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Can Federalism Work in Iraq?

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Executive Summary: On September 21, 2011, The INSS Center for Strategic Research conducted a conference on the challenges of federalism in Iraq. The purpose was to move beyond the ethnic and sectarian lens and examine the implications of federalism on governance, economic development and security across sectors and regions. In doing so, the conference identified the strengths and weaknesses of Iraqi federalism and policy options for the United States, particularly as it withdraws its military forces from the country. Speakers included high-level Iraqi government officials, academicians, and non-governmental organization representatives from Iraq.

The key findings were that Iraqi federalism has a chance to succeed but only with modifications. Most participants were relatively positive about the idea of federalism but critical of the way it has been applied. One of the biggest problems is the 2005 Constitution. While assuring minority group rights, the constitution's intentional ambiguity on resource and revenue-sharing and security responsibilities has created new tensions between Baghdad, the Kurdistan Regional Government (KRG) and local administrations. Another unintended consequence has been greater inefficiency in governance and economic development. Even though the provinces have been constitutionally bestowed with large powers, they have neither the institutional capacity nor resources to manage or implement large-scale projects, particularly in the energy sector. Some argued that given the significant role of petroleum

in the Iraqi economy, a more centralized system would be most effective in advancing energy development. Others pressed for greater clarity in authority between the central government, KRG, and local administrations, either through bilateral agreements or special arrangements.

Participants also had mixed views on the U.S. withdrawal. They largely agreed that Iraq's current security challenges could not be addressed with reduced U.S. troop levels, stating that the Iraqi military would not be ready until 2020 at least. Others indicated that Iraq was preparing to assume responsibilities and needed extended training, although not necessarily increased U.S. troop presence.

Iraq's Federalist Solution: The idea of a federalist system was initiated by the United States and Iraqi opposition groups while planning for a post-Saddam Iraq. Federalism was perceived as the best way to guarantee minority group rights, prevent a return of dictatorship and keep the country together. The particular nature of Iraqi federalism, as espoused in the 2005 constitution, devolved large powers to the Kurdistan region and the provinces, expanded political participation and representation through a quota system, and checked the authority of the central government. In doing so, Iraq became one of the weakest forms of federalism in the world, leaving the central government with minimal

responsibilities including enumerated powers to collect and distribute revenues. Yet Iraq's federalist framework is riddled with ambiguity and legal inconsistencies that have constrained both central government power and autonomy of the provinces. Vagaries of the constitution, institutional weakness, gaps in local capabilities and confusion about the meaning of federalism among different groups have prevented effective governance. Tensions between equity and efficiency also have become salient as the country attempts to reinvigorate its oil-dependent economy. Two contradictory trends have emerged that pose new challenges to governance, development and security; the push toward greater autonomy by regional and local administrations and a reaffirmation of central authority from Baghdad.

Is federalism holding Iraq together or pulling it apart? Although a unified Iraqi identity has never crystallized in the country, the collapse of the regime in 2003 did little to create a shared sense of Iraqiness. Political decisions and institutional arrangements since then have further entrenched the polarization of identities. The 2005 constitution offers a promising set of institutions for people of different ethnic and sectarian backgrounds and creates a more inclusive political process; however, it does not answer the question of what it means to be Iraqi.

Different and changing interpretations of what Iraqi federalism means and should do for each group have further undermined the emergence of a cohesive commitment to the Iraqi state. For the Kurdistan region, which was one of the key engineers and supporters of the constitution, federalism is largely about expanded autonomy and self-rule. In southern Iraq, where Shi'as "had always paid lip-service to federalism", federalism is about Baghdad's inefficient distribution of services and claims for local control. For Sunni Arabs in central Iraq, who had no role in formulating the constitution, the notion of federalism was initially perceived as an American-Iranian conspiracy and betrayal of Iraq. This sentiment has recently shifted;

however, as Sunni Arabs have become alienated from the state and seek protection as a minority group.

