

Federalism in Iraq, prospects, hopes, and future

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In 2003, the American invasion of Iraq changed, and forever, the political landscape of Iraq and to a large extent the region. It has dismantled well-trenching arrangements and realities which have been the norm for centuries. This article will examine the concept of “federalism” which has been proposed as the remedy of ills which have engulfed the country for so long.

The definition of Federalism

Federalism is a mixed or compound mode of government that combines a general government (the central or "federal" government) with regional governments (provincial, state, cantonal, territorial, or other sub-unit governments) in a single political system, dividing the powers between the two. Federalism in the modern era was first adopted in the unions of states during the Old Swiss Confederacy (1.)

Federalism differs from confederalism, in which the general level of government is subordinate to the regional level, and from devolution within a unitary state, in which the regional level of government is subordinate to the general level (2.) It represents the central form in the pathway of regional integration or separation, bounded on the less integrated side by confederalism and on the more integrated side by devolution within a unitary state (3.)

Further explanation of Federalism is that it defined as a political system that supposes that a number of states or nationalities, often small, relinquish their powers, privileges, and independence in favor of a supreme, unified authority that represents them on the international scene and is their reference in everything related to sovereignty, national security, defense, and foreign policy (4.)

Iraq after 2003

The fall of Saddam as a result of the Americans invasion in 2003 exposed a very strange reality in which the country is in fact one country in name only but two countries in reality. This is due to the fact that the northern part of Iraq, the kurdish region, was an independent country in all but name. This reality came to being as a result of the 1991 war and the total defeat of the Iraqi army and the subsequent establishment of the non-fly zone which also resulted in the withdrawal of Saddam forces from three kurdish forces in the north. The Kurds established the Kurdish Autonomous Republic in Iraqi Kurdistan in those three provinces. The Kurds smartly resisted the temptation of declaring a long-sought independent republic as was widely expected.

It is important to note that, to their credit, the Kurds used this new reality (of not being under the control of a central government in Baghdad) to embark on ambitious tasks of holding elections, forming a functioning parliament, and building civil institutions. In addition, initiated a large scale of construction of badly-needed roads, infrastructures, schools, malls, high-rise buildings, etc. The region also enjoyed a huge amount of foreign investment dollars, and robust trade with neighboring countries.



The autonomous Kurdish region in northern Iraq and under the control of the Kurdish Regional Government (KRG)

It is believed that this reality was the origin of many problems which engulfed Iraq later on and till this day. The Kurds, who resisted several opportunities to declare independence, were not willing to give up an inch of their hard-fought gains to the newly-proposed Iraq during the very difficult negotiations to write the new constitution. Furthermore, “the Kurds sought a formula that linked the Kurdistan region to other parts of the country Iraq while giving up the least possible measure of the autonomy they had gained after so much sacrifice” (5.) It was, therefore, alleged that the post-invasion Iraq constitution was more of an attempt to accommodate the semi-independent Kurdish state rather than writing a functioning constitution for the entire country. This attempt has manifested itself repeatedly when it came to establishing federal institutions while the Kurds already have one of their own. For instance, article 107 of the Iraqi constitution states “Formulating and executing national security policy, including creating and managing armed forces to secure the protection, and to guarantee the security of Iraq’s borders

and to defend Iraq" (6), yet, there is not even a single Iraqi soldier present in the Kurdish region. This is due to the fact that the Kurds have their own army named the Peshmerga which they inherited from the period before 2003 and it is a fully fledged army with organized military apparatus and a modern arsenal of weapons. And despite several attempts to put the peshmerga under some sort of arrangement with the Iraqi army as was initially agreed, this has never materialized.

The above example is one of many issues which remained unsolved despite the presence of the constitution due to the fact that there are realities on the ground in the Kurdish region. These include language, the distribution of the natural resources, decisions by the federal government and courts, etc..

It is important to note that not everyone in the Kurdish region was happy with the Kurdish leadership negotiating the future of Iraq. It was rumored that many Kurds criticized their leaders for "reviving a dead country and bringing it back to life after its death in 1991".

