

Editorial

CONSTITUTION-MAKING, PARLIAMENTS AND THE LAW-MAKING PROCESS - THEIR ROLE IN MAKING AND SHAPING CONFLICTS

Zaid Al-Ali*

This edition of Conflict in Focus is dedicated to the role that constitution-making and the law making-process can and do play in managing conflicts. A first question is therefore whether or not these processes actually do play a role in practice. If so, then the second question is to identify what that role is. If not, then the issue is to determine what the reason for that failure is, and to determine what can be done to allow for parliaments to play a role in the midst of a conflict. A final question is whether these processes should ever play a role in managing conflicts.

The contributing authors do an admirable job of answering most of these questions. I shall therefore limit myself to what is perhaps the most challenging and fundamental issue of all: should constitution-making and law-making play a role in managing conflicts? It is difficult to establish a universal principle that can be applied in all circumstances. However, if we return to the constitutional process that took place in 2005, it is possible to consider that law- and constitution-making processes do have a fundamental role to play in practice. At the same time however, the precedent that was established in 2005 also shows that where these processes are mismanaged, the effects can be disastrous.

A constitution is the supreme law which should frame a political process. It also should act as a social contract between its citizens and between its communities, and in the case of conflict should be the final text that establishes the respective positions of all the groups that were affected by the conflict. A constitution frames the ways in which power is exercised, democratic rules are established and fundamental rights are entrenched. If this is true generally, it is particularly the case in post-conflict or conflictual settings. The durability and respect for the constitution is likely to be enhanced if the constitution enjoys both breadth and depth of support, promotes good governance and speaks to the hopes, aspirations and history of the country. It is increasingly recognized that constitutions need to both protect majoritarian principles and vulnerable minorities.

Constitutions that exclude communities or citizens can sow the

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seeds of internal conflict. What is true for the content of constitutions is increasingly recognized as relevant to the process or processes by which they come into being. More specifically, inclusive processes are more likely to lead to respect for diversity while promoting nation building. In other words, best practice in a constitution making process, especially in divided societies, should allow communities and citizens to acknowledge their common destiny and should unite them, while tolerating their differences - both political and identity based - and finding the means by which to accommodate them. What this means in practice is that the process through which a constitution or law is drafted is often just as important as the text itself.

Against this background, the Iraqi constitutional process evolved in what can best be described in a questionable manner. The most questionable aspect of the drafting of the Iraqi constitution was the way in which the process was impacted by external actors. It is well known that the Iraqi Constitutional Committee, for reasons that should be obvious, was in a vulnerable position in relation to the US and UK embassies in Baghdad. In practice, this played a decisive role in the way in which the process played out in practice. Indeed, external actors proceeded in what can be described as a self-interested manner, which, for the most part, the national actors were incapable of resisting. Firstly, US officials were heavily involved in establishing the framework according to which the constitution was to be drafted,⁽¹⁾ and then influenced the manner in which the constitution-making society proceeded within that framework, mostly with a view to ensuring that the drafting process would remain as short as possible.⁽²⁾ This was to the extent that, when it became apparent that the presence of all Iraqi communities at the negotiating table would have forced an extension, the US Ambassador to Iraq encouraged the exclusion of several major communities in order to ensure that an extension would not be called for.⁽³⁾ Most of the participants to the constitutional process were dissatisfied with the way in which the shortened time period affected the final text.⁽⁴⁾

The opportunity to establish a national compact between Iraq's various communities was therefore sidelined for the sake of 'political momentum'. The effect is that the text does not enjoy internal legitimacy, in the sense that it clearly does not enjoy sufficient acceptance from the Iraqi people to allow for stable government. Indeed, events since the referendum have shown that a number of the country's major political and social groups continue to actively reject the new constitutional order.⁽⁵⁾ In addition, the Constitution makes no attempt to resolve Iraqi political morality, particularly in relation

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- (1) The process through which the Iraqi constitution was to be drafted was set out in the Law of Administration for the State of Iraq for the Transitional Period, which was also referred to as the Transitional Administrative Law or the 'TAL'. Law of Administration for the State of Iraq for the Transitional Period, March 8, 2004, at www.cpa-iraq.org/government/TAL.html. US officials were heavily involved in drafting that document, and worked to ensure that the drafting process of the final text would be as short as possible, so as to satisfy US domestic interests. See SQUANDERED VICTORY, Larry Diamond, Times Books (2005).
- (2) See THE END OF IRAQ: HOW AMERICAN INCOMPETENCE CREATED A WAR WITHOUT END, Peter W. Galbraith, Simon & Schuster (2006) [hereinafter Galbraith] (in which Galbraith, who was an adviser to the Kurdish Alliance in the constitutional negotiations, argues that 'the National Assembly should have invoked a clause in the [Transitional Administrative Law] allowing for a six-month extension of the drafting process. But President Bush, wanting to show progress to an increasingly uneasy American public, insisted that Iraqis needed to meet their deadlines. Although every senior Iraqi leader with whom I spoke wanted the six-month extension, none dared say so openly'). See also, Rumsfeld urges Iraq to meet constitution deadline, Reuters, July 27, 2005 (quoting former US Secretary of Defense Donald Rumsfeld as saying that '[w]e don't want any delays. Now's the time to get on with it').
- (3) See Galbraith, at note page 203 (in which Galbraith says that 'the constitution is not a national compact. It was made by Shiites and Kurds without the Sunni Arabs').
- (4) See Kurds Fault U.S. on Iraqi Charter, Ellen Knickmeyer, The Washington Post, August 21, 2005, available at www.washingtonpost.com/wp-dyn/content/article/2005/08/20/AR2005082001202.html (in which Mahmoud Othman, a leading negotiator for the Kurdish Alliance was reported as having said that '[i]t seems like the Americans want to have a constitution at any cost.' Salih Mutlaq, another constitutional negotiator, is reported as having said of Zalmay Khalilzad that '[h]is main interest is to push the constitution on time, no matter what the constitution has in it. No country in the world can draft their constitution in three months. They themselves took 10 years. Why do they wish to impose a silly constitution on us?').
- (5) See, for example, Iraq's Constitutional Process II: An Opportunity Lost, Jonathan Morrow, United States Institute of Peace, December 2005, available at www.usip.org/pubs/specialreports/sr155.html ('The draft constitution attracted criticism from a range of Iraqi groups and parties, and in particular Sunni Arab groups. After the National Assembly adopted the draft constitution on August 28, influential secular and religious Sunni Arab political groups, including the Iraq Islamic Party, the National Dialogue Council, and the Muslim Scholars Association, publicly indicated that they would oppose the draft at the national referendum [...]. Significantly, opposition to the text was not confined to Sunni Arab groups. Former Prime Minister Ayad Allawi had also publicly opposed the model of regional federalism in the constitutional draft. The influential Shia clerics Moqtada al-Sadr and Ayatollah Mohammed al-Yaqubi indicated their opposition to the draft at the referendum'; see also Moqtada Sadr throws Iraqi unity talks into disarray, Michael Howard, The Guardian, February 20, 2006, at www.guardian.co.uk/Iraq/Story/0,,1713411,00.html (in which Moqtada al-Sadr, arguably the most influential of Iraq's political leaders, is quoted as saying that 'I reject this constitution which calls for sectarianism and there is nothing good in this constitution at all').

