



CARNEGIE ENDOWMENT
for International Peace

POLICY OUTLOOK

Democracy & Rule of Law Project

March 2005

Debating Islam in Post-Baathist Iraq

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In the coming months, Iraq's newly elected National Assembly will face the major task of writing a permanent constitution for the country. Two other critical issues—personal status law and a security agreement with the United States—may also be thrust on its shoulders. All three issues are directly related to debates about the role of Islam (and more specifically Islamic law) in post-Baathist Iraq.

Iraq's transitional process has brought to the fore a number of religious forces whose political relevance was sharply repressed under the Baathist regime. Religious leaders have emerged as prominent among both Sunni and Shii Arabs, and religious parties have a major presence in the country's new National Assembly. This reality has caused some anxiety among more secular Iraqis. Beyond Iraq, some in the international community have perceived a strong irony in a U.S.-led regime change resulting in a more Islamic state.

But thus far much of the attention on Islam in Iraqi politics has been fairly unfocused in nature: The role of Islam in the new constitution has been discussed both inside and outside Iraq, but only in the most general terms. A year ago there was a brief but intense controversy over an attempt to change the personal status law (covering marriage, divorce, inheritance, and related matters), but the change was never implemented.

Part of the vagueness of the discussion is understandable. "Implementing Islamic law" attracts popular support in Iraq, as it does in many other Arab countries, but any attempt to translate the slogan into reality raises difficult questions. Whose interpretations of Islamic law will be binding? What is the respective role of legal scholars and parliaments? When legal specialists differ—as they inevitably do in Iraq with its mixed Sunni-Shii population—what law will be applied? What is the role for positive legislation in a Muslim society?

Now that the National Assembly—responsible for drafting the constitution, writing regular legislation, and approving international agreements—has been elected, vague and general debates about the role of Islam are about to become much more specific. Over the next year, Iraqis will likely be taking sides on subjects related to the role of Islam in three key areas of national life: the constitution, personal status law, and security arrangements with the United States. There will likely be vigorous debate over the precise formula by which to refer to Islam in the constitution, but it is not at all clear if any of the phrasing proposed will

have a practical effect. Personal status law, by contrast, is an extremely important matter for the lives of most Iraqis, but the debate focuses less on whether or not to use the body of Islamic law known as *Sharia* and more on how to use it and who may apply it. Negotiating a security arrangement has many political implications, most of which are not religious in nature. But any attempt to exempt foreign troops from Iraqi legal processes—as a security agreement will likely do—could be portrayed as placing foreign law in a position of superiority over the law of a Muslim society.

Constitutionalizing Islam

Iraqis are entering a long-standing regional debate on the constitutional role for Islam. With the exception of Lebanon, all Arab states make explicit provision for Islam in their constitutions. And indeed, there has been a form of religious inflation over recent decades: Whereas earlier Arab constitutional documents tended to give fleeting nods in an Islamic direction, more recently Arab states have increasingly decided to incorporate more extensive provisions on Islam. In particular, Islam is often mentioned in four contexts:

- *Official religion*: Islam is proclaimed the official religion in almost all Arab states. Although often an important symbolic step, in practical terms such clauses simply forestall disestablishmentarian tendencies that have been nearly absent in Arab politics in the first place. Religious instruction, for instance, is generally part of the officially mandated curriculum. Many such practices and institutions predate the constitution (such as a state *mufiti*, responsible for advising political officials on matters of religious law) and are unaffected by it. All of Iraq's previous constitutions have proclaimed Islam as the official religion.
- *Head of state*: Some Arab constitutions require that the head of state be Muslim. Iraq only briefly adopted such a provision (in its 1964 interim constitution), although all Iraqi heads of states have been Muslim.
- *Personal status law*: Some Arab constitutions provide that matters of personal status be governed in accordance with religious law. The 1925 Iraqi constitution did contain such a stipulation, but most subsequent constitutions dropped the issue. Once again, the practical meaning of such a provision is limited. It generally does no more than recognize an existing situation. Enshrining religious law for personal status does prevent civil marriage, which is virtually unknown in the region anyway. Such language has not prevented far-reaching reforms on personal status law, so long as such reforms can be cast as falling within legitimate interpretations of Islamic law. In the Iraqi case, debate over personal status law has already begun, but it is likely to be fought on the terrain of the normal legislative process rather than of the constitutional text.
- *Islamic law as a source of legislation*: Arab constitutions have seemingly carved out increasingly ambitious roles for the Islamic *Sharia*. The Syrian constitution of 1950 introduced the idea that Islamic law should be a source for legislation. Kuwait in 1962 and Egypt in 1971 followed suit with similar language. And in 1980, the Egyptian constitution was amended so that “the principles of the Islamic *Sharia* are the principal source of legislation.”

