution of Iraq. This Assembly shall carry out this responsibility in part by encouraging debate on the constitution through regular general public meetings in all parts of Iraq and through the media, and receiving proposals from the citizens of Iraq as it writes the constitution.

Article 61

- (A) The National Assembly shall write the draft of the permanent constitution by no later than 15 August 2005.
- (B) The draft permanent constitution shall be presented to the Iraqi people for approval in a general referendum to be held no later than 15 October 2005. In the period leading up to the referendum, the draft constitution shall be published and widely distributed to encourage a public debate about it among the people.
- (C) The general referendum will be successful and the draft constitution ratified if a majority of the voters in Iraq approve and if two-thirds of the voters in three or more governorates do not reject it.

- (D) If the permanent constitution is approved in the referendum, elections for a permanent government shall be held no later than 15 December 2005 and the new government shall assume office no later than 31 December 2005.
- (E) If the referendum rejects the draft permanent constitution, the National Assembly shall be dissolved. Elections for a new National Assembly shall be held no later than 15 December 2005. The new National Assembly and new Iraqi Transitional Government shall then assume office no later than 31 December 2005, and shall continue to operate under this Law, except that the final deadlines for preparing a new draft may be changed to make it possible to draft a permanent constitution within a period not to exceed one year. The new National Assembly shall be entrusted with writing another draft permanent constitution.
- (F) If necessary, the president of the National Assembly, with the agreement of a majority of the members' votes, may certify to the Presidency Council no later than 1 August 2005 that there is a need for additional time to complete the writing of the draft constitution. The Presidency Council shall then extend the deadline for writing the draft constitution for only six months. This deadline may not be extended again.
- (G) If the National Assembly does not complete writing the draft permanent constitution by 15 August 2005 and does not request extension of the deadline in Article 61(D) above, the provisions of Article 61(E), above, shall be applied.

Article 62

This law shall remain in effect until the permanent constitution is issued and the new Iraqi government is formed in accordance with it.

D Transitional Administrative Law Commentary and analysis by Nathan J. Brown (7/8 March 2004)

<http://www.geocities.com/nathanbrown1/interimiraqiconstitution.html>

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BACKGROUND: On 1 March 2004, two days after the deadline specified in the 15 November 2003 agreement between the Coalition Provisional Authority (CPA) and the Iraqi Governing Council (IGC), the IGC announced that it had completed and approved the “Transitional Administrative Law,” an interim constitution to govern Iraq following the restoration of sovereignty on 30 June 2004 until a permanent constitution is adopted.

The IGC has been wrestling with constitutional issues almost since its creation (an excellent review of the issues as of November 2003 is available from the International Crisis Group; a very interesting, theoretically-informed discussion by Andrew Arato — based on the now superseded January draft — is still quite worth reading.). Initially, the Council formed a committee to recommend mechanisms for constitution drafting. Its report was due in September 2003. While I do not believe that the committee’s report has been made public, it was reportedly unable to develop a definitive recommendation. The work of the committee was superseded by the agreement reached on 15 November 2003 between the Coalition Provisional Authority and the Iraqi Governing Council. That agreement required the Council to approve a “Transitional Administrative Law” by the end of February 2004. Such a law would make possible “local caucuses” by the end of May; the convening of a “Transitional National Assembly” based on those caucuses; the dissolution of the Iraqi Governing Council and the Coalition Provisional Authority; and the restoration of Iraqi sovereignty by the end of June 2004. Elections for a constituent assembly would follow in 2005; that body would quickly write and seek ratification of a permanent constitution; and elections would be held under the new constitution by the end of 2005.

That plan broke down under international and domestic pressure and was finally abandoned. The effort to write the Transitional Administrative Law survived. The 1 March 2004 announcement that the IGC had agreed on a draft turned out to be an exaggeration, however. It later became clear that not all the language was complete and that English and Arabic drafts had to be reconciled and reviewed. On 5 March the IGC was to meet to approve the final document, but some members raised objections and the signing was postponed until 8 March.