to the issues that were most important to Iraqis.⁽⁶⁾ This is to the extent that many legal commentators, including Iraqi scholar Kanan Makiya,⁽⁷⁾ and experts from the International Crisis Group,⁽⁸⁾ maintain that the Iraqi Constitution, instead of resolving questions that were fundamental to most Iraqis, is a basis for future conflict in the country.

The rule should therefore be clear - constitution- and law-making provide an opportunity in the midst of a conflict to allow all groups to negotiate their differences and establish rules for continued co-existence in the future. However, where the process is mismanaged - for example, by excluding parties to the conflict - the effects can be worse than if the process had never been engaged in at all. The conflict that is ongoing in Iraq provides a good example of how devastating the effects of such a failure can be in practice. ■

(6) For example, a majority of Iraqis have identified the issue as to whether regions can be formed along a sectarian basis as a major area of concern (see A majority reject federalism in Kerbala, Al-Sabaah, June 5, 2006, available at <http://alsabaah.com/paper.php?source=akbar&tmlf=copy&tsid=24142> [Arabic]). Despite this, the Constitution merely provides that the issue will be resolved by future legislation. Article 118 of the final constitution provides that '[t]he Council of Representatives shall enact, in a period not to exceed six months from the date of its first session, a law that defines the executive procedures to form regions, by a simple majority of the members present' [unofficial translation] (see Article 118 of the Final Iraqi Constitution). Another example relates to the second chamber of parliament, which is referred to as the 'Federation Council'. Many Iraqis were insistent that such a Council should be formed, but were concerned that it would be formed along sectarian lines. However, Article 64, which is the only one in the entire constitution that deals with the second chamber, merely provides that '[a] law, enacted by a two thirds majority of the members of the [first chamber of parliament], shall regulate the Federation Council formation, its membership conditions and its specializations and all that is connected with it' [unofficial translation] (see Article 64 of the Final Iraqi Constitution). To this date, which is to say more than 18 months since the Constitution entered into force, such a law has not been passed or even debated in the country's parliament.

(7) Present at the Disintegration, Kanan Makiya, The New York Times, December 11, 2005, available at <http://select.nytimes.com/gst/abstract.html?res=FA0913F83A550C728DDDAB0994DD404482> ('All signs suggest that this Constitution, if it is not radically amended, will further weaken the already failing central Iraqi state. In spite of all the rhetoric in that document about the unity of the 'homeland of the apostles and prophets' and the 'values and ideals of the heavenly messages and findings of science' that have played a role in 'preserving for Iraq its free union,' it is disunity, diminished sovereignty and years of future discord that lie in store for Iraq if the Constitution is not overhauled').

(8) Unmaking Iraq: A Constitutional Process Gone Awry, The International Crisis Group, Middle East Briefing No. 19, September 26, 2005, available at www.crisisgroup.org/home/getfile.cfm?id=1978&tid=3703&tl=1 ('Key passages, such as those dealing with decentralisation and with the responsibility for the power of taxation, are both vague and ambiguous and so carry the seeds of future discord. Many vital areas are left for future legislation that will have less standing than the constitution, be more vulnerable to amendment and bear the sectarian imprint of the Shiite community given its likely dominance of future legislatures').

THE POLITICAL AND CONSTITUTIONAL PROCESS IN IRAQ

Dr. Omar Makki

Iraq at Crossroads

Four years after the fall of the regime of Saddam Hussein, we are faced with two possible scenarios for the future. The first is optimistic and consists of a long and difficult political process with several upsurges of violence and further disintegration until a political solution is reached that could lead eventually to equilibrium and subsequently, a gradual reduction of the insurgency. The second is pessimistic and mainly consists of civil war.

The State of Iraq

Since the birth of modern State of Iraq in its current boundaries in 1920s, the country has witnessed recurrent political instability. In 80 years, the form of the regime changed many times - foreign occupation and protectorate, parliamentary monarchy, and then a succession of authoritarian republics, the last one having a totalitarian flavor.