Until 2004, Iraq stood aloof from this last trend, although the interim constitution of 1964 did describe Islam as “the basic foundation” of the constitution. But there will be strong pressure to include some role for Islamic law in the constitution about to be written. Indeed, the matter has already been the subject of sharp political contestation, beginning with the

composition of the Transitional Administrative Law (TAL) in 2003 and 2004; the debate over the permanent constitution has picked up where the argument over the TAL left off.

Although much of the TAL was drafted in a very closed process, the debate over its provisions for Islamic law spilled out into public view. Some of the more enthusiastic advocates of *Sharia* wished to add a clause along the lines of the Egyptian constitution proclaiming the principles of *Sharia* as “the principal source of legislation.” More secular drafters were willing to name *Sharia* as a source of law, but they balked at making it the only or principal source. The final, fairly tortured compromise read:

Islam is the official religion of the State and is to be considered a source of legislation. No law that contradicts those fixed principles of Islam that are the subject of consensus, 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.

What *Sharia* advocates lost—Islam was mentioned but *Sharia* was not, and Islam was one but not the only source of law—was compensated by the prohibition against any law that contradicted the fixed principles of Islam. But those fixed principles were not specified, nor was any structure brought into being to determine them. The reference to “consensus” presumably indicated that religious scholars might be consulted—the consensus of scholars is a primary source of law for Sunni Muslims (and a secondary one for the Shia)—although the TAL provided no mechanism by which scholarly consensus could be authoritatively expressed.

Immediately after the National Assembly elections on January 30, 2005, the debate over the role for the Islamic *Sharia* began again. On February 6, a statement issued in Najaf claimed that all religious scholars demanded that *Sharia* be specified as the sole source of law in the constitution. The statement was puzzling because deriving all law from *Sharia* would make it virtually impossible to write a constitution in the first place. A representative from Ayatollah Al Sistani immediately disavowed the statement, making it less necessary to work out its precise meaning. Realistically, religious forces are likely to press at most for declaring the Islamic *Sharia* as “the” or “the principal” source of legislation, perhaps barring any legislation contradicting it. More secular Iraqi political forces will probably offer language making it *a* (rather than *the*) source of law. Surprisingly they have objected far less to the more specific language disallowing any legal provision that contradicts *Sharia*.

The practical implications of the various proposed formulas cannot be anticipated without consideration of implementing structures. At this point, the debate in Iraq is at best fairly hazy on who is authorized to speak for *Sharia* and how their assessments are to be applied. *Sharia* is not an easily identifiable set of rules that can be mechanically applied but a long and quite varied intellectual tradition. Proclaiming it “the principal source of legislation” places the burden on officials to draw on that tradition in drafting legislation, but it gives them little guidance on how to do so. Absent any clearly identified implementing structure, the effect of such a provision would not be to Islamize the legal order but to give moral support to any attempts to draw on Islamic law through normal political and constitutional channels. Stronger language might place advocates of the Islamization of law in a more advantageous position in the parliament, allowing them to claim that they are working in accordance with constitutionally ordained principles when they introduce legislation that has an Islamic coloration.