These federalist interpretations, as well as historical memories, changing incentive structures, and the redistribution of power in Iraq have encouraged shifts in group behavior that include:

- **Fragmentation of political identities.** Sectarian, ethnic, tribal and local interests have taken precedence over a shared sense of Iraqiness. Two groups in particular have gained from the federalist system; Shi'a and Kurdish communities. According to one speaker from southern Iraq, the sense of injustice or victimization is still very strong among Shi'a groups, who have a feeling of triumphalism and that "this is our time". Many think of themselves as Shi'a first and not as Iraqis, although they also identify with the state.

Kurdish political identities also remain strongly regionalized, although less separatist than what is feared by the international community. One speaker from the Kurdistan region affirmed that the appointment of a Kurd as president of Iraq (Jalal Talabani) and official recognition of a president of the Kurdistan Region (Ma'sud Barzani) has helped Kurds to "feel both Iraqi and more Kurdish". Even with the presence of an opposition movement (Goran) in the northern region, the Kurds remain relatively unified in Baghdad on key nationalist demands. The Kurds are also mindful of their dependence upon Turkey and realize they will have to compromise accordingly.

In contrast, Sunni Arab communities, who represent about 17 percent of the population, have become more alienated from the state and have mobilized other types of political identities that draw upon tribal and localist

claims. The sense of Sunni Arab alienation also is rooted in the 2010 elections and government formation process, defective application of the law on the provinces, and policies tied to resource and revenue allocation. The central government's petrodollar system that provides oil-producing provinces with one dollar from each barrel of oil produced has largely benefitted Kurdish and Shi'a regions while disadvantaging Sunni Arab provinces with minimal petroleum resources.

- **Coalition building:** Politically expedient coalition-building between parliamentary blocs has become a key part of Iraqi federal politics. The Kurdistan Alliance and the Iraqiyya list, led by Iyad Allawi, have reacted to Prime Minister Nuri Al-Maliki's control over key ministries and political processes by combining efforts on oil sector policymaking and on payments from Baghdad to the regions and provinces for oil exports. The KRG also has attempted to negotiate deals with high-level Sunni Arab leaders, such as Parliament speaker Usama Nujaiifi, largely in response to their recent rebuff from Prime Minister Nuri Al-Maliki. These deals have been able to stifle Maliki's oil legislation and advance shared economic interests, but they have not led to durable political alliances, significantly altered legislation, or supported Kurdish nationalist interests.¹
- **Flirting with federation.** Economic disparities and opportunities have reinforced the drive to protect or maximize group interests. Despite the fact that over 80 percent of Iraq's oil comes from Basra, living conditions in the province have not

dramatically improved, creating a greater sense of dissatisfaction with the central government by local populations. The Basra provincial council, for instance, is having a sit-in every Tuesday to protest central government obstruction of electricity projects. Anbar and Karbala have similarly tried to bypass Baghdad by signing oil and gas contracts on their own or demanding inclusion in oil and gas policy-making. Frustrated with Baghdad's obstruction and motivated by jealousy over Kurdish control of its resources, Basra has shown renewed interest in developing a southern federation.²

Sunni Arabs may follow suit. Stirring the debate about Sunni federalism was a recent public statement made by Sunni leader Usama Nujaiifi affirming "We (Sunnis) feel like second-class citizens and we are largely frustrated".³ Sunni Arabs also fear the development of a southern federation coming from Basra will open a door for Iran to influence all of Iraq. They are equally concerned that state revenues will get directed more and more to the oil-rich southern provinces and away from resource-limited areas. Additionally, Sunni Arabs think that their federation could provide certain immunity and strengthen communications between Iraq and Turkey, Syria, Jordan and Saudi Arabia.

Still, there are a number of obstacles to a Sunni Arab or southern federation. Sunni Arabs, who are very tribal and organized along horizontal arrangements, have long believed in a strong central state and the importance of Iraqi unity. Additionally,

² For a detailed analysis of the early debates on federation in southern Iraq see Visser, Reidar. "Debating Devolution in Iraq", Middle East Research and Information Project", <http://www.merip.org/mero/mero031008>

³ This statement made on *al-Hurra* caused a firestorm in Baghdad. Al-Maliki reacted vehemently and called the statement unpatriotic. Tribal leaders in Anbar province also reacted critically.