Each regime was the occasion to bring a 'temporary' constitution. Iraq's longest-lasting constitution was adopted under the monarchy in 1925 and replaced in 1958. With the successive Governments that followed the collapse of the monarchy, Iraq adopted several interim constitutions, most recently in 1990. The challenge of having a 'permanent' constitution is therefore enormous, the issue at stake being to end the cyclical regime changes in the country.

Iraq under Occupation

In May 2003, the Coalition Provisional Authority (CPA) was established for the purpose of ensuring that the US-led coalition would remain in charge for an indefinite period. It would also create an Iraqi interim authority that would assist the CPA in drafting a constitution and planning future elections. Therefore, instead of a quick handover and early elections - as planned earlier by the American Administration and the Iraqi political opposition parties - a Governing Council (GC) was formed in July 2003. This GC was immediately criticized by Iraqis and international observers for the lack of transparency in its selection and for its lack of real power; in addition to the fact that its composition was based on the simplistic notion that Iraqi political and social reality is best understood in terms of Shiites, Sunnis and Kurds; and this, it was feared, would only reinforce community alliances, and therefore erode a sense of Iraqi national identity.

The summer of 2003 also witnessed the start of the insurgency and of popular public anger in the face of the lack of amelioration of the situation (public order and security, public services and employment). The growing domestic pressure faced by the members of the coalition - fuelled by an increasingly volatile situation on the ground - was decisive to push its most powerful member, the US, to look for an exit strategy in Iraq. In fact, a plan of transfer of sovereignty was under discussion since September 2003. The CPA officially announced it on the 15th November 2003. Iraq was to have an interim constitution by the end of February 2004, a transitional assembly by the end of May 2004, a provisional government by the end of June 2004, and a permanent constitution and government by the end of 2005.

Drafting the Constitution

The Transitional Administrative Law (TAL) was adopted in March 2004 and it established a timetable for the political process until Iraqis adopt a permanent constitution and an elected government takes its functions according to this constitution. The TAL outlined that Iraq's permanent constitution should guarantee basic rights; it endorsed the principle of federalism; and it provided that an adequate sharing of power and revenues between central and regional governments was to be reached by consensus amongst the various political blocks represented in the Constitutional Drafting Committee (CDC) that was formed April 2005. The CDC had a serious defect - the Sunni Arabs were severely under represented as a result of the fact that the majority of Sunni political groups boycotted the January 2005 elections and subsequently the National Assembly was dominated by other political powers, namely Shiites and Kurds. Understanding the consequences of this problem - especially when the plan was for the permanent constitution to be presented to the people to decide on it in a referendum in October 2005, and could be rejected if two thirds of the voters from three Governorates rejected it - the political powers agreed to include fifteen Sunni politicians from outside the National Assembly in the CDC in order to maintain the needed balance and to overcome the potential odds of the constitution to be rejected.

Throughout the consultations of the CDC, conflicts between the various partners in the political process grew with every new discussion. Several issues that

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were discussed by the CDC were highly politicized by the various politicians to increase their chances of achieving a good result in the elections that were due to take place a few months later, in December 200. The CDC reached a deadlock, the process stagnated, crucial and fundamental subjects such as Kirkuk, the role and authority of religion, the De-Ba'athification, the authority of the regions, the power-sharing mechanisms, and the Arab identity of Iraq were avoided, and when raised, they were dealt with in a very rigid and agitated attitude and subsequently, there were no solutions offered and no compromises accepted and the conflicts were unlikely to be resolved.

The Escape Forward

This period was a benchmark in the Iraqi political process. The Iraqi political parties that were involved should have taken more time to engage in an effort to reach a consensus, but with the persistent US pressures to meet the deadlines, the anticipation of the UN and the international community, and the rapid deterioration of the security situation in Iraq, they opted for suicide. They decided that the priority should be to meet the deadlines, a move that saved their image in their voters' eyes, a move that was politically right, but which was strategically wrong. They decided to present an incomplete draft to the population in time for the October 2005 referendum. It was decided two days before the referendum date that the final text was to be reviewed by the next parliament and presented to the people in a second referendum four months after the formation of the next parliament.

The politicians welcomed this 'escape to the next step' with the deadlines of the upcoming elections pre-occupying their minds, and the presumption that the review will be easier than the drafting, this also proved to be another misjudgment.

Reviewing the Constitution

The Constitutional Review Committee (CRC) was established in June 2006, which is to say six months after the elections. During these six months, the results of the elections were contested, an international investigation affirmed the results, the parliament was sworn in and this was followed by four painful months spent in disputes, negotiations and compromises in order to form the government.

The CRC was mandated to come up with one package of recommendations in relation to the revision of the constitution. The four main points of conflict were the Arab identity of Iraq, the de-Ba'athification law, the authority of the regions, and the complicated - most difficult of all - matter of how the central government and the regions will share the power and the revenues, in addition to other points that were considered as mild conflicts.

Until today, the CRC has not finished its tasks as most of the issues that were in dispute have not been solved. The parliament was sworn in one year ago, and Iraq has to wait for yet another few months for the CRC to finish its task, and for two thirds of the parliament to endorse it before it is presented to the people in a referendum. If the people accept it, it will be then and only then that Iraq will have its 'Permanent Constitution' and only then will the parliament be able to start drafting the sixty six new laws that the constitution provides for.

Can Iraqi Society Wait?

The political process in Iraq the effort that is made to reach an agreement between conflicting parties and to ensure that the conditions are created for politics - as opposed to physical violence - to be used in future conflict resolution. The mirror opposite of a successful political process is typically civil war.

In Iraq, the political process consists of the efforts made by acting authorities - the coalition that defeated Saddam Hussein's regime and the coalition-backed Iraqi Government - to politically rebuild the country after the fall of the previous regime and the political void that followed.