TEXT: While several interim drafts leaked to the press, neither the IGC nor the CPA reported extensively on the efforts to write the Law. Not until 7 March 2006 did the London-based Arabic daily Al-Sharq al-Awsat publish a complete text. The next day, on March 8 — and only after the signing had been completed — an official copy was released. The CPA has posted English text.

I include some commentary on the provisions of the Law below. I previously posted a translation and commentary for an earlier draft. As far as I know, no other translation of that earlier draft is publicly available. While I am gratified to have provided a service by posting the translation and commentary, my experience with that draft leads me to ask users to read fairly carefully. Some of my comments were apparently used in a letter to US National Security Advisor Condoleezza Rice signed by four United States Senators. I do not know who drafted that letter, but the person(s) responsible managed to garble some of the information in a manner that I might charitably describe as unhelpful. The letter mixed some very legitimate concerns about religious freedom with hyperbolic and misleading statements (and at least one falsehood).

SECURITY: One issue largely overlooked in press discussions of the law has been the matter of security arrangements after the restoration of Iraqi sovereignty on 30 June 2004. The final text of the Law confronts the issue in an unexpected way.

The 15 November agreement and early drafts of the Law provided that the CPA and IGC would negotiate security arrangements and then present them for adoption to the transitional parliament. The transitional

parliament was to meet prior to the restoration of Iraqi sovereignty on 30 June 2004 to approve the arrangements. No provision was made for rejection or even renegotiation of the arrangements: implicitly, the newly-seated parliament was to be given the choice of accepting arrangements it had not negotiated or delaying restoration of sovereignty. This plan became untenable when the IGC made clear it was no longer willing to negotiate the matter with the CPA. This left the possibility that on June 30, American and other coalition forces may be occupying a country with a sovereign government without the agreement of that government — a situation that might be awkward both politically and legally.

The solution found to this problem in Article 59 (see the commentary below) is ingenious but also audacious and might provoke controversy.

COMMENTARY

Preamble

The Law has a preamble, something missing from initial drafts. Moreover, Article 1 makes the principles enunciated in the preamble an integral part of the constitution. These two features suggest that the authors hope that their effort will survive the expiration of the transitional period and be adopted in the permanent constitution. Making the principles of the preamble an integral part of the constitution is designed to influence the course of constitutional interpretation and jurisprudence (and perhaps guide a constitutional court in interpreting some of the document's provisions). If a permanent constitution is adopted by the end of next year, there is unlikely to be enough time to develop traditions of constitutional interpretation. Thus, I believe that the authors view many of the document's provisions as primarily aspirational and designed to guide the writing of the permanent constitution rather than have any immediate effect.

Article 1

The document specifies that the use of the masculine includes the feminine. (Arabic is a much more strongly gendered language than English, and nouns, verbs, and adjectives all indicate gender. The masculine is

generally used not only for men but also for cases in which gender is unspecified.) Thus, this provision makes explicit what might otherwise be only implicit: that every reference to an “Iraqi,” “citizen,” or “individual” in the masculine refers to women as well as men. This provision seems to be adopted from the draft constitution for a Palestinian state. Juan Cole and Shahin Cole have written a general analysis on gender issues related to the constitution.

Article 2

The 15 November agreement between the IGC and the CPA provided for an ambitious timetable not simply for the transfer of sovereignty to an Iraqi government but also for the composition of an Iraqi constitution, to be completed by December 2005. That agreement — and initial drafts of the Law — contained no provisions for a failure to meet the timetable. As finally written, article 2 of the law maintains the original timetable but also refers to article 61, which allows for a single six-month extension if the constitution is either rejected or if drafting proceeds too slowly.

