

{ العلاقات البين حكومية في العراق
الفدرالي
رؤية تقويمية للعلاقة بين بغداد }

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ملخص:

تشكل العلاقات البين حكومية العنصر الاساس في استقرار النظام السياسي في الدولة الفدرالية، فهي الركيزة الاساسية التي من خلالها يمكن للدول الفدرالية تجنب الازمات والمشكلات بين المركز والاطراف التي من شأنها تقود الى عدم الاستقرار، ومن ثم الى التفكك. يختلف نمط العلاقات البين حكومية من نظام فدرالي الى آخر استنادا الى عدد من العوامل، من بينها: طبيعة النظام السياسي، البنية الاجتماعية - الثقافية، الاقتصاد الوطني وتوزيع عوائد الثروات الطبيعية، كذلك الخلفية التاريخية - السياسية التي صعّدت من المطالب الداعية الى تبني الفدرالية.

تتلخص مشكلة البحث بنقطة اساسية مفادها: ان النظام السياسي العراقي يشهد حالة من الارتباك في العلاقة بين حكومة الاتحادية وحكومة اقليم كردستان التي تحتاج الى اعادة تنظيم والتقيّد بالالتزامات القانونية التي تؤطر هذه العلاقة لتحقيق الاستقرار السياسي. ارتكز البحث على فرضية مفادها: ان استقرار النظام السياسي وتطوره في الدولة الفدرالية التي تشهد تنوعا اثنيا ودينيا يعتمد على بناء علاقات ايجابية بين الحكومة الاتحادية وحكومات الاقاليم وتنظيمها في اطار دستوري واضح.

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خلص البحث الى ان حل المشاكل بين حكومتي بغداد واربيل لا يمكن ان يتم من خلال الضغط المفروض على الحكومة الاتحادية او من خلال الاعتماد على العامل الخارجي، بل يكمن في تنمية الهوية الوطنية بوصف الاكراد جزء من الشعب العراقي، كذلك مراعاة المصلحة الوطنية لدولة العراق الفدرالي.

Some scholars who study federalism usually focus on the boundary problem. Federalism's boundaries are not the geographical boundaries drawn between the states. Although they sometimes compose important problems, another is prior: the authority boundaries defining governmental powers and obligations, drawn between the states and the national government.

The Iraqi Constitution of 2005 provided that the political system takes the form of a federal democratic union. The intergovernmental relationship between the federal government and the regional governments constitutes one of the essential points in achieving stability and ensuring national security.

Scope and limitation of the study: this paper attempts to provide a clear vision about the nature of the intergovernmental relationship between Baghdad and Erbil, how it is organized and what are the most important crises and problems afflicting, and how to address the state of the treatment and the implications for the stability and security of the political process in Iraq.

Statement of the Problem: the Iraqi political system is witnessing a state of confusion in the relationship between the federal government and the government of Kurdistan region that needs to be reorganized and abide by the legal commitment framing this relationship to insure political stability.

Hypothesis of the study: The stability of the political system and its development in federal states experiencing ethnic and religion diversity is based on building positive relationships between the federal government and the governments of the regions as well as organizing clear constitutional frameworks.

Method of Research: The Legal approach shall be adopted to examine the intergovernmental relations between the Federal

- ❖ The notion of participation, which refers to the desire of the member states to unity in a federal union.
- ❖ The notion of autonomy, which refers to the desire of the member states to maintain their autonomy as much as possible.

Federalism is a system of government characterized by semi-autonomous states in a regime with a common central government; governmental authority is allocated between levels of government. As a system it is complex; it is comprised of multiple interacting governing units, each with its own preferences and decisions to make. The interaction between these governments produces system-level properties that are not properties of any individual unit on its own. In other words, federalism indicates that bond grouping several states waive outside their jurisdiction, and some of the internal independence to a single state made up of them all is the federal state. Therefore, the federal structure is to regulate the domestic jurisdiction of the state, because their associations between the states waive part of the domestic jurisdiction in favor of the State of the Union. Still federalism in the simplest sense means the organization of the state on the basis of the distribution of powers and authorities between the federal and the regional governments, where the federal government dominates the powers of national in character, and leaving the rest to the regional authorities.

The line drawn between the federal government and the regional governments is critical for generating the claimed benefits of federalism. This boundary of federalism delineates the authorities assigned to the national government and those held by the regional governments¹.

The distribution of powers among the federal authority and the authorities of the regions constituting the federal state have varied relating to the underlying degrees and kinds of common interests and diversity within the particular society in question. Different geographical, historical, economic, ecological, security, linguistic, cultural, intellectual, demographic and international factors and the

¹ Jenna Bednar, *The Political Science of Federalism*, Department of Political Science, University of Michigan, jebdnar@umich.edu. 2011, p. 6

experiences there are aspects of the unitary state of the Union in the internal and foreign spheres¹:

As for the external level:

- a. The Federal State has the sole right to engage in international relations with other countries,
- b. The Federal State has the sole right to represent the regions composing the Federal Union at the International Organizations,
- c. The Federal State has the sole right to conclude treaties,
- d. The right of diplomatic representation,
- e. The declaration of war or peace.

