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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND
SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO
COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES : REPORT
OF THE SUB-COMMISSION UNDER THE COMMISSION ON HUMAN RIGHTS
RESOLUTION 8 (XXIII).**

**Written statement* submitted by Europe Centre – Third World, non-governmental
organization with general consultative status and the American Association of Jurists, non-
governmental organization with 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.

[29 June 2004]

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

Resolution 1546 (2004), of the Security Council

Resolution 1546 (2004), on Iraq, adopted by the Security Council on the 8th June 2004, that declares the end of the occupation and the setting of a sovereign interim government, does not disguise a totally different reality, that the Resolution tries to legitimate.

The Resolution states, among other things, the following:

1. *Endorses the formation of a sovereign Interim Government of Iraq, as presented on 1 June 2004, which will assume full responsibility and authority by 30 June 2004 for governing Iraq while refraining from taking any actions affecting Iraq's destiny beyond the limited interim period (the underlining is ours) until an elected Transitional Government of Iraq assumes office as envisaged in paragraph four below;*

On the one hand, the paragraph refers to “a sovereign Interim Government” (as in paragraph 2, that refers to “full sovereignty”) and on the other hand, the sentence underlined applies the theory of the “limited sovereignty”.

One might ask whether, under these circumstances, the Interim Government has the power to repeal the *Coalition Provisional Authority Orders*, amongst which n. 39, that left wide open and with no limits the doors of Iraq to foreign investments (in fact, only to United States companies linked to the country's present administration) repealing previous legislation on the matter, *Coalition Order 37* that exempts from taxes the occupation forces and the Coalition Authority, or *Coalition Order 17* that gives jurisdictional immunity to occupants and their contractors (the underlining is ours). It is worth supposing that specialists in questioning of the private companies *CACI International* and *Titan International*, contracted by the occupant, that act in *Abu Ghraib* prison and are accused of torturing, are amongst those “contractors” enjoying immunity.

This paragraph 2 of the Resolution states:

2. *Welcomes that, also by 30 June 2004, the occupation will end and the Coalition Provisional Authority will cease to exist, and that Iraq will reassert its full sovereignty*

On the 30th June the occupation “will end” and nonetheless the 160,000-forces occupying Army remains in Iraq because the Interim Government has so asked.

“Inviting” to stay in the national territory a foreign Army of 160,000 forces that occupied it by means of an aggression war and that holds the decision power on the use of force, is undoubtedly, a sovereign Government's act of incalculable consequences that can be assimilated to giving up sovereignty.

If the Interim Government supposedly assumed the authority and exercise of the sovereignty on the 30th June, how has it been possible that on the 5th June (letter from Ayad Allawi to Colin L. Powell) **in the exercise of an authority it still did not have**, “invites to stay” the occupying Army?

The most basic logics indicate that the Interim Government could only “invite to stay” the occupying Army **after** assuming its powers on the 30th June.

This paragraph 2 of the Security Council Resolution, as well as paragraph 9, are a challenge to common sense and to the most obvious principles of logics and law.

In fact, the continuity of occupation is a unilateral decision by the occupant, that Resolution 1546 cannot disguise.

It could happen that the “sovereign Interim Government” of Iraq took seriously its sovereignty and asked the occupants to leave the Iraqi territory.

Such a possibility has been observed in paragraphs 9, 10 and 12 of the Security Council Resolution:

9. Notes that the presence of the multinational force in Iraq is at the request of the incoming Interim Government of Iraq and therefore reaffirms the authorization for the multinational force under unified command established under resolution 1511 (2003), having regard to the letters annexed to this resolution;

10. Decides that the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to this resolution expressing, inter alia, the Iraqi request for the continued presence of the multinational force and setting out its tasks, including by preventing and deterring terrorism, so that, inter alia, the United Nations can fulfil its role in assisting the Iraqi people as outlined in paragraph seven above and the Iraqi people can implement freely and without intimidation the timetable and programme for the political process and benefit from reconstruction and rehabilitation activities;

12. Decides further that the mandate for the multinational force shall be reviewed at the request of the Government of Iraq or twelve months from the date of this resolution, and that this mandate shall expire upon the completion of the political process set out in paragraph four above, and declares that it will terminate this mandate earlier if requested by the Government of Iraq;

Thus, if the Iraqi Interim Government had the idea to ask the occupants to leave Iraq, they would come across, on one hand, with a powerful army that has no intention to do so and, on the other, with three Security Council Resolutions (1483, 1511 y 1546) that “legitimate” the said occupation.

In such a case, the request to end the occupation will have to be approved by another Security Council resolution, **that United States can block by exercising the right to veto.**

It is foreseeable that, in the best of cases, the occupation will end at the end of December 2005, when the “political transition”, established in paragraph 4 of Resolution 1546, will come to an end. If in that moment the United States, that usually do not respect international agreements, consider it appropriate.

Paragraph third of Resolution 1546, that states:

3. Reaffirms the right of the Iraqi people freely to determine their own political future and to exercise full authority and control over their financial and natural resources;

is a mere expression of good intentions with no practical consequences, given the contents and implication that the other paragraphs of the Resolution have.