Earlier drafts focused great attention on the process of selecting members of a transitional national assembly and constituent assembly. The procedures drafted ran into problems connected with the IGC’s and CPA’s legitimacy: a transitional assembly was to be selected through a vaguely-specified caucus system that convinced few Iraqis or international observers that it would be immune to manipulation. And since that assembly would draft a law for electing a constituent assembly, the latter body was indirectly tainted as well. The final draft omits many of these provisions. Instead, it has a temporary sovereign government composed by the CPA and IGC, acting in consultation with the Iraqi people and perhaps with the United Nations. Following the composition of that government, elections for a national assembly will be held by 31 January 2005 at the latest.

Article 3

The 15 November agreement as well as earlier drafts of the Law barred amendment. That position is no longer tenable because some of the governance provisions have not yet been written and thus the document

will necessarily be amended—as articles 2 and 3 of the Law acknowledge. Thus, Article 3 is forced to provide for a limited amendment procedure.

Article 4

The provisions on federalism here are very general and are given meaning by other articles.

Article 5

The insistence on civilian control of the military Iraqi military is recognition that army intervention in politics has a long history in Iraq - from 1936 until 1941 it was the main arbiter of political power. From 1958 until 1979 every Iraqi president came from the military.

Article 6

This article promises restorative justice. Delivering on that promise will raise many difficult issues, some of which are addressed in article 58.

Article 7

The formula for Islam and Islamic law has provoked great international and domestic controversy. The final version of the Law represents a compromise between those who wished to have Islam serve as “a source” and those who wished it to be “the primary source” of legislation. However, absent any provisions for determining authoritative interpretations of the shari‘a, it is not clear whether any of these provisions would have any practical legal effect:

- Designating Islam the official religion has tremendous symbolic importance and is standard in Arab constitutional documents, but the practical meaning of such a designation is probably quite limited.

- Providing that Islam is “a source” of legislation is vague indeed. Other Arab constitutions refer to “the principles of Islamic law,” but the Iraqi Law refers only to Islam. More important, the clause would seem to be an injunction to legislators to consult Islamic law but not to bind them to it, much less to any particular interpretation.

- The article also bars passing a law that contradicts with aspects of Islamic law that are definite and affirmed by consensus. But this prohibition applies only to the interim period, and thus older legislation is left standing. And given over one thousand years of Islamic legal thought and argumentation, as well as Iraq’s Sunni-Shi’i mix, fixed and consensual provisions are extremely few in number.

- More generally, absent any structure that has the authority to issue authoritative interpretations of Islam, the article by itself will have little impact on the Iraqi legal order. It may at most lend symbolic support to those who call for a greater measure of Islamic legal influence.

- The article also bars any legislation that contradicts the rights mentioned elsewhere in the Law. This seems to be a strange nod in the direction of those who feared the language on Islam would somehow negate the rights provisions. I describe the language as strange because of its obvious redundancy: affirming the rights provisions in this manner adds nothing to their effectiveness. This language in article 4 simply affirms rights that are affirmed elsewhere. In sum, the language of this article seems to say that it is unconstitutional to pass an unconstitutional law.

More interestingly, the article also places religious freedoms on an individual rather than communal basis, unlike initial drafts. This may be partly a response to the rather lurid letter from four American senators I

referred to in the introduction to this commentary. And indeed, religious freedom in Arab states is often placed on a communal rather than individual basis (though the claims of the letter made the point in a misleading way). This article thus represents a possible departure in regional conceptions of religious freedom.

The article also proclaims Iraq to be a multi-national state. This is almost unprecedented in Arab constitutions—but not quite. The Ba‘thist-era constitutions described Iraq as composed of two nations (Arab and Kurdish). Such provisions, of course, did not prove convincing too much of the Kurdish population.

Article 9

The detailed nature of this article would turn Iraq into a bilingual state in practice, not merely in theory.

Article 11

This article may attract attention because, if I read the implications correctly, it seems to offer to restore the citizenship of Iraqi Jews who left the country after 1948. I would be surprised if many accepted the offer, however, and it does not seem that the right would pass on to descendants. Far more significant, therefore, is the article’s effect on Iraqi Shi‘a whom the Ba‘thist government stripped of citizenship rights. The call in the article for the National Assembly to issue the necessary legislation may mean that these constitutional rights will not be effective until such legislation is passed, though I am not certain that this is the intention of the article.