Accusations and counter accusations

Since the focus of this article is to closely examine the reasons behind the poor state of federalism in Iraq, it is important to first review the lists of the accusations and counter accusations of the major players in Iraqi federalism. These accusations, true or not will illustrate the state of mind and the mindset of these parties.

Iraqis outside the KRG accuse its government of never missing any opportunity in bashing Iraq for atrocities committed in the past by successive Iraqi governments against the Kurds despite the fact that they have been living in relative security for more than 30 years with virtually no threat from any central government in Baghdad. In addition, and as it has been shown repeatedly and continuously, Kurdish politicians never claim that they are Iraqis and/or part of Iraq with constant threat of separating from Iraq (In a recent interview with the KRG Prime Minister Masrour Barzani he claims that he is Iraqi, he responded by saying I am a Kurd and refused to answer if he is Iraqi or at least an Iraqi-Kurd despite repeated attempts.) Finally, and as part of its effort to discredit the central Iraqi government in Baghdad, KRG officials blame all their economic mismanagement and bad economic policies on Baghdad. For instance, it is a common phenomenon in the KRG that civil servants rarely receive their salaries in full or on time. To this, the KRG blames the central government in Baghdad for holding its share of the budget.

Other accusations against the Kurds by the rest of Iraq alleges that KRG which is an equivalent to a legal status of any governorate in Iraq is considered as an independent state by Kurdish representatives when abroad to the extent that in official meeting it is noticed the absence of the Iraqi flag and the presence of the Kurdish flag. To that, it was noticed by the first Kurdish

president of Iraq, Jalal Talabani who spent the last year of his life in an exclusive private hospital in Germany at the expense of Iraq, yet when he returned to Iraq, his plane landed in his stronghold of Sulaymaniyah, and when he died, his coffin was draped in the Kurdish flag rather than that of Iraq.

On that matter, Iraqis bitterly complain that their entrance to the KRG is more of a trip to a foreign country than a trip to a part of Iraq whereas Iraqis, if permitted, they have to comply with a residency permit for a specific period of time (usually 30 days), and in some cases even require a sponsor. The Kurds use “security” behind this policy.



Jalal Talabani, first postwar Iraqi president

With regards to foreign affairs, and despite of the fact that Article 107 of the Iraqi constitution states that “The federal government shall have exclusive authorities in the following matters: First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing and ratifying debt policies and formulating foreign sovereign economic and trade policy”, the representatives of the KRG have repeatedly ignored this and acted entirely independent of the federal government. And as a stark example, is the not so hidden relationship between Israel and the KRG and refusal by its officials to criticize Israeli policies and practices despite the fact that, at least officially, Iraq is in a state of war with it.

One of the biggest issues of contention between the two sides is Oil & Gas and Articles 108 and 109 are supposed to set the framework for management of those resources. It is repeatedly stated by the federal government that the KRG government has considered all Oil and Gas fields in the region as its own property and accordingly have taken every measure to ensure that the federal government has absolutely no control. Accordingly, it has managed production, marketing, transportation, sales, revenues, etc. In addition, and despite fierce opposition by the federal government, the KRG has formed many contracts with foreign companies, long and short, to explore oil and gas and to sell to other countries.

Finally, it is a common complaint by any Iraqi individual to state what it is that the Kurds ultimately want after all that they have got and achieved. After all, the present of Iraq, foreign minister, army chief of staff, and so many other high positions in the country are in the hands of the Kurds, and Iraq has accommodated all Kurdish demands and conditions to remain part of the country. In addition, and as stated earlier, the new constitution of Iraq has more than accommodated Kurdish demands for equality. For instance, Article 4 states that the Kurdish language is one of the two official languages of Iraq. Article 113 states that the constitution shall approve the region of Kurdistan and its existing regional and federal authorities. And in an explicit recognition of what the Kurds have accomplished, Article 137 states “Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan - including court decisions and agreements - shall be considered valid unless it is amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the constitution.” So it is not really understood by average Iraqis why Kurds are acting that way.

Others claim that the Kurds will never consider themselves as Iraqis not because of practices of past and current governments in Baghdad but their entrenched belief that Iraq is not really a country but is a British-patched entity made forcefully by incorporating different nationalities and sects as a result of series of treaties and accords between superpowers which the Kurds had no say and was imposed on them.

