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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD**

Joint written statement* submitted by The Europe – Third World Centre (CETIM), a non-governmental organization in general consultative status, and the American Association of Jurists (AAJ), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 March 2005]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

FROM THE RECONSTRUCTION TO THE PRIVATIZATION OF IRAQ

1. Although the United Kingdom - United States coalition, as occupying power, had absolutely no right over Iraq and its resources, the coalition has privatized the bulk of this sovereign country's economy then handed it over to foreign corporations in the name of reconstruction. Paul Bremer, the civil administrator of the Coalition Provisional Authority named by the Bush Administration, during his 13 months in power issued some 100 Coalition Authority Orders¹. These orders currently function as new national laws without the Iraqi people at any time having consented to them in any way. No democratic check counterbalanced the decisions made by the Coalition, which, however, will radically change Iraq's economy.

2. A veritable legal arsenal was created in order to impose privatization on the national economy and on the public sector for the sole benefit of major foreign corporations. Iraq has become one of the most deregulated economies in the world without any form of protectionism whatever. Many of these laws were inspired moreover by bilateral trade agreements that the United States imposes on their "partners", such as the NAFTA or the proposed future FTAA². Thus, foreign corporations enjoy unlimited leeway in conducting business in Iraq and are accountable to nobody.

Orders Contrary to the Principle of National Sovereignty

3. The majority of these orders are in flagrant contradiction to the 1990 Iraqi constitution³ and to the 1907 Hague Conventions and the Geneva Conventions, ratified by the United States, which both stipulate that the occupying power must respect the laws of the occupied country. They are also in violation of United States law dealing with this subject, to wit The Law of Land Warfare (1956). Our attention will focus on several of these orders, those that are at the heart of the privatization process of Iraq and which flagrantly violate the economic and political sovereignty of this country.

4. The first order, of 16 May 2003, far from being symbolic, launched the de-Ba'athification of the government and of all decision-making structures of the country and resulted in the unemployment of thousands of Iraqis. The unemployment rate is said to be 50% of the labor force, indeed 70% in Basra.

Opening of the National Market to Foreign Investors and Corporations

5. Among the orders promulgated by the civil administrator is Order 39⁴, which deals with foreign investments. This order plays a leading role in the forced march of Iraq toward a neo-liberal economy. This order, according to its preamble, aims at "...the need for the development of Iraq and its transition from a non-transparent centrally planned economy to a market economy..." In fact, it is designed to deprive future Iraqi authorities of all economic sovereignty and prerogatives. It comports five main points.

¹ These Orders are available on the Coalition Provisional Authority's website: <http://www.iraqcoalition.org/regulations/index.html#Orders>.

² Cf. in this regard the article by Mary Lou Malig, "War: Trade by Other Means" in *Silent War: The US' Economic and Ideological Occupation of Iraq* (Focus on the Global South, January 2005), as well as the most recent CETIM publication "Mobilisations des peuples contre l'ALCA-ZLEA: Traités de libre-échange aux Amériques" (Ed. CETIM, 2005, 240 pp.).

³ The Iraqi constitution has been replaced by a provisional constitution (Transitional Administrative Law) until the new constitution, planned for 2005, is adopted.

⁴ This order is dated 19 September 2003. The official text is at: http://www.cpa-iraq.org/regualtions/20031220_CPAORD_39_Foreign_Invetment_.pdf.

1. It allows foreign investors to enjoy exactly the same rights as the Iraqis in developing the national market. Thus, the future government will not be able to favor Iraqi investors or companies. However, it is clear that up until now, United States corporations have enjoyed a position of privilege⁵ to the detriment of their Iraqi counterparts.
2. It privatizes the entire Iraqi public sector. Thus, some 200 national companies have been affected: railroads, electricity, water supply and sewerage (infrastructures for the most part destroyed by the U.K.-U.S. coalition), television and radio, hospitals (which were previously free), telephone service (the U.S. standard, CDMA has been imposed on Iraq), airports etc. Even the prisons may well be privatized in time.
3. It allows for foreign ownership of up to 100% of Iraqi companies, with the exception of the petroleum industry, mining banks and insurance companies. (These last two are dealt with in separate orders⁶).
4. It allows the expatriation or reinvestment of earnings without restriction or tax on the totality of funds invested or financial instruments as well as profits and dividends earned within Iraq. Foreign corporations can thus invest where they like and withdraw their funds at will without being accountable to anybody. This point clearly draws on the Multilateral Agreement on Investment, which was fought victoriously by social movements at the international level and which the OECD finally had to abandon.⁷
5. It allows the possession of land for 40 years and with the possibility of unlimited renewal of the right to property.