The grounds for an effective political process - the process by which a national consensus is reached over power-sharing between competitive groups and the form of government to ensure the institutionalization of this power-sharing - are not met in Iraq yet. Instead, the situation from the ground tends to escalate towards a weak state reproducing inside its institutions growing sectarian tensions fuelled by unresolved crucial political issues. At the military level, an internal war is taking place between competitive groups, undermining the chances for a national consensus to be reached. The chances for the permanent constitution of Iraq to be the occasion of such a settlement are very limited in such a timeframe and given the major constraints and the violence prevailing; if not based on solid grounds, this fragile political process is likely to be challenged in the coming months.

The effects of this slow and agonizing process have seriously affected the lives people of Iraq; the political conflicts led to a deteriorating of socioeconomic, humanitarian and human rights standards. The factions inside Iraqi society have been significantly polarized and aligned according to their ethnic, religious and sectarian affiliation, with a tendency to solve their disputes by violent means adding to the mounting insurgency and the prevailing organized crime. The result is that Iraqi society is being pushed to the point where it will be difficult to repair. ■

BYPASSING THE IRAQI PARLIAMENT: MONOPOLIZING POWER IN IRAQ

Raed Jarrar

The U.S administration continues to insist that the current conflict in Iraq is sectarian or religious in nature and that it has roots that pre-date the occupation. The U.S. mainstream media has decided to follow this lead and is now propagating the message as far and wide as it can. The result is that a growing number of people, including commentators and policy makers, now believe that Iraqis are for the most part divided along a sectarian or religious divide. Needless to say, this view is not shared by a majority of Iraqi analysts and politicians who believe that the conflict that is ongoing between their countrymen is secondary, symptomatic, and dominated by political, not religious, motives. The sectarian tension is just one of the manifestations of the US-led occupation, as shall be explained below.

Separatists and Nationalists

There is no dispute that, during the last Iraqi parliamentary elections, Iraqis did vote along sectarian lines. This is what Paul L. Bremer III, pro-consul of Iraq from 2003 to 2004, and the Bush administration intended for the country. Indeed, when Bremer formed the Iraqi Governing Council shortly after the fall of Baghdad, he established the first precedent in contemporary Iraqi history in which governmental representatives were selected based on their sectarian or religious background.

However, whereas the Governing Council maintained its purely sectarian colouring, the current parliament has, in the last year, evolved from its sectarian foundation into an institution that is divided along political lines. The accompanying political map reveals on its horizontal axis the original sectarian-based coalitions (Shia, Sunnis, Kurds, and others), and on its vertical axis, the split into two main political-based groups, 'Separatists' and 'Nationalists'.

The 'Separatists' include a number of Sunni, Shia, and Kurdish groups that are supported by the US-led occupation. The Bush administration is always very quick to describe these parties as the most influential leaders in Iraq. They include individuals such as Shia leader Abdul Aziz Al-Hakeem of the Supreme Council for the Islamic Revolution in Iraq ('SCIRI'), Prime Minister Nouri Al-Maliki of the Dawa party, Sunnis such as Vice President Tariq Al-Hashimi of the Islamic Party, and Kurds such as President Jalal Talabani and the President of the Kurdish Region Masoud Barzani. Iraqi separatist leaders are against a unified Iraq with a strong

central government; they want to partition Iraq into three independent regions/states with strong regional authorities and a weak Baghdad government. They also are against setting any timetable for ending the U.S. occupation. They prefer receiving more U.S. troops to secure their regime. They are also in favor of privatizing Iraq's oil and gas and decentralizing petroleum operations and revenue distribution.

The 'Nationalists' also include a plurality of parties from different religious sects, etc. They include Shias such as the Al-Sadr movement and the Al-Fadila party, Sunnis and secular politicians such as Salih Al-Mutlaq of the National Dialogue Front and Iyad Allawi of the Iraqi national list. There are even a few Kurdish representatives amongst the nationalists. These groups and individuals all favor one united Iraq with a strong central government. They incessantly call for an end to the U.S. occupation and any other foreign intervention. They have also called for former Iraqi army soldiers to be reinstated with a view to securing Iraq. Finally, they all oppose the privatization of Iraq's oil industry. What is most surprising however is that the Separatists do not actually represent the majority of the Iraqi parliament. Indeed, all the Separatists together do not amount to 138 seats within the parliament. This is below the threshold that is needed to pass legislation by a simple majority.

The Parliament's Role and Parliamentary Maneuvering

Despite the many questions that have been raised about the legitimacy of the entire political process in Iraq, and despite the many doubts about the fairness of the Iraqi elections, the parliament could still play an important role in representing Iraqi citizens. Although the parliament is disconnected from the groups that are involved in resisting the US-led occupation and has excluded the former regime's political and military leaders from its ranks, the current Iraqi parliament nonetheless represents several of the major Iraqi socio-political groups, and these same groups are well connected with some of the entities that have been excluded from the parliament. For example, a number of Iraqi MPs continue to maintain a strong relationship with Baathists, former army officers, current militias and armed groups, and other entities that are not involved in the new parliament.

The picture is completely different when it comes to

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Al-Maliki's cabinet, which is dominated by Separatist groups. The government is perfectly aware of the disassociation between its ministers and the parliament and so it has therefore decided to act accordingly. The new constitution provides that the Council of Ministers is the second most important power in the country (note that the constitution is currently undergoing a revision process, but it is unlikely that any of the text's major provisions will be changed in a significant manner). At the same time, the constitution provides a number of fundamental powers to the Iraqi parliament, and its provisions allow for the parliament to exercise a certain amount of control over the entire legislative process. But when it comes to the facts on the ground, the Iraqi parliament has been systematically bypassed by the Al-Maliki government through a number of loopholes and unconstitutional decisions.