If the Iraqi constitution does construct a strong constitutional court—as most constitutions written throughout the world in recent decades, including the TAL, have shown some effort to do—then it might be possible for the judiciary to be drawn into attempts to enforce general constitutional language on the Islamic *Sharia*. This is the case in Egypt, which has lived for a quarter-century under the fairly strong formula that the “principles” of the Islamic *Sharia* are “the principal source of legislation.” Yet the Egyptian constitutional court—while often a bold actor—has been fairly deferential to parliaments and to the executive in allowing them to adopt whatever interpretation of Islamic law they see as appropriate. For an Iraqi constitutional court to set a more exacting standard, it would have to be given several tools: access to the court would need to be relatively open; the court would need to have a fairly wide purview for examining legislation; and the body or bodies appointing judges to the court would need to be inclined to name some religious judges. Such matters are rarely spelled out in the constitution; generally most details of the structure and operation of a constitutional court are left for ordinary legislation. If *Sharia* advocates intend to have a constitutional formula with practical legal effects, they will have to watch the legislation regarding a constitutional court fairly closely.

This does not mean that the constitutional language on the Islamic *Sharia* has no meaning, but it does indicate that the outcome of the debate would be better seen as effect than cause: Rather than determining the extent to which Islam will affect the legal order, the precise formula adopted will be a significant barometer of the power of religious forces. The specific language adopted will be taken as a litmus test of the new state’s commitment to Islam and of the strength of various religious orientations. If the experience of other Arab countries is any indication, Islamist groups will be able to seize on strong constitutional language to buttress their case not in the courts (where they generally lose) but in the public sphere. And Islamist movements in Iraq have tipped their hands on their intentions only to a limited extent. Some have suppressed trade in alcohol on a local basis, others have ventured into the domain of personal status law, but none has made clear how much they wish to Islamize the legal order and how they would do so.

In short, even if they succeed in matters of constitutional language, *Sharia* advocates will likely have won for themselves tools that are more political than legal.

Personal Status Law: Who May Speak for Islam?

Although the constitutional debate over *Sharia* is more symbolic than substantive, this is not at all the case for personal status law. Indeed, there is no area of law that more broadly affects the lives of ordinary Iraqis: It guides relationships between parents and children and between husbands and wives, covering matters relating to birth, marriage, divorce, and death.

The struggle over personal status law—and especially over the progressive 1959 law now in force in Iraq—is often portrayed as pitting advocates of women’s rights and freedom on the one hand against supporters of the Islamic *Sharia* and rigidity on the other. Such a view is only partly true. The position of women is deeply affected by various provisions of personal status law, but the conventional view—prevalent in the West but also heard in Iraq itself—exaggerates and misstates the position of various parties regarding the Islamic *Sharia*.

First, both those who admire the 1959 law and those who oppose it claim to be faithful to *Sharia*. Virtually no political forces are calling for a totally secular law, and indeed every

country in the Arab world bases its personal status law to a considerable degree on religious sources, as do the non-Arab states in the region, Israel and Iran.

Second, although supporters of the 1959 law speak of it as freeing women from authoritarian and rigid interpretations of *Sharia*, religious scholars in Iraq have criticized the 1959 law as authoritarian and rigid, imposing a single, officially codified version of *Sharia* that effectively robs Iraqi society and its religious scholars of their ability to implement their own more learned and sounder (in their eyes) conception of Islamic law. In sum, the struggle over the 1959 law is essentially a political one concerning the authority to make law, the content of the law, and the nature of the courts that adjudicate disputes concerning personal status.

Prior to 1959, matters of personal status were adjudicated by a set of traditional religious courts that ruled on the basis of their interpretation of classical religious sources. Sunnis, Shia, and religious minorities (such as Christians and Jews) each had their own set of courts. Although there was some legislation that covered these courts, personal status law itself was largely uncodified and varied according to sect. The Iraqi state supervised the work of the personal status courts only in very loose ways. Calls for a uniform law of personal status and for more intrusive state control were deflected, chiefly by Shii religious leaders who were anxious to maintain their autonomous realm.