An earlier provision to guarantee both fathers and mothers the right to pass on Iraqi citizenship seems to have been removed.

Article 12

The provision for gender equality is very generous. Indeed, it is far more generous than in the United States (where an equal rights amendment to the constitution was never ratified). However, other Arab countries

with similar provisions (such as Kuwait) have not always implemented them fully. Kuwait bars women from voting in a manner that almost certainly violates its constitution. Yet it took over three decades for a court case to be raised challenging the ban, and the Kuwaiti courts have thus far escaped from ruling on the matter because of technical deficiencies in the cases that have been raised.

Article 13

Much press comment has parroted the claim that the Law provides for a bill of rights unprecedented in the region. This is an exaggeration: by the standards of the Arab world, the rights provisions are not particularly extensive. What is innovative is the number of rights that are absolute, not depending on implementing legislation. The language here is often quite carefully drafted to close loopholes.

However, some of the rights do operate in accordance with law. While such language is common in Arab constitutional texts, it is not necessarily problematic if the implementing legislation is itself liberal (indeed, the formula of defining rights in legislation is often followed in Europe). However, the reliance on implementing legislation in the Iraqi case may raise significant problems. First, no formula is included insisting that a right cannot be limited in the guise of defining it. Second, the necessary legislation has not yet been written in most areas (though the CPA has issued a law governing NGOs), meaning that the operative law will date to the Ba‘thist era and all that implies.

Article 14

The inclusion of some social and economic rights is standard in the region, though the Iraqi Law introduces a measure of realism with its provision that governmental units guarantee them within the bounds of their abilities—in general, comparable constitutional provisions elsewhere are interpreted as aspirational guidance given to political leaders, a formula the Iraqi Law follows explicitly rather than implicitly.

Article 15

The provisions for searches, detentions, and trials are unusually detailed, undoubtedly informed by Iraq's recent history (and also showing some American influence not in their general spirit—which is common to many systems—but in their specific formulation). The ban on torture is particularly airtight by regional standards. The prohibition of trials of civilians in military courts and the ban on exceptional courts is also quite unusual for the region (though not wholly unprecedented). However, this wording is flatly contradicted by Article 48, which provides for an exceptional court that is to act wholly outside the constitutional framework.

Article 21

Constitutional protection of working with international NGOs is a much-needed innovation.

Article 23

The language here seems inspired by the Ninth Amendment to the United States constitution. In general it seems to me wise to frame constitutional provisions to the extent possible within terms that Iraqi legal and judicial figures will recognize; while borrowing across borders has become quite common in constitution drafting, the Ninth Amendment is a rarely emulated elsewhere.

Article 25

The specification of the duties of the federal government is more detailed than in previous drafts; the language that would govern oil revenues seems to be a compromise formula. The result does seem to be a genuine federal system, though given the importance of oil revenues in supporting all government functions in Iraq, the balance in this article might seem weighted slightly in favor of the central government. However, actual operation of the system is difficult to predict with precision.

Article 26

This is a significant article in three respects:

- In affirming the legislation in place as of June 30, the Law answers the question — left open in initial drafts — of the status of CPA legislation. Presumably, IGC legislation would take effect only if it gained CPA approval prior to June 30.
- This is made more specific by the final clause, which specifically provides for the continued effectiveness CPA legislation taken on the basis of its authority by virtue of international law. This formula leaves a potential loophole here, though I cannot see it being used in the transitional period. The CPA has issued a wide variety of legal enactments, and a very bold Iraqi court might hold that the CPA exceeded the bounds of international law. Such a position would not be implausible. The 1907 Hague convention — which the CPA avoids citing in its legal enactments, preferring the more generally worded UN Security Council resolutions — states “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” The CPA seems to subscribe to a fairly broad interpretation of what it means to be “absolutely prevented” from respecting laws in force. Indeed, one might be able to contest the legality of the Law itself — a product of a CPA-managed process — on such grounds. The resulting constitutional and legal chaos makes such a position politically unlikely.
- Allowing federal legislation to trump that of provincial and regional bodies is a significant marker of a federal (rather than confederal) system, though the language here is hardly unqualified.