¹ "Al-Nujaiifi: Kurds are relaxed in Kurdistan, but anxious in Ninewa", Niqash, January 20, 2011. <http://www.niqash.org/articles/?id=2771&lang=en>. Political coalitions across ethnic and sectarian groups are issue-dependent but have not crossed the threshold of implementing Article 140.

while Basra flirts with federalism other southern towns such as Nasiriya and Maysan are more suspicious of the power-plays involved and the consequences on Iraqi unity.

How much devolution of power is feasible and likely? While federalism in Iraq has largely focused on participation and minority group rights, issues of equity and resource distribution have become equally pressing. The constitution delineates general authorities between the federal government, Kurdistan Region and the provinces; however, it makes no mention of who is responsible for social services, education, and local infrastructure. These ambiguities have created new concerns about the devolution of power in certain regions and sectors:

- **Institutional constraints.** Iraq's excessively regulatory structure, nepotism and corruption at all levels of business and government, and absence of the rule of law hinders foreign investment, increases costs, and prevents the successful completion of projects at the local levels.⁴ The country also has no institution to represent provincial interests at the federal level.
- **Weak capacities.** Provincial administrations are ill-equipped to effectively manage or implement projects. Only 9 percent of the government's 2011 total capital expenditures, or \$25.7 billion, has been targeted to the provinces for development projects.⁵ The operational budget also fails to address local needs. Allocations focus on play grounds and road maintenance

⁴ In one recent incident, a local businessman in Fallujah had to visit eighteen places to start his bottled water factory and pay bribes at every step of the way. See <http://www.cbsnews.com/stories/2011/10/18/ap/business/main20121999.shtml>

⁵ The breakdown of 2011 capital expenditures allocated to the provinces and Kurdistan region is: Ministries projects (provinces and Kurdistan Region) - \$12.7 billion; oil projects - \$6 billion; electricity projects - \$3.2 billion; reconstruction and development (provinces and Kurdistan Region) - \$2.2 billion; petro-dollar projects (excluding Kurdistan Region) \$1.4 billion; and Marshal Projects - \$123 million.

and not health care and hospitals as a priority. Implementation levels at the provincial level are equally limited. In 2010, the provinces executed only 68 percent of capital expenditure projects, although there was large variance in rates across provinces.⁶

The provinces also lack the authority and capabilities to provide services. According to a survey conducted in July 2010 by the Iraqi Ministry of Planning, local planning bodies were generally available but described as weak and inefficient. These bodies rarely engage in strategic planning but focus instead on operational level planning, which is conducted mainly by temporary contractors.⁷ Additionally, the provinces have all of the weaknesses of the federal government; no oversight on corruption, legislation, and human rights issues.

- **Expectations of the role of the central government.** Despite the creation of provincial councils Iraqis have a mentality that the central government is the source of all benefits and services and all ills. It is difficult to change this mentality, particularly for those who rule in Baghdad. Although some provincial officials see devolution of power as a means of expanding local patronage networks, the vast majority is afraid of being held responsible for the lack of services.

The KRG also has large expectations of the central government, but for different reasons. In the Kurdistan region local expectations are not vested in Baghdad but the KRG, which has assumed responsibility for delivering goods and social services in the region. Yet even though

⁶ Salahadin and Anbar had financial execution rates of 29 and 27 percent respectively, while Ninewa, Qadisiya, Muthana and Najaf had rates between 94 and 100 percent.

⁷ The survey covered seven provinces, 10 districts and 11 sub districts. It examined the general status of local governments, planning, human resources, financial capacity, monitoring, and infrastructure, staffing levels, the male/female ratio, education level, years of experience, and the ratio of services rendered.

the KRG has been the most reluctant to integrate into a national structure and has developed its own parallel sectors, the region remains highly dependent upon Baghdad for nearly 95 percent of its budget. The KRG also expects the central government to finance its militia (peshmerga) and resource development projects alongside its annual budget.

Efficiency or equality? Resource and revenue management. The Iraqi constitution clearly prioritizes equity over efficiency, yet lack of technical skills, corruption, and heavy reliance on international oil companies prevent the KRG and the provinces from maximizing benefits in the energy sector. Iraq's federalism also lacks mechanisms of assuring regular and complete payment transfers from regions and provinces to the central government. All provinces are currently compliant in transferring non-oil revenue to the federal treasury except the Kurdistan region.