In 1959, a revolutionary and left-leaning government issued a new personal status law by decree. With some modifications, that law still governs Iraq. The 1959 law introduced three sweeping innovations:

- It unified personal status law for Sunnis and Shia (Christians and Jews were allowed to keep their separate systems).
- Personal status law was now codified in written form. No longer were judges required to determine the law based on their specialized religious training; their task was simply to apply the code.
- Personal status courts lost their autonomy and became a branch of the regular court system.

The 1959 law did not repudiate the Islamic *Sharia*, nor was it gender neutral. Indeed, it was presented to Iraqis as the codification of *Sharia* rather than its repudiation. All of its vocabulary and conceptual categories were taken from Islamic legal thinking, and the law specified that where it failed to make explicit provision for a situation, judges should resort to the principles of *Sharia*.

Despite its reliance on *Sharia*, the 1959 law undermined the influence of both the Sunni and Shii religious establishments. It removed their authority to determine law and stripped them of their oversight of personal status courts. Chibli Mallat, an expert on modern Shii jurisprudence, described the effects on senior Shii jurists: “a unified code meant the end of their expertise and the irruption on their own scene of state-appointed scholars who looked only to the text of the Code for their decisions.” Although the new law generally operated within the bounds of plausible interpretations of Islamic law, it borrowed eclectically—and from a traditional viewpoint completely randomly—from various schools of law and from both Sunni and Shii jurisprudence. On occasion, it burst past the limits of any established interpretation, such as when it assigned equal inheritance rights to sons and daughters.

It was precisely the law’s willingness to push the limits of *Sharia* in favor of various rights for women that led to its reputation as an important step toward reform. Groups pursuing

women's rights in the Arab world rarely advocate formal legal equality—because such a step would have very mixed results for women—and instead generally prefer to work within the categories of existing personal status law and practice to enhance the legal position of women. Thus, the 1959 law did not drop distinctions between husbands and wives, but it did tilt the balance between them. In matters ranging from custody to child support to polygamy, it generally put wives in a stronger position than they had been before the law's adoption.

Subsequent Iraqi governments tinkered with the 1959 law but kept most of it intact. In 1963, a new Iraqi regime seized power with some participation from the Baath Party. Perhaps in an effort to curry religious support, the regime amended those areas of the code that did not seem to be operating within the bounds of any traditional interpretation of *Sharia*. The 1964 interim constitution went so far as to insist that inheritance—where the 1959 law had departed from traditional teaching most dramatically—follow Islamic jurisprudence. As a result, women lost some of the guarantees they had received in 1959; the areas most affected involved inheritance and polygamy. In 1978, a Baathist government promulgated further amendments to increase the grounds on which a woman could request a divorce from a court.

In December 2003, the Iraqi Governing Council (IGC) issued an order that seemed to go beyond tinkering with the 1959 law and straight to repealing it. The IGC's Order 137 required that personal status provisions of the Islamic *Sharia* be applied in accordance with the various schools of Islamic jurisprudence and cancelled any contradictory legislation. This vague language raised as many questions as it answered. Although the Order lacked much specificity, it seemed to replace the 1959 law with preexisting Islamic jurisprudence interpreted on a sectarian basis and may have shifted jurisdiction back to the sectarian courts. But none of the questions regarding the meaning of Order 137 were ever answered, because Paul Bremer, the leader of the occupation's Coalition Provisional Authority (CPA), refused to approve the order and the IGC later repealed it. The brief life of Order 137 did set off a storm of debate inside Iraq, and it was bitterly denounced outside of Iraq, helping to spark a brief effort in the U.S. Congress to pass an "Iraqi Women and Children's Liberation Act."