The events of September 12, 2006 provide a good illustration of this point. On that day, a group of Iraqi lawmakers tried to seek approval for a resolution setting a timetable for the withdrawal of foreign troops from Iraq. Sponsored by both Shia and Sunni Arabs, the resolution managed to gather 104 signatures in the 275-member parliament before it was effectively shelved by being sent to a committee for review. That committee will need at least six months to examine the resolution and present its findings to parliament. If it were to be approved, the resolution would be binding on the government. Professor Juan Cole, from the University of Michigan and one of the leading commentators on Iraqi issues in the United States, has argued that 102 signatures is actually enough for the resolution to be approved - so all that is needed is for the committee to report the text back to the parliament. 80 MPs out of 275 have stopped coming to the parliamentary sessions altogether, so it is possible that the resolution had actually gained a sufficient amount of support to pass when it was first drafted. That is, had it not been sent to the committee for review, it is more than likely that the resolution would have passed on that same Tuesday. The Maliki government, fearful of the effects that such a resolution could have on its future, decided to use this particular parliamentary maneuver to allow it to postpone the resolution for at least 6 months, if not more.

The Leaked Oil Law

The drafting of the oil law provides another example of how the Iraqi parliament is systematically being bypassed in order to allow the government to achieve its shortsighted objectives. Earlier this month, I managed to leak a copy of the Iraqi oil law out of the Green Zone after it was approved by the Iraqi council of ministers. The copy of the law was sent to me by a contact and includes the council of ministers resolution.

Article 4 of the Resolution provides that 'all parties must abstain from signing new contracts agreements related to exploration and production activities in Iraq until this law is fully enacted' [my translation]. Considering that Iraq is now supposed to be a parliamentary democracy, this provision doesn't come as a surprise. It is Article 5 however that is particularly shocking and is worth quoting in full: '[t]he Federal Government, in coordination with the regions governments, shall finalize the requirements needed to implement this law and activate the entities mentioned in the law in a time period not exceeding the end of May 2007. In case this deadline was not met, the Iraqi Prime Minister shall meet with the president of Kurdistan Region to implement the law within one month and reach out to a solution based on one of the following options: (a) In case article 5 was not finalized by the deadline of May 31st 2007, the two parties shall have the right to sign Exploration and Production Contracts in accordance to the constitution, this law, and the general principles of contracts' models (the first option); (b) Extend the time period mention above.'

What is shocking about this provision is the candor with which it grants the Council of Ministers the right to bypass the parliament. Indeed, it provides, in plain language, that if the oil law is not passed by May 31, then the government will be able to enter into Production Sharing Agreements with foreign corporations anyway, despite the fact that there will in fact be no legal basis for it. There can be little dispute that this manner of proceeding is unconstitutional.

Conclusion

Sectarian and religious differences are not the predominate force splitting the country. The main force is the continued presence of the occupation, and its plans for Iraq are set out clearly in the existing constitution - partitioning Iraq and privatizing the oil industry. As a result of the fact that separatism is not the dominant trend in both the country and the parliament, the current Iraqi government has decided to monopolize power and neutralize the parliament. This new US backed dictatorship is reducing the possibilities of reaching to an Iraqi political solution, and is making it harder to convince Iraqis to express their resistance to the occupation in a non-violent fashion. The Al-Maliki government is oppressing its own parliament, and therefore the Iraqi public.

The Bush administration is lending all its support to the Separatists controlling the Iraqi government. If this continues, the violence will most likely continue and increase, and the political participation of Iraqi Nationalists in the political process will be jeopardized. This is clearly a recipe for more violence in the country. ■

Separatists | Nationalists

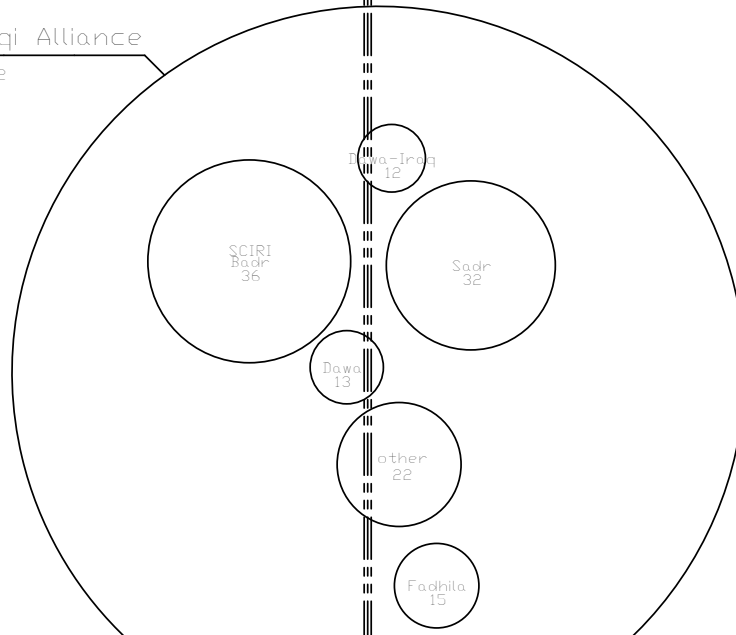
For Splitting Iraq Into Three Sectarian Regions
 For Decentralizing Natural Resource Revenues
 For Keeping the U.S. Military Presence
 For Increasing U.S. Troop Levels

For a United Iraq with Strong Baghdad Gov
 For Centralizing Natural Resource Revenues
 For Setting a U.S. Withdrawal Timetable
 Against Increasing U.S. Troop Levels

United Iraqi Alliance

128+2

Shias

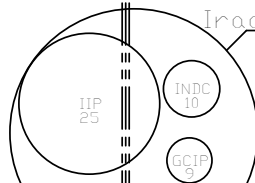


The Etilaf (Unified Iraqi Coalition) (United Iraqi Alliance): the Islamic Da'awa Party, the Islamic Da'awa Party-Iraq Organization the Fadila (Islamic Virtue Party), the Bader Organization, the Supreme Council for Islamic Revolution In Iraq, the Al Sadr movement. **OTHER:** the Centrist Coalition Party, the Turkman Islamic Union of Iraq, the Justice and Equality Assembly, the Iraqi Democratic Movement, the Movement of Hizbullah in Iraq, the Turkmen Loyalty Movement, the Sayyed Al Shuhada Islamic Movement, the Al Shabaq Democratic Coalition, the Malhan Al Mkoter-Mr, the Reform And Building Meeting, the Justice Community, and the Iraq Ahrar.