Baghdad is responsible for allocating revenues to each province and region from the Development of Regions and Provinces Fund which is based upon population density, though areas "damaged" during the previous regime may receive greater compensation. Iraqi ministries also are financed to execute their own projects in the provinces.

These seemingly arbitrary revenue distribution processes, alongside inequalities of the petro-dollar scheme, have further limited the authority of regions and local administrations to engage in long-term planning and development projects. For instance, Iraq's revenue allocation to the provinces from 2006-2011 reveals no clear pattern; in 2008 Baghdad received \$900 million while Basra received \$300 million and in 2011 Baghdad received about \$550 million while Basra received about \$975 million. Kirkuk, which received less than \$150 million in 2008 was the third highest

recipient of central government provincial funds in 2011, with an allocation of nearly \$400 million.⁸ Energy sector management has created similar constraints for regional and local administrations. Even though all Iraqis agree that oil is the key to Iraq's finances, they disagree on how the sector should be managed, reflecting the vagaries of the 2005 Constitution and competing views on the distribution of powers between the Baghdad and the provinces.⁹ Oil deposits also are unevenly spread across the country and differences exist among oil fields' production capacity, extraction costs, and quality of crude.

According to energy sector and economic experts, a more equitable resource management policy would give regions and provinces the right to manage oil production and revenues. In doing so, oil would yield less revenue than its potential, as oil firms would negotiate with more, smaller vendors in the form of provinces, rather than a single, larger vendor in the form of the Iraqi government. This option would also reduce the share of the oil revenue going to the Iraqi government.

In contrast, greater resource efficiency requires maximizing oil production and revenue, which given Iraq's energy structure, would result in greater control by Baghdad. According to the Iraqi Institute for Economic Reform, Baghdad's total revenue for 2011 is over 69 billion dollars; about ninety percent of which is oil based and representative of 60 percent of Iraq's gross domestic product.¹⁰ Given the country's high

⁸ Allocations to the provinces of Ninewa, Diyala, Anbar, Babil, Karbala, Wasit, Salahadin, Najaf, Qadisiya, Muthana, DhiQar and Maysan were \$50 - \$390 million during this period, although with fluctuations across time and between provinces.

⁹ Article 112 of the Iraqi constitution states that oil production is to be managed by the federal government and the producing regions and provinces. Article 115, however, suggests that the regions and provinces, not the federal government, are meant to take the lead on managing oil production, as the laws of provinces and regions are given priority over federal laws in cases of shared authority.

¹⁰ Total expenditure during this period is nearly 83 billion dollars, leaving Iraq with a deficit of over 13 billion dollars before additional oil sales.

dependence upon oil and exposure to oil price shocks, the central government is reluctant to decentralize the system radically because it risks losing power. Baghdad also is reticent to expand other sectors because they could consume oil and thus take away profits of the petroleum economy.

- **The hydrocarbons law.** One of the most contentious issues involving resource and revenue management is the hydrocarbons law. Two versions of the draft law representing the distinct and overlapping demands by the KRG and provinces and the central government have been proposed by the parliament and cabinet respectively. These versions reflect the competition for greater control over the energy sector, as well as where decision-making power in Iraq should be vested; legislative (parliament) or executive (Cabinet) branches of government.¹¹

Equally problematic is the validity of contracts signed by the KRG, particularly those in the disputed territories. In response to Baghdad's criticisms of the opacity of its contracts and procedures, the KRG has publicly opened some of its records, although in a limited form.¹² Further, there still is no systematic process of accounting and auditing energy sector activities. Baghdad has created a Committee of Financial Experts to replace the Iraqi

¹¹ The hydrocarbon law has been debated since 2007 and is currently locked in a stalemate between the Iraqi parliament and the cabinet. A decentralized version of the law was rejected on August 17, 2011 while a centralized version, approved by the Council of Ministers on August 25, 2011, was denounced by the KRG. On September 7, 2011, the Oil and Gas Committee in the Iraqi parliament refused to introduce the Council of Minister's draft law. No significant progress has been made since then.