The matter, however, has not been completely forgotten. Two of the major constituent parts of the United Iraqi Alliance—the party that now controls 140 of the National Assembly's 275 seats—have staked out strong positions. The Al Dawa Party, for instance, campaigned on a platform of passing laws "that would guarantee the family's status based on Islamic values and the traditional norms of Iraqi society." Showing more political savvy than historical accuracy, the party blamed the "former regime" for "laws, pieces of legislation and deviant decisions that tore families apart." The 1959 law was actually issued not by the Baathist regime but an earlier, more fondly remembered government led by Abd Al Karim Qasim (whom a youthful Saddam Hussein had tried to assassinate).

If the Shii Islamist parties do decide to pursue the matter, they would likely do so not through the constitution itself but through regular legislation. This would provoke opposition—from more secular political forces, including the major Kurdish parties. To date, senior members of the clergy seem to have been far less forceful on the matter than the main Shii religious parties. And none of those involved have made clear what their practical aims really are. Would they move to modify the 1959 law to offer alternative Shii and Sunni codifications? Or do they wish to scrap codification completely, returning to the previous

decentralized system in which judges ruled on the basis of their education in Islamic law? And would they attempt to restore the pre-1959 personal status courts as well?

How these questions are answered will have a deep impact on the lives of ordinary Iraqis. The personal status law is of critical importance, but it is difficult to predict the outcome of the debate, not only because the opponents of the 1959 law have not completely shown their hands, but also because the various Islamist forces, while strong in parliament, have little experience bargaining over such issues, both among themselves and with their more secular opponents. And the furious debate occasioned by Order 137—regarded as a notorious decision by many who followed Iraqi developments from the outside as well as by some groups within the country—may have intimidated some Islamists into making personal status law a long-term target rather than an immediate one.

Security Agreement: Political and Religious Obstacles

The United States and its allies entered Iraq without the permission of those who ruled the country at the time, but they have now made clear on several occasions that they will leave if asked to by the new leadership. Early in its occupation of the country, the United States attempted to negotiate a security agreement with the IGC, making its ratification by an assembly a virtual condition for the restoration of sovereignty. That plan collapsed when members of the IGC balked, aware of their unelected status and anxious to avoid appearing as tools of the occupation. Accordingly, the matter was left until the Iraqi Transitional Government was formed in the wake of the National Assembly elections.

In the absence of a security agreement, the presence of U.S. and other foreign forces has been sanctioned by United Nations Security Council Resolution 1546, passed in June 2004 as the formal occupation was drawing to a close. In addition, the CPA had issued a series of orders that retained legal effect after the end of the occupation governing the status of foreign forces. In one of his final actions (Order 17, as amended on June 27, 2004), Bremer granted members of the force authorized by Resolution 1546 immunity “from Iraqi legal process.” Although Iraqi laws—including CPA orders—would still apply to foreign forces, only the country sending them could arrest or try them.

When U.S. forces regularly operate on foreign territory, the United States generally negotiates a “status of forces agreement” (SOFA) with the host government. A SOFA can cover many different issues regarding the presence of foreign troops, such as the modalities of their entry into the country and how they are taxed. The most critical issue is often jurisdiction—what law will govern their presence and who will be able to try them for any infractions of the law. The United States generally works to ensure that its troops will be tried by U.S. courts (even if those courts are enforcing local law) as long as soldiers are acting in an official capacity. In some countries, the United States has pressed for broader immunities as well, covering dependents of its military personnel. The U.S. military’s increasing reliance on private contractors has also led the United States to attempt to include them under SOFA immunities. The Bush administration has pressed forcefully in recent years for a pledge by host countries that they will not hand U.S. troops accused of war crimes over to the International Criminal Court (ICC).

Although the United States did try several ways to negotiate a SOFA with Iraq prior to the restoration of sovereignty on June 30, 2004, those efforts collapsed in the face of domestic and international suspicions that the United States was imposing them on a government that lacked legitimacy and autonomy. The result in the short term was a legal framework that was

actually far more generous than any SOFA would likely be. Order 17 is particularly sweeping for military forces and contractors. This situation, however, is inherently unstable and could cause problems for the United States in three ways.