Iraqi Accord Front

44

Sunnis

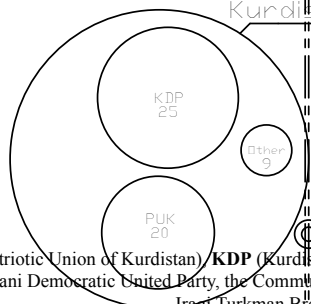


Iraqi Tawafuq (Accord) Front: **IIP** (the Iraqi Islamic Party), **GCIP** (the General Council For Iraqi People), and **INDC** (the Iraqi National Dialogue Council)

Kurdish Alliance

54

Kurds



Kurdish Islamic Union

5

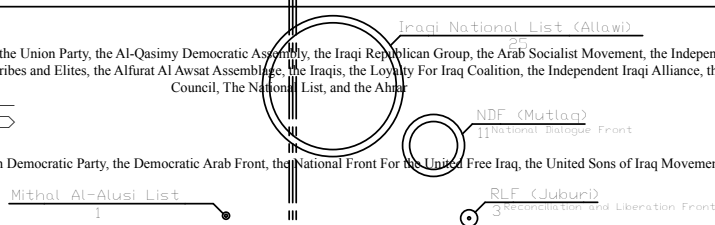
The Kurdish Alliance: **PUK** (the Patriotic Union of Kurdistan) **KDP** (Kurdistan Democratic Party), **OTHER:** the Labor Party of Kurdistan, the Islamic Group of Kurdistan/Iraq, the Al Kaldani Democratic United Party, the Communist Party of Kurdistan, the Socialist Democratic Party of Kurdistan, and the Iraqi Turkman Brotherhood Party.

Iraqi National List (Allawi)

25

The Iraqi National List: the Iraqi Communist Party, the Union Party, the Al-Qasimy Democratic Assembly, the Iraqi Republican Group, the Arab Socialist Movement, the Independent Democratic Gathering, the Iraqi National Accord, the Society of Turkman Tribes and Elites, the Alfurat Al Awsat Assemblage, the Iraqis, the Loyalty For Iraq Coalition, the Independent Iraqi Alliance, the Independent Iraqi Sheikhs Council, The National List, and the Ahrar

seculars



The Iraqi National Dialogue Front: the Iraqi Christian Democratic Party, the Democratic Arab Front, the National Front For the United Free Iraq, the United Sons of Iraq Movement, and the National Iraqi Front.

turkmen

Turkmen Front 1

christians

Rafidain List 1

Yazidis

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NO SILVER BULLET FOR IRAQ

Philippe Hansen

The state of affairs in Iraq today is extremely dramatic. Tens of thousands of Iraqis have lost their lives. Thousands of citizens are fleeing the country every day and not knowing if they will ever be able to return. Among the biggest problems today is still the looming danger that the country might be partitioned along ethnic-sectarian lines, which would entail a further increase of bloodshed, exacerbate sectarian violence and eventually encourage regional intervention and interference.

Two main problems will further worsen this core problem of partition: The insurgency against the occupation forces and the Iraqi government on the one hand and the complete failure of Iraq's political institutions, including the Iraqi parliament, to create political, social and economic stability on the other hand. Politics cannot be separated from the life of the individual. A key issue of politics is confidence. Who could the Iraqis trust? The US has lost all its credibility in the eyes of the vast majority of Iraqis. Unfortunately the same applies to the Iraqi government. Both have allowed for the creation of militias and death squadrons which have driven the country to the edge of the abyss. America's decision to sideline with the Shia against the Sunni Iraqis facilitated the growing rift and sectarian conflict. Additionally, the current Iraqi government and its security institutions are practically non-existent. The security forces are infiltrated by militias and have been committing the worst atrocities. The ministries simply serve the corrupted interests of individuals and certain factions.

Little by little, the American occupying forces have corrected some of the major errors committed in the early occupation phase, especially those decided upon by the chief of the Coalition Provisional Authority (CPA) Paul Bremer. These major errors included the dissolution of the Iraqi army, police and state structure. Recently, Ambassador Zalmay Khalilzad supported the law to allow former Ba'ath-party members the return into civil service. Previously he had encouraged the inclusion of Sunni Arabs into the political process and supposedly even negotiated with Sunni insurgents.

Only two institutions survived the liquidation of all power structures: the higher Shia' clergy, the 'Marjaiya', and the Shia' militias. However, all these fatal decisions cannot be undone. The Sunni Iraqis are alienated from their country, the Shia' have been goaded and then unleashed, while the Kurds continue to push for independence. The US therefore did not only lose its credibility but also

deprived itself of all possible options for action. Also the new American strategy to contain the sectarian violence and the Islamist insurgency - the Baghdad 'security plan' - has thus far proven to be a failure, with recent statistics showing that attacks have risen by 15% in the past two months.