¹² One of the key debates during the July 2, 2011 session of parliament in Baghdad was over the legality of Maliki's policy of approving oil contracts by cabinet vote in the absence of legislation. Oil Committee Chairman Adnan Al-Janabi, of Iyad Alawi's Iraqiyya party, read out a list of complaints about the current oil and gas contracts signed by Baghdad, and demanded that a national hydrocarbons law be passed and that no further oil and gas contracts be signed in Iraq without legislative approval. The vote on this issue was postponed. See *Inside Iraqi Politics*, Issue No. 24, October 17, 2011. 7-8. www.insideiraqipolitics.com

Supreme Auditing Board to monitor transactions; however, no significant changes should be expected before 2012.

Securing the federal Iraqi state. Federalism in the security sector is an equally sensitive issue. The constitution permits regions and provinces to establish internal security; however it does not clarify who is responsible for securing borders or paying costs of local militia, particularly if they operate separately from the Iraqi army. These concerns stem from two trends that have emerged in the security arena since 2003: the increase in organized crime and decline in the capabilities of military forces due to new responsibilities of dealing with police work. Different views of Iraqi capabilities show that while Iraqis are working hard to fill these gaps, security and political dilemmas remain. They include:

- **How to reconstitute the Iraqi army.** What rules and processes will define the composition of the military? If the army is created along ethnic or sectarian lines it will be seen as exclusionary but if it is representative of society it will be criticized for being based on quotas. Re-building and sustaining the army also is tainted by Saddam's use of the military for internal security purposes and different group perceptions of the military. Shi'as continue to have greater representation in the military but are now also dominant in the officer corps, which was previously Sunni Arab (The Maliki government has excluded Sunni Arabs as Ba'athists) Most Shi'as continue to be distrustful of the former Sunni Arab dominated armed forces. Sunnis are distrustful of the new military because it is misrepresentative of the population while the Kurds are distrustful of both.
- **Securing Iraqi borders.** New disputes have emerged over deployments of Iraqi armed forces in the provinces, and similarly, the deployment of Kurdish peshmerga and local militia outside regional or provincial borders. While party and

group militias have assumed greater control of local security, the main threats (terrorism and insurgency) are transnational and trans-provincial and cannot be effectively countered exclusively on a local level. Another issue is identity-based. Police and security forces do not enforce warrants against people in their own tribes. The recent Karbala bus incident that led to the deployment of Karbala security forces in Anbar province that created local hostilities, exemplifies the problem of Iraq's securing its borders.¹³

- **Baghdad-Arbil relations.** According to a high-level Iraqi official, security issues and challenges differ more within the Kurdistan Region than with the provinces. Baghdad has had particular tensions with the Kurds in the past and is wary of their perceived intentions, while the KRG continues to distrust the central government. The size of KRG forces and their costs remains a contentious issue. Although the KRG refuses Iraqi military forces from entering the Kurdistan region, it wants Baghdad to fund 90,000 peshmerga forces to guard the borders of the Kurdistan Region in addition to the 17 percent budget it receives from the central government (Baghdad has agreed to fund 30,000). Additionally, tensions have reemerged over the jurisdiction and identity of Iraq's disputed territories. Maliki's recent decree banning Kurdish flags from being flown in Khanaqin in Diyala province has led to demonstrations and new threats of a "popular revolution" by the Kurds.¹⁴

¹³"Nikhaib massacre aims at sectarian conflict-PM", September 16, 2011. *Aswat al-Iraq*. An unknown group kidnapped a bus travelling from Syria carrying 30 Karbala pilgrims, and then killed 22 of them. A military force from Karbala province, following orders from Prime Minister Al-Maliki and in cooperation with Anbar security forces, arrested 8 individuals from Anbar, which aroused anger from those in Anbar province. http://en.aswatiraq.info/Default.aspx?page=article_page&c=slideshow&id=144868

¹⁴ Khanaqin is a predominantly Kurdish populated territory in Diyala province that the KRG claims is part of the Kurdistan Region. Since 2005 the KRG has deployed its peshmerga forces at internal borders in Khanaqin, instigating further tensions with Baghdad. [http://www.alsumaria.tv/en/Iraq-News/1-](http://www.alsumaria.tv/en/Iraq-News/1-69471-Khnaqin-warns-of-revolution-outbreak-if-Kurdistan-Flag-is-lowered.html)