While on the internal level, which is the range of our attention because of its association with the determination of the relationship between the Federal government and the Regional governments:

- a. Federal Constitution alongside regional Constitutions
- b. Federal Legislative Authority which is usually composed of two chambers,
- c. Federal Executive Authority, although it differs depending on whether presidential or parliamentary political system.
- d. Federal Judicial Authority, whose mission is to solve the problems that arise between the Federal government and the Regional governments.

II. A Glance on the Legacy of Federalism in Iraq

The term "**federalism**" was formally used for the first time in a resolution adopted by the Kurdistan elected parliament in October 1992, which stated that the representatives of the Kurdish people in Iraq have chosen federalism as the best formula for the relationship between the Kurdistan region and the central government in Baghdad, and that this resolution was based on the right of the Kurds to self-determination. Since then, the demand for federalism has become the national right which united Kurdish parties behind achieving it².

¹ Ihssan Hamied Almfreji, *Constitutional Law and the Constitutional System in Iraq*, 4th ed., Cairo: Alatak, 2010, pp. 104-106. (Arabic).

² Daham Mohammed Alazawi, *The American Occupation to Iraq and the Dimension of Kurdish Federalism*, 1st ed., Beirut: Aldar Alarabia Lil'ulum, 2009, pp. 45-46. (Arabic)

territories in accordance with the law to be legislated by the Transitional National Assembly and to be ratified by a referendum of the people of the concerned province¹.

The Iraqi State Administration Law for the Transitional Period also recognized all authorities within the scope of the Federal Iraqi State: the executive authority (Government of Kurdistan Region), the legislative authority (National Council of Kurdistan) and the judicial authority, however, within the territories of the “provide comfort” zone which was imposed by the Security Council No. 688 in April 6, 1991 in the aftermath of Gulf War II².

Federalism was one of the most controversial issues when Iraq drafted its constitution, and the Iraqi federalism negotiations fundamentally resolved around balancing the powers between the federal authorities in Baghdad and the Kurdish regional government; which had been the De Facto government in Kurdistan since the end of the Gulf War II in 1991.

This system was enforced and became a constitutional procedure in the year 2005 as a way to face the inherent crisis in modern Iraq's history resulting from the lack of a political system through which powers could be distributed and the peculiarities of different ethno – sectarian communities could be included.

The permanent Constitution which gained the approval of the Iraqi people in the referendum was ratified and promulgated later in October 15, 2005 has recognized eighteen governorates and one region, Kurdistan, which encompassed three of these governorates entirely, as well as limited areas of other governorates. Iraq embraced an asymmetrical form of consociation federalism, and this refers to a power – sharing arrangements based on a group affinity, such as ethnicity, religion, national, etc. Asymmetric refers to the distinct amounts of powers wielded by governments at the federal and regional and governorates may join together to form regions³.

¹ The Iraqi State Administration Law for the Transitional Period, 2004, Article (4).

² See The Iraqi State Administration Law for the Transitional Period, 2004, Article (53).

³ Sharmila L. Murthy, Iraq’s Constitutional Mandate to Justly Distribute Water: The Implications of Federalism, Islam, International Law and Human Rights, the Geo, Washington, Intl L. Rev. Vol. 42, 2010, p. 760.

formulating monetary policy; and establishing and administrating a central bank.

- d. Regulating standards, weights, and measures.
- e. Regulating issues of citizenship, naturalization, residency, and the right to apply for political asylum.
- f. Regulating the policies of broadcasting and mail.
- g. Drawing up the general and investment budget bill.
- h. Planning policies relating to water resources from outside Iraq and guaranteeing the rate of water flow to Iraq and its just distribution inside Iraq in accordance with international laws and conventions.
- i. General population statistics and census.

As for the shared powers between the federal authority and the regional authorities, the Constitution made it clear that all powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region¹.

The Constitution stipulated the shared powers between Baghdad and Erbil, the capital of Kurdistan region, and the regions that may emerge in future. These powers were named as follows:

- a. Managing and extracting oil and gas from present fields, and formulating the necessary strategic policies to develop the oil and gas wealth in a way that achieves the benefit to the Iraqi people²,
- b. Antiquities and archaeological sites are under the jurisdiction of the federal government, and shall be managed with the cooperation with the regional and governorate authorities³.

Moreover, customs, regulation of electric power, formulation of environmental policies, as well as public policies concerning education, health, water resources; are all competencies to be shared between the federal and regional authorities⁴.

¹ The Iraqi Constitution of 2005, Article (115).

² The Iraqi Constitution of 2005, Article (112) paragraphs (First) and (Second).