Article 27

Barring militias not formed in accordance with a law (and specifically a federal law) is a very significant step, but also provokes a very difficult problem: in the absence of a federal law, such forces would seem to be illegal. If so, the prospects of writing and passing legislation would seem to be unlikely by June 30. Yet disbanding such militias would raise considerable difficulties at present.

The language in the article regulating intelligence forces is general, but mere mention of the subject is innovative. The most significant element is probably the insistence on parliamentary oversight; I know of no Arab state in which such a parliamentary role has ever been successfully asserted.

Article 29

This is an interesting symbolic step (though probably only symbolic): the Law essentially is asserting a right to proclaim the dissolution of the CPA, and the CPA — by approving the Law — is implicitly acknowledging that right. This reverses the legal, chronological, and political relationship between the structures created by the Law and the CPA.

Article 30

While the detailed provisions for selecting members of the Assembly present in earlier drafts have been removed, the final text of the Law appears to be far more detailed on the operations of, and relations among, various constitutional structures. Indeed, earlier drafts were often conspicuously silent on such fundamental questions as who may introduce legislation. The final text of the Law is far more explicit, generally establishing a parliamentary system (though the presidency is more than a symbolic office). Interestingly, the name of the assembly has been changed from “Transitional Assembly” in earlier drafts to “National Assembly” in the final text.

Much press speculation centered on whether the matter of representation for women was a quota or a goal. To my reading, the final language

could be read either way; the matter is essentially referred to the elections law.

Article 31

Provisions for membership in the Assembly are quite detailed on the issue of de-Ba'athification. But the requirement that members have a good reputation seems problematically vague. The education requirement — that members have a secondary school degree or its equivalent — may be partly aimed at older tribal leaders. Interestingly, Iraq's tribal leaders successfully deleted a requirement in the 1925 constitution that parliamentary deputies be literate.

Article 33

While most Arab constitutions allow the interpellation of ministers, this Law extends that right to members of the presidency.

Article 35

The introduction of a prime minister alongside a presidency could make for a complicated system, though it should not be confused with a 5th-Republic arrangement since the Assembly itself selects the members of the presidency.

Article 36

The language here seems to imply that the members of the presidency are not politically responsible to the Assembly after their election, though they may be removed for questions regarding their competence and integrity. Since the decisions of the presidency are made by consensus, it is not clear that identifying one as president and the other two as deputies has any practical meaning.

Article 38

There is no requirement that the prime minister or ministers be members of the Assembly.

Article 39

Allowing the presidency — even if it acts upon the recommendation of the judicial council — the authority to appoint members of the Supreme Court is a diminution of independence of the judiciary, even when compared to Iraq's neighbors. Much depends on how the presidency treats the recommendations emanating from the judicial council (and whether the presidential appointment power emerges as a real authority or a mere formality).

Article 40

I believe it is unprecedented in Arab governance to remove the Ministry of Justice from all administrative matters involving the judiciary. However, administration is not defined. If this were to be fully implemented, it might involve transferring oversight of a wide variety of functions to the Judicial Council (such as budgeting, relationship with other branches of government, and nonjudicial court personnel). While Judicial Councils are quite widespread in Arab governance, few would have the administrative capacity to oversee such a wide range of tasks, and the Iraqi Judicial Council — only recently reformed by the CPA — would likely need tremendous assistance. I may be reading too much into the administrative autonomy provision, but it seems to me to be potentially far reaching. Since many Arab executives dominate the judiciary through their extensive administrative roles rather than through heavy-handed direct control, my reading — if correct — implies a major step toward true judicial independence.