Paragraph fourth states:

4. Endorses the proposed timetable for Iraq’s political transition to democratic government including:

- (a) formation of the sovereign Interim Government of Iraq that will assume governing responsibility and authority by 30 June 2004;*
- (b) convening of a national conference reflecting the diversity of Iraqi society; and*
- (c) holding of direct democratic elections by 31 December 2004 if possible, and in no case later than 31 January 2005, to a Transitional National Assembly, which will, inter alia, have responsibility for forming a Transitional Government of Iraq and drafting a permanent constitution for Iraq leading to a constitutionally elected government by 31 December 2005;*

Therefore, a political process implying the realization of fundamental acts in the exercise of the sovereignty of the Iraqi people and Nation, will be carried out under an occupation army that will widely hold the right to use the force to maintain “the stability and security and to put a stop to terrorism” with no monitoring at all by Iraqi authorities, as it is apparent from the exchange of letters between Colin Powell and Ayad Allawi and the refusal by the United States to the proposal of the Government to establish a minimum Iraqi control on the use of force.

The members of the occupation army will continue to enjoy jurisdictional immunity in the territory of Iraq, as set in *Coalition Order n. 17* of the Occupation Authority and therefore also before the International Penal Court, even though the Security Council has not renewed resolutions 1422 and 1487 adopted in 2002 and 2003. This immunity before the IPC remains because not being the United States party to the Treaty of Rome, except for the Security Council itself (where the United States can oppose its veto), only an Iraqi Government could inform the Prosecutor of the IPC about the crimes committed by United States citizens in its territory, in conformity to article 12 of the Court Statute*. Such a denounce cannot be filed while *Coalition Order n. 17* continue to apply. If, hypothetically, the Interim Government installed on the 1st July would like to repeal Order 17, it could not do it because its decision power is limited by article 1 of Resolution 1546.

It can be said that the “political process” will be completely distorted because it will take place under a foreign occupation that holds all the power –that can be exercised discretionally and with impunity- in order to make prevail over interests of the Iraqi people the occupants’ decisions according to the interests of big American companies tightly linked to President Bush team, that have taken up possession of Iraq.

Paragraph 7 of Resolution 1546 lists the activities of the Special Representative of the UN Secretary General and the United Nations Aid Mission for Iraq (UNAMI) to aid in this process if circumstances allow it (the underlining is ours). It is foreseeable that “circumstances will not allow it”, if any of the activities previewed are contrary to the occupant’s strategy, like “circumstances” did not allow the Secretary General correspondent to take part in the appointment of the Interim Government.

Paragraph 24 of Resolution 1546 states:

24. Notes that, upon dissolution of the Coalition Provisional Authority, the funds in the Development Fund for Iraq shall be disbursed solely at the direction of the Government of Iraq, and decides that the Development Fund for Iraq shall be utilized in a transparent and equitable

* A State not party to the Treaty of Rome can accept the competence of the IPC and denounce crimes committed within its territory, to the Prosecutor

manner and through the Iraqi budget including to satisfy outstanding obligations against the Development Fund for Iraq, that the arrangements for the depositing of proceeds from export sales of petroleum, petroleum products, and natural gas established in paragraph 20 of resolution 1483 (2003) shall continue to apply, that the International Advisory and Monitoring Board shall continue its activities in monitoring the Development Fund for Iraq and shall include as an additional full voting member a duly qualified individual designated by the Government of Iraq (the underlining is ours) and that appropriate arrangements shall be made for the continuation of deposits of the proceeds referred to in paragraph 21 of resolution 1483 (2003);

Paragraphs 24 to 27 of Resolution 1546, related basically to the management of profits out of the selling of petroleum and gas, keep the monitoring by the self-called “international community” over those resources, although it is graciously granted to the Government of Iraq the right to designate an individual with the right to vote to be integrated in the International Advisory and Monitoring Board.

IN CONCLUSION

The interim Government, appointed by the United States, when “inviting” to stay the occupant Army, has only complied with the orders of its “creator” and has thus given up the possibility to lift the main obstacle to the establishment of peace, democracy and sovereignty of Iraq.

Member States of the Security Council, with Resolution 1546 of 8 June, gave in obediently to the exigencies of the United States who will, anyway, apply this Resolution only as far as it is of its interest. They skipped once more the opportunity to solve the Iraqi problem, be it voting, on agreement of all groups representing the Iraqi people, the sending of a neutral multinational force in replacement of the occupying Army, as a first step to restore peace and initiate a real political process with no external interferences, or resending the question to the General Assembly, should there be veto by United States.

Instead, Security Council, with the last two years Iraq-related Resolutions (1422, 1483, 1487, 1511):

- Has endorsed the aggression, that is an international crime;
- Has “legitimated” the occupation and the plundering of the Iraqi patrimony;
- Has covered with a mantle of impunity crimes committed by the occupant, even violating the Statute of the International Penal Court and
- With Resolution 1546 of 8 June, has ratified all these crimes and given a perspective of permanence of the neo-colonial status of Iraq.

The breach between the acts of the Security Council and the main principles of international law, that has always been big, has become now abyssal.

The time has come to ask ourselves seriously about the use of the United Nations system as it works presently, and whether we should start to think about a reconstitution on basis

really democratic and representative, in order to make the sentence “We, the peoples of the United Nations”..., that appears in the Preamble of the Charter, stop being just an empty