First, Resolution 1546 requires the presence of the forces be reviewed in June 2005 and explicitly withdraws their mandate either on the request of the Iraqi government or with the end of the transition process (at the end of 2005, barring delay).

Second, all CPA orders can be revoked by the transitional Iraqi National Assembly just elected. It should be no surprise, therefore, that U.S. Secretary of Defense Donald Rumsfeld revealed a desire to negotiate a SOFA with the new government:

One of the things we're going to have to do this year, between now and when the constitution is completed and the permanent government is elected in December, is to begin that process of inventorying all of those questions, like status of forces agreements, bases....So our discussions and negotiations with respect to those issues are unlikely to be taking place in this interregnum but very likely will start shortly with the new government once it's announced in two, three, four weeks—whatever it may be.

Third, in an almost unnoticed move, the cabinet of interim Prime Minister Iyad Allawi used (and probably exceeded) its authority to conclude international agreements to ratify the Rome Statute (which established the International Criminal Court) two weeks after the Iraqi elections—and before the National Assembly met. Until the convening of the National Assembly, the cabinet was authorized only to conclude international agreements regarding “diplomatic relations, international loans and assistance, and Iraq’s sovereign debt,” provided the three-member presidential council gave its unanimous consent. Perhaps the questionable legality of the move (and possibly discrete American pressure) led the Iraqi government to backtrack within a week, dropping the matter for the present. But the step should still cause some unease in Washington because of the Bush administration’s intense hostility to the ICC. Indeed, until the Abu Ghurayb scandal derailed its diplomatic efforts on this issue, the U.S. government was threatening to obstruct any international peacekeeping effort that did not grant an exemption for troops on a UN-sanctioned mission. Currently, the most significant U.S. diplomatic tool against the ICC is negotiating bilateral agreements with states hosting U.S. forces in which the host agrees not to surrender U.S. soldiers over to the ICC. Even if Iraq’s ratification of the Rome Statute has no legal effect, U.S. negotiators are likely to become particularly insistent on this point in any SOFA discussions.

A SOFA is a far less comprehensive document than a formal military alliance and should therefore provoke fewer sensitivities. But given Iraq’s history, the U.S. pattern of dawdling in the region, and a string of fairly vague statements from U.S. officials, there are still some significant pitfalls in negotiating a SOFA. Some of these pitfalls are not merely political but also involve matters of religious law.

First, with regard to Iraqi history, a protracted set of Anglo–Iraqi negotiations over military and security arrangements destabilized Iraqi politics beginning in the 1920s and became particularly problematic in the 1940s and 1950s. Some Shi’i leaders urged a boycott of Iraq’s first elections in 1924 because the resulting assembly would be forced to approve a treaty with Great Britain; when the assembly was elected, it proved very reluctant to ratify the treaty and gave its assent only after a British ultimatum. In 1941, the treaty relationship became caught up in a power struggle among rival groups in Baghdad, and the pro-British faction emerged triumphant only after a British reoccupation of the country. In 1948, a

newly negotiated treaty had to be abandoned after it met with widespread rioting in Iraq. And the close military relationship with Great Britain over time became a major factor of robbing Iraq's constitutional monarchy of legitimacy, leading to the revolution of 1958. Clumsy U.S. efforts during 2003 and early 2004 to rush an agreement through before any elections could be held hearkened back to the British technique of 1924.

Second, U.S. actions in the region since 1990 will likely augment suspicions. When U.S. troops were sent to Saudi Arabia in 1990, President George H. W. Bush sent Dick Cheney (then secretary of defense) to pledge that U.S. troops would withdraw when their mission was completed. Because that mission grew from liberating Kuwait to containing Iraq and then to occupying it, it took thirteen years for the United States to even begin to carry out its promise.