Article 44

The Supreme Court is really more of a constitutional court (a specialized body with exclusive jurisdiction over constitutional cases) than a more general supreme court (which generally has appellate functions). While there is a provision for appellate functions, the next article mentions a Court of Cassation; such a body is normally the highest appellate court for most cases.

Article 45

This article on the composition of the judicial council raises two interesting issues. First, it refers to specific court structures without elaboration (though Article 46 does offer some detail), thus presumably necessitating their establishment. More specifically, it mentions a Court of Cassation that seems to be separate from the Supreme Court but that would presumably take the latter body's place as the supreme court of appeals.

Second, the judicial council mentioned in article 45 has already been established by CPA Regulation 35. The problem is that the provisions of Article 45 conflict with those of Regulation 35. This leaves some matters unclear. Would the Judicial Council immediately be formed in accordance with the provisions of Article 45? As opposed to an earlier draft, Article 45 now makes no mention of the need for implementing legislation. Nevertheless, since not all the courts mentioned may now be operating, would CPA Regulation 35 operate provisionally, even though it would be rendered unconstitutional?

Article 46

This is one more example of how carefully federal arrangements have had to be negotiated.

Article 48

The provision for the Special Tribunal raises several issues. First, it flatly contradicts the promise of Article 15 barring exceptional courts. Second, this court, intended to try accused war criminals, is not merely exceptional. It is placed completely outside the constitution. The court in question was established by the IGC after being delegated by the CPA to try those accused of atrocities and war crimes. In one sense, the Law transfers the court to a body authorized by the CPA into a wholly Iraqi court.

But the Special Tribunal is no ordinary court. In some uncomfortable ways, it resembles the political courts established in some Arab countries in the 1950s and 1960s after a regime change to deal with the old

regime. I have no doubt that the procedural safeguards will be far greater than in those earlier bodies, but the political nature of the court cannot be ignored. Indeed, the language here is startling, because the constitution does not simply recognize the IGC-established Special Tribunal but also exempts it from any of the provisions of the constitution. No other Iraqi courts may be involved in cases in the jurisdiction of the Special Tribunal. The language is so sweeping, it is not clear whether the law establishing the Tribunal may be amended under this constitution.

Article 49

The effect of this article is to render Iraqi bodies that had been created under the CPA.

Article 53

This article not only enshrines the status quo; it also spells it out in more detail than did initial drafts. Subsequent articles are the most detailed and carefully drafted in the constitution, suggesting that the matter of the central government's relationship with Kurdish areas was the most complicated matter to negotiate.

The various provisions on federalism are quite complex and it is difficult to predict precisely how they would work. This is partly the case because the provisions are mutually dependent (and sometimes in tension with each other). For a trenchant critique of the approach adopted, consult the March 8 entry in Spencer Ackerman's Iraq'd blog.

Article 59

This article is likely to cause considerable controversy, since it compensates for the absence of an agreement over security arrangements in an audacious manner.

First, the article effectively places the Iraqi military under American command (in the form of the "unified command" of the "multinational force"). Second, it mentions UN Security Council Resolution 1511 and

effectively uses it to prolong such a security arrangement until a permanent constitution is approved and operating.

Significantly, of all the provisions of the draft constitution, this was the one major issue not to leak.

Articles 60-62

The provisions for the permanent constitution are notable in several ways:

- They abandon the attempt in earlier drafts to establish principles governing the permanent constitution. This seems wise, since the Law, approved by an unelected body, would lack the legitimacy to set conditions on the actions of the elected body writing the permanent constitution.
- They devote more details to procedures for adopting the constitution. Besides the widely-noted adoption provisions involving the referendum (debate over which led to a delay in the final signing), there are provisions for delays in the writing of the permanent constitution.
- The responsibility for drafting the constitution is transferred from a specially-elected constituent assembly to the National Assembly.