- **Is Iraq prepared for the U.S. withdrawal?** While Iraq is becoming generally more safe and secure, it confronts key security challenges such as Iranian meddling and its influence on radical militias and politicians such as Moqtada Al-Sadr forces, and other terrorist threats. One high-level U.S. official argued that it was time for the U.S. to "take off the training wheels" and allow Iraqis to assume security responsibility. A high-level Iraqi official affirmed that while Iraq does not need extensive U.S. forces in the country, it needs "simple readiness" that would permit the country's armed forces to protect Iraqi territory if threatened. Others claimed that the Iraqi military will be incapable of waging war against neighbors and combating internal terrorism until at least 2020. Iraq has weak and ineffectual armed forces, unprepared logistics and no air force. Additionally, security-related issues cannot be resolved before higher level issues are settled.

Prospects for Iraqi Federalism and U.S. policy Implications. After eight years of post-authoritarian regime change Iraqi federalism remains a work in progress whose survivability requires continued U.S. attention and support. The U.S. can help assure a successful transition and maintain the federalist framework by assisting Iraqis in the following key areas:

- **Fine-Tuning Federalism.** The current form of Iraqi federalism needs to be modified to encourage more efficient and effective governance and economic development. Given the institutional weaknesses of the provinces and local perceptions of the role of the government, power should be devolved gradually and supported by available institutions. Paradoxically, a devolved Iraqi polity may require a moderately strong center.

[69471-Khnaqin-warns-of-revolution-outbreak-if-Kurdistan-Flag-is-lowered.html](http://www.alsumaria.tv/en/Iraq-News/1-69471-Khnaqin-warns-of-revolution-outbreak-if-Kurdistan-Flag-is-lowered.html)

- **Asymmetrical federalism.** The Iraqi case reveals that distinct relationships exist between Baghdad and each province, as well as between Baghdad and the KRG. These relationships - and the tensions and opportunities tied to each - have a better chance of being developed by accounting for the particular needs and demands of each region and province. Although it is unlikely that the constitution will be amended in the near future, special bi-lateral agreements or arrangements are required to clarify authorities between the central government, KRG and the provinces.
- **Fiscal federalism.** A formal mechanism of transferring payments between regions and Baghdad should be developed, including a regional development bank and public-private partnerships. To encourage transparency and a more balanced federalist system, the regions and provinces should be held accountable for revenue collection and making payments to the central government. Currently the regions have no responsibility to Baghdad other than requesting funds and no accountability for the funds allocated from Baghdad. The KRG continues to refuse an audit of its receipts and spending by the central government.
- **Judicial federalism.** Iraqi federalist structures require a legal framework that can resolve the incongruity between regions and systems. Currently there is no differentiation between federal and local crimes so that federal issues are being tried in Kurdish courts, which is illegitimate.

Also, although the constitution gives regions the right to form their own judiciaries it does not define judicial authorities or how to establish military courts. Nor does Iraq have a dispute resolution mechanism or a court specializing in arbitration. If someone violates borders, commits crimes or metes out punishments

across provinces and regions, who arrests and prosecutes?

- **Backlash from Baghdad.** Iraqi federalism also has a chance of failing or changing in form. Prime Minister Nuri al-Maliki has responded to demands for greater local autonomy by trying to re-assert the authorities taken from Baghdad in the 2005 constitution. Key security positions remain vacant and under Maliki's personal control. Deputy Prime Minister of Energy Hussein Shahristani has reinforced Baghdad's position by pressing a centrist position on energy sector management.

The Kurdistan Alliance and Iraqiyya have responded by attempting to oppose Maliki's State of Law bloc; however, they have been unable to pose a serious political challenge. Neither have enough support in parliament nor among the Sadrists, who have assumed an increasingly salient voice in Baghdad.

In the absence of a formidable opponent and with momentum in developing the southern oil fields, Maliki may succeed in consolidating his power. Thus, even if federalism survives in Iraq, it may do so with a significantly stronger political center.

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