It is true that U.S. leaders have hinted increasingly broadly that U.S. troops will be withdrawn at the end of their mission. But definitions of that mission have grown extremely broad. In his 2005 State of the Union address, President George W. Bush explained that "our men and women serving in Iraq" would come home when Iraq was "democratic, representative of all its people, at peace with its neighbors, and able to defend itself." Other statements have either been evasive or left much room for maneuver. On the eve of the UN Security Council's approval of Resolution 1546, Secretary of State Colin Powell stressed that the continued presence of U.S. troops depended much more on a bilateral agreement than on any Security Council action:

The more important point is not what the resolution says. It's what the Iraqi sovereign government wants. We have had troops in sovereign nations for, you know, the last 50 years. We've had them in Korea. We've had them in Germany. We've had them in the United Kingdom. And so we will be there for as long as we are needed. I hope it is not a long period of time. But we're there with the consent of the sovereign government and we've made arrangements with that sovereign government.

More obliquely, Secretary of Defense Rumsfeld testified before the Senate Armed Services Committee on February 17, 2004, claiming that the United States had no plans "at the present time" for permanent bases but that he could not even say whether the subject would be raised in negotiations with the new government:

I think I'm correct in my statement that we're not asking for any funds for permanent facilities in Iraq. That's the first question. And the second question is do we have plans for permanent facilities in Iraq. No. There wouldn't be even any discussion about a relationship between the United States and Iraq until they have a new constitution and until they had a new government. And even at that point I have no way of even surmising whether that subject would come up. But I can assure you that we have no intention at the present time of putting permanent bases in Iraq.

The day before in the U.S. House of Representatives, Rumsfeld had been more succinct. When asked if he could make any comment on the basing agreements the US would seek, he replied simply, "I can't." Official refusal to speak about future American intentions will likely be understood as an unspoken desire to remain for a considerable period.

Iraqi statements have left some room for maneuver as well, but the emphasis is far different. For instance, Abd Al Aziz Al Hakim, who heads the Supreme Council for the Islamic Revolution in Iraq (SCIRI, one of the largest member organizations of the United Iraqi

Alliance, the majority party in the National Assembly) explained in an interview published on February 27, 2005:

There is an Iraqi national consensus on withdrawal. Nobody welcomes the continued presence of the occupation forces. Everybody wants these forces to leave. But there is a Security Council resolution that acknowledges the existence of these forces. We worked with the Security Council which responded to us by placing the decision to withdraw in the hands of the Iraqi government.

A move to negotiate a SOFA governing the legal status of U.S. troops is thus likely to place the Iraqi Transitional Government in a politically exposed position. The incoming Iraqi leadership certainly shows very public signs of acknowledging its security dependence on the United States; despite strong nationalist sentiments (and opposition calls), the Transitional Government may be amenable to negotiations.

However, if the new Iraqi leaders do attempt to conclude a SOFA, they will probably come under pressure to consider religious aspects of the issue. This is particular likely to be the case with any attempt to place U.S. troops in Iraq under jurisdiction of U.S. rather than local courts. It was outrage against such a SOFA that sparked the political career of Ayatollah Khomeini in neighboring Iran. The terms of that agreement were unusually favorable to the United States, allowing Khomeini to claim that it placed foreign law in a superior status to Iranian and Islamic law.

Few leaders are likely to wish to accommodate what they would view as a long-term subordination of their own legal system. Thus far, much of the Shii religious establishment has expressed no objection to the U.S. presence, implicitly accepting it as necessary in the current circumstances, but some of its members would likely eye a SOFA very carefully. If the SOFA were restricted both in scope and in time, the legal implications would likely be more tolerable. But if its legal exemptions are sweeping and if it seems designed to provide the basis for a permanent or long-term military presence (as the U.S. silence on the issue suggests), religious leaders are more likely to see it as an affront not merely to Iraqi sovereignty but also to the Islamic *Sharia*. ■

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