The Kurds, on the other hand, have their own list of complaints against those who accuse them of not believing in federalism, or at least give it a chance to succeed. To that, they claim that Iraqis outside of the Kurdish region never really gave up their entrenched mentality of a strong central government which interferes in every fabric of society and backed by a strong army and security forces which do not hesitate to use ruthless means of subduing any resistance. Accordingly, and as it was proven over the past years, any attempt to form a region other than what was already there (the KRG), as it was written in the constitution, was fiercely resisted and

was branded as a deliberate attempt to divide the country. Example of this was the long and persistent attempt to form the oil-rich “Basra Region.”

The Kurds also claim that although some high positions in the federal government are assumed by Kurds, these actually do not have any real power, and that power is in the hands of the prime minister who exercises to the fullest (this is an accusation leveled by the Sunnis also.) In addition, Kurds have suffered so much and for so long of atrocities at the hands of successive Iraqi governments and they are not ready to let their guard down and fiercely defend Kurdish gains and rights. And as an example of Kurdish representation in political life outside of the KRG, they claim no Kurdish member in the national assembly can speak in Kurdish and there is no instant translation technology from Kurdish into Arabic is available (as for instance in Canada whereas instant translation between English and French is available.)

What is so ironic is that both sides accused the other of not respecting the constitution and all problems should be solved if it is respected to the letter.

These accusations and counter accusations illustrate the present mindset of both parties which shows beyond any doubt that the future of federalism is on thin ice and if there is no sincere effort to tackle the many issues of contention, then the future indeed looks bleak.



Iraq national assembly

The third component in the federal system in Iraq is, of course, the sunnis who have historically ruled the country from its creation in 1921 till the fall of Saddam's regime in 2003, and have their share of concerns about federalism and who was behind its failure.

The Sunnis of Iraq, and as it was mentioned of their historical control of power, are, for the obvious reasons, strong believers in a strong central government in Baghdad. There is no historical example of any attempt by any sunni-dominated government from 1921 to 2003 to let loose, no matter how small, of its grip on power through the center. One example, however, occurred in 1966 in which Iraqi prime minister Abdul Rahman al-Bazzaz (who was convinced there would be no military solution to the Kurdish problem in the north, after successive military defeats) tried to institute formal recognition of the Kurds. This was to be achieved through a twelve-point agreement whose purpose was to provide constitutional recognition to the [Kurds](#) and to recognize [Kurdish](#) as an official language of Iraq. The plan was to hold a parliamentary election within the period mandated in the provisional constitution of 1964. It provided for representation of the Kurds in all branches of the government. It gave the Kurds the right to organize their own political parties and publish their own newspapers. However, al-Bazzaz was forced to resign in August 1966 so the agreement was never signed (7.) Of course the Iraqi-Kurdish Autonomy Agreement of 1970 is another example but not as many decentralization goals. It was a different sort of attempt to solve the kurdish question.

In drafting the new constitution there was so much back and forth attempts to accommodate Sunni demands, and sunni negotiators were split amongst themselves, which was reflected on the sunni provinces during the vote on the constitution. It is fair, therefore, that Sunnis were never fans of federalism and decentralization as they believe it will be the first step towards the partitioning of the country.

Discussion

There have been many articles, studies, discussions, etc. on federalism in Iraq and what are the reasons behind its dysfunctionality. Most attribute the matter into the way the constitution was negotiated between the parties.

The drafting and adoption of the new Constitution came with so many problems as sectarian tensions in Iraq figured heavily in the process. The deadline for the conclusion of drafting was extended on four occasions because of the lack of consensus on religious language (8.)

What was so unique about negotiating the sort of federalism which will be applied in Iraq, is that none of the sort of federal systems which existed in the world at that time (which was either formed by different states, different ethnic groups, or different sects) could have applied in Iraq due to its complex ethnic, sectarian, and religious characters, and the interlocking of sects, ethnic

groups, etc. in many regions of Iraq (Baghdad is a major example.) Accordingly, it was suggested that “The case in the Iraqi case is that the appeal is a federal model in the world, and the Iraqi constitution presented an unfamiliar pattern for federalism in the world, whether on the theoretical or practical level. The Iraqi draft constitution includes, for example, a text in which regional law takes precedence over federal law in the event of a dispute between them over joint powers (Article 111), as we can notice a similar text in Article 117-Secondly-, and even the draft established offices for regions and provinces in embassies and diplomatic missions Iraqi (Article 117 - Fourth -). In an unprecedented procedure at the level of all federal experiences in the world. Thus, it can be said that the federalism included in the Iraqi constitution went too far in fragmenting power, and it also established a federal system that is not consistent with the well-known theoretical concept of federalism and almost reaches in its general features the borders of the confederation which means the union of independent and sovereign states (9.)