6. Owing to Order 37⁸, foreign corporations were not taxed in 2003 and have paid taxes of up to only 15% in 2004. Order 12 suspended the collection of all import taxes, customs duties (for goods coming in by ship and by plane) etc. on all products that entered or left Iraq in 2003. Order 38 reintroduced an import duty of 5% on goods, with numerous exceptions, for a period of two years. Thus, food, medicine and clothing, among other things are exempt from import duty, as are the occupation forces and the subcontractors. For Paul Bremer, these measures were taken to support the reconstruction of the country.

Privatization of Seeds and the Importing of GMOs

7. A new law allows the patenting of, among other things, living things. Order 81 on “Patents, Industrial Design, Undisclosed Information, Integrated Circuits and Plants Variety” is in complete contradiction to the 1990 Iraqi constitution, which prohibits privately owning biological resources.⁹ This order makes illegal the farmers’ traditional and millennia-old practice of selecting the best seeds¹⁰ and gives foreign companies a free reign in imposing their patented seeds at their price. It also allows the importing and marketing of genetically modified organisms (GMOs). Patents are valid for 20 years for agricultural plants and for 25 years for vines and trees. The Iraqi people’s food sovereignty is put in grave danger by this law.

⁵ According to *Iraq Revenue Watch 2004*, cited in Medact’s report, p. 11, U.K. and U.S. companies received 85% of the contracts. Examples: Bechtel Corporation, which is running the water supply system, and, MCI, formerly WorldCom, which is rebuilding the telephone network in the capital.

⁶ Order 40 gives foreign banks access to the Iraqi market and allows them to own up to 50% of an Iraqi bank.

⁷ Cf. in this regard “Accord multilatéral sur l’investissement (AMI). Attention, un accord peut en cacher un autre!”, Editions CETIM, 1998.

⁸ Order 37 establishes for 2004 a tax rate of between 3% and 15% on both Iraqi and foreign business enterprises and individuals. Cf. *Le Temps*, “A Genève, des hommes d’affaires irakiens vantent le ‘nouvel Irak’ bientôt libéralisé”, 3 Décembre 2004.

⁹ Cf. the “Iraq’s new patent law: A declaration of war against farmers”, *Focus on the Global South* and GRAIN, October 2004.

¹⁰ According to an FAO study quoted by The Ecologist, about 97% of Iraqi farmers used their own seeds or those bought at a local market. Website: <http://www.theecologist.co.uk>.

8. Moreover, the law cannot be separated from the context within which it was promulgated, where the coalition's responsibility is firmly a stake: the food situation is critical, indeed catastrophic. One Iraqi out of four depends on the food distributed to the public. According to the most recent report of the British NGO Medact, 17% of children are under their normal weight, and 32% suffer from chronic malnutrition.¹¹ Last October, the United Nations Food and Agriculture Organization (FAO) announced that grain production for 2004 was 2.4 million tons, almost half of what it was in 2003.¹² A major part of the water purification system has been destroyed or sabotaged, which has triggered severe diarrhea in children and the elderly and which favors the spread of illnesses. In this situation, how can the Iraqi farmers deal with the competition of agro-business transnational corporations that, as already mentioned, additionally enjoy a total exemption of import duties?

9. Further abusing his authority, the civil administrator took the first steps toward Iraq's joining the World Trade Organization (WTO) by requesting observer status for this country (11 February 2004). The country's sovereignty was once again impaired. As for the interim Iraqi government that succeeded Bremer, after being set up by the United States, it officially filed a request for membership last October, backed by Washington. In only eight months, Iraq went from observer status to being a candidate for membership, whereas ordinarily it takes a minimum of five years. The WTO member states last December 13 gave the green light for the opening of negotiations.

Right to Health and to Life

10. In 20 years, the Iraqi population has been subjected to three wars, massive bombing with depleted uranium¹³ and more than ten years of embargo. According the worst-case figures, there have been more than 100,000 civilian Iraqi victims, direct or indirect since the U.K.-U.S. offensive began on 19 March 2003.¹⁴ According to the NGO Medact, "The risk of death from violence in the 18 months after the invasion was 58 times higher than in the 15 months before it. The risk of death from all causes was 2.5 times higher after the invasion than before."¹⁵ Since May 2003, the coalition forces have never been able to protect civilians – but was this ever goal? Like Colombia, Iraq is a one of the most dangerous countries for trade unions. On 4 January of this year, Haid Salih, international secretary of the Iraqi Federation of Trade Unions, was murdered in his home. On 27 January, the president of the Mechanics, Metal Workers and Printers Union was kidnapped. Moreover, on many occasions, coalition soldiers have arrested or tried to intimidate unionized workers, and it was only in March 2004, some ten months after acceding to power, that the coalition repealed the law prohibiting the creation of trade unions for public sector employees.