It is difficult to answer the question whether the occupying forces are only part of the problem or if an immediate and unconditional withdrawal would worsen the sectarian bloodshed. Nevertheless, a clear timetable and commitment for withdrawal would open the door for all those Iraqis who only turned towards the insurgency out of despair and their political alienation. Also Muqtada Al-Sadr and his Mahdi-army would be deprived of many arguments for their continued resistance. It would also mean that full responsibility for a true national reconciliation process would be put on the Iraqis themselves.

Although it seems unlikely that such a thing would happen under the current administration, the US must also end its attempted isolation of Syria and Iran and engage in serious negotiations with both parties. The execution of Saddam Hussein was perceived in the Arab World as a signal for the imminent loss of the Arab identity of Iraq. The rift between Sunni and Shia' Muslims, Arabs and Persians has been further deepened. Even the more moderate, pre-dominantly Sunni Arab States are increasingly mobilising the Sunni Arab world against the Shiite Persians. Jordan's King Abdallah's infamous wording of the 'Shia' crescent' is the most prominent example of this. This also forced Iran to present itself as a Shia' as opposed to an Islamic power centre.

Scenarios for 2007

The major Shia' faction SCIRI as well as both major Kurdish parties will probably push for the realisation of their federal regions. Even if the Kurdish leadership knows that full-fledged independence is not feasible under the prevailing circumstances they will do everything to incorporate the city of Kirkuk into their semi-autonomous region of Kurdistan to further sustain the status quo. SCIRI will probably also strive for the creation of a Shia'-dominated super-region in the south of Iraq. Neither the Sunni Arabs nor various Shia' factions such as the Sadr-movement or the Fadhila-party are strong enough to

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prevent this. However, even if these 'anti-federalists' are not strong enough to avoid this scenario politically and militarily, they have the power to resist militarily.

In any event, what seems clear is that the Iraqi parliament, one of the many institutions that have been established since the invasion in 2003, will not be able to play a meaningful role in managing the conflict. Indeed, all the political parties mentioned here are represented in the parliament, but their real respective importance is determined not by the number of seats that they won in the last elections, but by the number of guns that their militias possess. In such a situation, one cannot meaningfully speak of a role for the parliament.

The worst-case scenario would be tantamount with the final and complete dissolution of the central state. It would follow the same pattern as described above but with a drastic escalation of violence that could lead in the north to ethnic killings between Kurds, Arabs and Turkmen followed by attempts of ethnic cleansings. In the south, the conflicts between the different Shia factions that already fight each other for power control could spiral out of control. Such a development would be followed by regional intervention in support of local proxies by Saudi-Arabia, Syria, Iran and Turkey. In light of the overall Sunni-Shia divide this could lead to a regional escalation.

In a best-case scenario, the security situation would improve slightly at least in Baghdad and would pave the way for a new government with a Prime Minister capable of acting. In the current government the Sunni parties mainly act as opposition groups but are also often excluded in decision-making by the Shia and Kurdish groups. Prime Minister Maliki himself lacks a sufficient power basis as his Daawa-party is only the third strongest among the Shia-factions.

Such a government could take the necessary steps to ensure a functioning central government reaching out to all provinces, although the current Iraqi constitution as well as the existing legislation on the establishment of federal regions allow for the formation of highly independent regions. However, many commentators agreed that key Iraqi decision-makers know that the local and regional administration would be even less capable than the current central level to ensure basic services for citizens. At least Sunni and Shia Iraqi lawmakers have come to the conclusion that a certain degree of coordination at the central level is a prerequisite for a functioning state if they cannot yet agree on an extended list of exclusive powers for the central authority. Despite all secession-scenarios and threats, most Iraqis including lawmakers still adhere to the idea of a unified state.

However, it will be on the basis of a decentralised system

taking into account the centrifugal forces in the country. A reform of the electoral law following the German example of a mixed-member-system could help strengthening the federal idea. If there were direct, constituency-based elections in addition to party list-based elections this would on the one hand force candidates in ethnically and religiously mixed areas to compromise and root the federal principle in the system on the other hand.

However, it would need a joint forum of neighbouring states, the US and the EU to sustain the territorial integrity of Iraq. Diplomatic and economic incentives will be needed in order to convince the Kurds to remain in the Iraqi state, although always with a great degree of autonomy. It also needs Iran and the Sunni dominated neighbouring states to extend their influence to the Iraqi actors fighting each other on a sectarian basis.

Only the US can bring these actors together and force them to stop the down-spiralling. However, until the next presidential elections, it is highly unlikely that any developments will take place in this regard. In any event however, given the current circumstances, the Iraqi parliament will not be able to contribute in a meaningful way to ending the conflict. ■

THE ROLE THAT PARLIAMENT COULD PLAY IN CONFLICTS, BUT OFTEN DO NOT

Philippe Wengman

In the midst of conflict - whether heterogeneous, endogenous, or otherwise - parliaments and the law making process can play different roles. They can be a forum through which the different participants to the conflict can settle their differences; they can actually take on a pro-active role in resolving the conflict, as representatives of the people; or they can become a pretext, or even a victim of the conflict. Recent events in different countries, ranging from Iraq to Kuwait, to the United States itself, show how a parliament can take on a positive role during conflicts.

In Iraq, the setting for what is probably the most shocking conflict in recent years, the parliament has not been granted a role as a mechanism for conflict resolution. Indeed, the institution merely provides a platform for government officials and different politicians to threaten each other. This is related to a number of factors, most notably that the parliament is unicameral, and that it is under the control of the same alliance of political parties that is in control of the government (an odd arrangement considering Iraq is supposed to be a federation, which would ordinarily require it to have two chambers of parliament). Another factor is the distinct lack of parliamentary tradition in the country. Many observers blame this state of affairs on the Baath party, which previously dominated all branches of government. The party undoubtedly prevented democratic institutions in the country from developing, but its impact was temporal. To blame the Baath for the Iraqi parliament's continued failures amounts to intellectual laziness, as there are a great many other factors, many of them still in effect, which have contributed to the current situation. To begin with, the country's electoral law was drafted in a way such that individual parliamentarians are not accountable to any particular constituency. As such, there is no oversight, and therefore there is very little incentive for them to perform according to standard. Indeed, at least 80 of them never even bother showing up to the sessions.