Further opinions on the subject have reached the same conclusions. In her research on the reasons behind the failure of the federal experience in Iraq, Eva Maria Besler noted that “The attempt to introduce federalism in Iraq to peacefully deal with internal diversity and to stabilize the country has largely failed. The constitution of 2005, which directly resulted from the intervention of the USA and their allies, was unsuccessful in transforming the authoritarian centralized state in a federation uniting the different components of the country while respecting their diversity. The constitution and its patchy implementation are instead associated with a quasi-independent Iraqi region of Kurdistan having a charged relationship with Baghdad, and an elected government for a highly dysfunctional rest-Iraq.” She went on to conclude that it was not federalism, which has failed in Iraq, but conflict resolution and state transformation in a much broader sense. The fact that the constitution-making process was severely flawed had an independent outcome on the constitution itself: The constitutional provisions did not entrench a hard-earned agreement on how to divide powers and resources between Baghdad and the regions and on how to share power at the center, but employed federal terminology in the absence of such a consensus.” She went on to state that the constitutional regime introduced in 2005 is not federal but lacks subnational units, a clear division of powers and resources, an appropriate participation of the units at the center as well as a neutral arbiter. Accordingly, federalism has not failed in Iraq, but has not yet been tried. A Failure of State Transformation Rather than a Failure of Federalism? (10.)

Conclusions

Recently a new Iraqi president (a Kurd) was elected and he promptly designated a new prime minister to form a new government which was achieved in a short time, of course in Iraqi standards. This development took place after a tumultuous year of a deadlock which almost resulted in a civil war. This development, though positive given the state of affairs in the country, did not hide the bitter conditions of the country and its future. Almost at the same time,

the Kurdistan Democratic Party (KDP) had Masoud Barazani as its president, his nephew Nechervan as the president of the KRG, and his son Masrour as the KRG.



New Iraqi president Abdul Latif Rasid, a Kurd

The focus of this article was to examine the state of federalism in Iraq after almost two decades of implementation. This writer believes that federalism is not working, and has little prospects of succeeding. This is because it was built on a weak foundation in a country, and to a large extent, a region which has no tradition of federalism and believes in a strong central government. The following is a list of factors which this writer believes contributed to the status quo in Iraq;

- Iraq in 2003 had a very unique phenomenon in which the northern part was by all intents and purposes an independent country in all but name. The government in that “country” was not willing to give up a single inch of any authority to the new government in Baghdad written in the constitution. The new constitution, therefore, became a treacherous exercise of “fitting” the KRG as it was at that time. Accordingly, the constitution is filled with articles and sections to do just that.

- The drafting of the constitution was not done during ordinary circumstances but during intense sectarian strife which reflected itself on the parties which were involved in that process
- The constitution of Iraq which was adopted in 2005 has no precedent anywhere in the world and, therefore, it does not follow any existing model of federalism which incorporates, for example, states, nationalities, sects, etc.
- The constitution was finally approved and adapted by three competing parties which either don't believe in federalism in the first place or don't believe that they are Iraqis in the first place

The above main factors and others which we listed above have greatly contributed to the paralysis in the Iraqi capital and with no end in sight. Some, of course, hope that the implementation of true federalism, and hence, true distribution of wealth and power, will greatly help in ending many odd phenomena which dominate the Iraqi scene. For instance, true federalism, if applied, will end the dominance of the two ruling families in the KRG (The Brazanis and the Talbanis) which use the failure of the very same federalism to remain in control. Similarly, true federalism and the fear of forming new regions, distribution of power, etc. will end many of the social and political ills which engulf Iraq now. It will take much hard work to do this!

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