Total Immunity for the Occupation Forces and Foreign Workers

11. Order 17¹⁶ guarantees legal immunity to the occupiers¹⁷ and their sub-contractors in Iraq. It

¹¹ "Enduring Effects of War Health in Iraq 2004", London, 2004, p.4. Website: www.medact.org.

¹² FAO, "Cultures et pénuries alimentaires », No 3, October 2004

¹³ As CETIM noted in a joint written statement during the 2000 Commission on Human Rights, this bombing with depleted uranium has had serious consequences for health and for the environment: "The 700 tons of depleted uranium dumped on the Iraqi population, the 135,000 tons of bombs (six times Hiroshima) and the various experiments involving unknown military technology, have made Iraq into a contaminated place for a long time, where the air is polluted by a high ionization and where the land is abnormally and dangerously radioactive". UN E/CN.4/2000/NGO/150.

¹⁴ According to *The Lancet*.

¹⁵ Medact, op.cit. p. 2.

¹⁶ This law provides that "Unless provided otherwise herein, the MNF, the CPA, Foreign Liaison Missions, their Personnel, property, funds and assets, and all International Consultants shall be immune from Iraqi legal process."

¹⁷ Cf. the CETIM's and the AAJ's written statement, « The situation in Iraq, since the recent invasion, is characterized by an accumulation of human rights violations, without precedent, since the end of the second world war », E/CN.4/2005/NGO/279.

gives to their country of origin the responsibility of bringing them to law, but the Bush administration has already taken measures to assure them immunity in the Under the scope of Executive Order 13303¹⁸, United States commercial enterprises working in the petroleum industry in Iraq run no risk of being brought to law for breaking the laws if such a violation occurs within the framework of the petroleum industry or in the course of the reconstruction of Iraqi infrastructure.

Conclusion

12. The economic reforms imposed by the U.K.-U.S. coalition do not seek to satisfy the need and priorities of the Iraqi people, as readily demonstrated by the deterioration of the health and food situation over the past two years. Their only logic is the pillage of the country's resources for the profit of foreign corporations and to make Iraq the staging ground of the neo-liberal economy in the region. Foreign business enterprises often charge prohibitive prices, as has been shown in certain studies, yet they have been chosen repeatedly by the civil administrator, to the detriment of Iraqi businesses. Further, Paul Bremer's and the coalition's management of the Iraqi Development Fund, created by Security Council Resolution 1483 (2003), and which centralized the profits from the sale of oil and gas, leaves much to be desired.¹⁹

13. The decisions made by the civil administrator under the coalition mandate are contrary to international law. The Fourth Hague Convention of 1907 clearly states in Article 43 that "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." Article 55 states that "The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."

14. Paul Bremer's orders have unfortunately not been questioned by the temporary government in power since 28 June 2004 – but did it actually have to power to do so? Its members were all "approved" by the Bush administration. Security Council Resolution 1546 (2004) requests the temporary government to refrain "from making decisions that affect the destiny of Iraq beyond the interim period", however, the civil administrator was able to modify the Iraqi economic system to suit himself, thus mortgaging the future of millions of people.

15. As for the elections of 30 January 2005, the conditions in which they were held were most irregular, which makes us doubt the real legitimacy and legality. Thus, more than 70 political parties boycotted them, most candidates were anonymous, the international observers, so numerous in Ukraine, were practically absent and were based in Amman in Jordan.

16. The Europe – Third World Center and the American Association of Jurists consider that the Commission on Human Rights, within the framework of its mandate, should adapt a resolution:

1. condemning without ambiguity the violations of international law and humanitarian law which are being committed in Iraq;

¹⁸ Cf. "Executive Order – Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest", signed by President George W. Bush, 28 May 2003.

¹⁹ Cf. *Le Monde*, « Reconstruction de l'Irak: 9 milliards de dollars auraient disparu », 31 January 2005.

2. favoring an inquiry into these violations and bringing their perpetrators to law;
3. favoring a pacific and democratic solution with the participation of all the sectors of the Iraqi people, respecting Iraq's sovereignty and right to self-determination, a solution which requires as condition the immediate withdrawal of the army of occupation;
4. asking that the Iraqis be consulted on the decisions made by the civil administrator during his mandate as well as on Iraq's membership in the World Trade Organization;
5. requesting that an audit be conducted on the use of the moneys managed by the Iraqi Development Fund.