The argument that the parliament's inactivity can be traced to the Baath also flies in the face of recent history, which provides us with an obvious example of a situation which disproves that commonly held belief. It is commonly known that Iraqi Kurdistan broke away from the rest of the country in 1991, and that parliamentary elections were held in 1992 in that region, in an attempt to break away from the autocratic system of government that was prevalent in Baghdad. However, what is less well known

is that, between 1992 and 2002, that same parliament only met once, at the beginning of its tenure. Shortly after the elections were held, a dispute between the two main Kurdish political parties broke out and eventually evolved into a full blown civil war. A stalemate was eventually reached in 1996 - a new border was created within Iraqi Kurdistan, with one government ruling the eastern section and another ruling the west. Needless to say, the parliament did not meet during that period.

At the start of each country's march towards democracy, there is always a dearth of institutional learning, which affects the parliament just as much as it does any other governmental institution. It is a fallacy however to argue that, if a particular country's parliament does not emerge into an active and effective institution, it is because of a tendency towards autocracy. In fact, most commentators agree that where democratic institutions manage to take root, it is typically because local elites decide that it is within their interest to allow such an evolution to take place, and not because of a tendency towards altruism. A quick survey of parliaments in the Arab world provides a good illustration of this point.

In Lebanon, a country which many tend to believe contains the most educated and modern people in the Arab region, and which is also in the midst of a conflict (although of a different sort to the conflict that is raging in Iraq), the parliament is currently without a role to speak of. This is no doubt because of a series of historical, sociological and political circumstances that are particular to that country. Indeed, although an alliance of political parties has a clear majority within it, the president of the parliament is actually one of the main leaders from the minority. This is the result of the very particular and very sectarian system of government that is provided for in the country's constitution, which indicates that the president of the parliament must always be from the Shi'a sect. The Shi'a, being in the minority, have therefore decided that the parliament will not meet so long as it is dominated by their political opponents. All in all however, these complicated circumstances cannot hide the fact that the parliament has been deprived of the role that it could play in resolving the conflict that is ongoing within that country merely because the country's elites have not reached the point where they consider that it is in their own particular interests to allow the parliament to meet.

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The situation in Kuwait, which many continue to believe is among the most traditional and undemocratic countries in the Arab region, is markedly different. The country's parliament is not only active - it is actually involved in monitoring government corruption, and has prevented key ministers from implementing a series of economic and financial reforms, for various reasons. By way of example, the ministry of oil - one of the Kuwait's most important institutions - has for years been trying to lure foreign oil corporations to invest in the country. Production sharing agreements are strictly forbidden under the constitution, so the ministry has merely been attempting to enter into exploration and exploitation agreements with the foreign companies. However, the Kuwaiti parliament has blocked such initiatives at every turn, for reasons that include a desire to maintain natural resources in national hands. One could never imagine such a thing happening in Lebanon, or even in the vast majority of Arab parliaments.

How did this state of affairs come into existence? A quick review of Kuwaiti history provides the answer. Up until the late 1980s, the parliament had actually been prevented from exercising its constitutional mandate by the government, which at that point was and continues to be dominated by the monarchical class. The catalyst took the form of the Iraqi invasion in 1990. After the government and just about every prince fled the country, they lobbied as best they could to amass as much support as possible both within and without the country to ensure that they would return to power as soon as the Iraqi invaders were expelled. One of the parties that the government contacted was the country's parliament, which, after some hesitation and negotiation, agreed to support the return of the government on the condition that the constitution would be upheld, and that the parliament would be allowed to resume regular sessions and fulfill its democratic purpose. As soon as this agreement between the ruling elites was reached, and after they were able to return to their capital, the parliament commenced providing much needed oversight for government activities.

Once this type of precedent is established, and once the role of the parliament has been consolidated, there is little that can be done to undermine it. It is only at that point that a parliament can begin to satisfy its mandate, and to play a role in managing and resolving conflicts both within and without its borders. An example of what can be done is provided by the recent developments that have been taking place in the United States. Since 2003, the Bush administration has been waging what has now become an immensely unpopular war in Iraq, and has proven itself unwilling to adhere to the growing calls either for a withdrawal, or at least for a modified policy. One of the effects of this wanton failure on the government's part was the results of the last congressional

elections, which saw the Republican Party lose control over Congress. Since then, Nancy Pelosi, the speaker of the House of Representatives, who is the third most important official in government according to the US constitution, has decided to bring effect to the will of the American people, as expressed through their democratic choice in the last elections. She has therefore engaged herself in Middle East diplomacy, with a view to bringing countries such as Syria in from the cold, which she hopes will assist the United States' expectations of a positive outcome in Iraq.

It seems clear therefore that in order for parliaments to play a positive role in the midst of conflict, a set of conditions needs to be satisfied, including: (1) the country in question must enjoy a strong constitutional system and electoral system, which allows each parliamentarian to know which district he or she is representing, and what their specific roles are; (2) the parliament and parliamentarians must be self aware of what role they can play, and how to acquire such a role; and (3) a precedent which concretizes an agreement between the ruling elites according to which the parliament should be allowed to satisfy its constitutionally mandated role. Given the circumstances in countries such as Iraq, and given the fact that none of these conditions have been met, it seems less than likely that that country's parliament will soon be in a position to play a role in resolving the conflict that is ongoing in that country. ■