³ The Iraqi Constitution of 2005, Article (113), however, this article has not been regulate by laws as stipulated in the text.

⁴ The Iraqi Constitution of 2005, Article (114), Paragraphs (First – Seventh)

Despite the identification of the joint powers between Baghdad and Erbil, the Constitution provides for the priority to the laws enacted under the jurisdiction of the regional and governorate authorities in case of a dispute occurs between federal and regional legislations¹.

V. Intergovernmental Relations between Baghdad and Erbil

In most federal countries, a considerable part of the intergovernmental affairs is carried out within the executives be it a Head of State or a Head of Government, Governors, and members of their cabinets, and official in the bureaucracy. This reflects the general tendency towards executive dominance in complex modern governments, but is especially true in the Westminster style federations, where the concentration of power is in the hands of executives is especially marked. This type of rule is labeled “Executive Federalism”. Indeed, it is applied to the Canadian model of federation, and similarly adopted in Australia.

In some other federations, the legislative body plays a significant role. They do so in two ways: First, the second chamber in the legislature may represent regional governments and populations in the national parliament and thus provide a forum for representing and advocating regional interests in the national legislature. Second, elected legislatures may play a role in monitoring the executive’s performance at the level of intergovernmental relations.

The first of these elements suggests that in federal systems that are made of strong second chamber representing the regions- that is, strong elements of “intra-state federalism”. The second chamber will be the primary arena that will shape the intergovernmental relationship. A clear example of this model is the “Bundesrat”, the second chamber of the German legislature. It is indeed a powerful body that speaks directly to the interests of the “Lander” in national policy making².

As for the case of Iraq, although federalism is said to be a helpful model to unlock changes through progressive decentralization, this

¹ The Iraqi Constitution of 2005, Article (115).

²For more details see: J. Peter Meekison (editor), *Intergovernmental Relations in Federal Countries: A Series of Essays on Practice of Federal Governance*, Gauvin Press, Gatineau, Quebec: 2007.

prospect, however remains distant given the apparent lack of political and popular support within the country¹. Indeed, it may be said that Iraq is a too young federal system to assess the success and/or failure in federal state building, and it has to be distinguished from federation which refers to the whole structures in which self – rule, shared rule, partnership rule, and participating government. Nevertheless, Iraq has been practicing federalism for the past decade. It is now composed of two regions recognized by the Federal Constitution which was ratified in the year 2005. Iraq's federalism was perceived as a way to reduce centrifugal forces by participating all political and social groups in the regional and national governments. However, comparing with what has been mentioned earlier, the Federal Constitution has stipulated that the legislative body shall be consisted of the Council of Representatives and the Federal Council², and that the later shall be established basing on a decision enacted by the House of Representatives by a two-third majority vote³. In other words, the purpose of establishing the Federal Council, and its role and functions, as well as its powers has been completely dropped from the Constitution. The framers have left this case for the elected members of House of Representatives to shoulder this task which is somehow considered strange.

The House of Representatives has been performing its duties with the absence of the Federal Council. There is no doubt that the presence of this chamber would give greater importance to the legislative authority in the field of legislation and speaking for the federal regions.

The Iraqi Constitution has also left unaddressed and ill defined significant aspects of the division of competences between federal government and sub-federal entities, which have been the focus of intense disputes between Baghdad and the government of Kurdistan

¹ Barah Mikail, *Avoiding Iraq's Fragmentation*, Norway University, www.fride.org, 2004, p.4

² *The Iraqi Constitution of 2005*, Article (48).

³ *The Iraqi Constitution of 2005*, Article (137).

region¹. The natural resources issue is deeply intertwined with territorial disputes between the federal government and the Kurdish regional government or over adjacent – mixed areas such as Kirkuk, Mosul, Salahuddin, and Diyala provinces. These territories are ethnically mixed and rich in natural resources including Kirkuk; its super – giant oil field².

Indeed, the disputes over control of Iraq's natural resources have tugged at these centrifugal forces; thereby fueling tensions that the federal structure was designed to accommodate in order to solve it eventually³.

¹ Massimo Moreli and Costantino, *Oil, Federalism and Third-Party Intervention: An Assessment of Conflict Risk in Iraqi Kurdistan*, Colombia University, 2014, p. 5.

² *Ibid.*, p. 7

³ Murthy, *op. cit.*, p. 761.

VI. Assessment of Baghdad-Erbil Intergovernmental Relations

The Constitution has defined the shape of the relationship between the Federal Government and the Regional Government of Kurdistan in the form that determines the powers of the Federal Government and leaves the rest to the Kurdistan Regional Government. Moreover, the Federal Constitution has asserted that “priority shall be given to the law of the region..”¹ The Constitution has gone further in asserting that in case of a contradiction between regional and federal legislation in respect to a matter beyond the scope of the exclusive authority of the federal government, the regional power shall have the right to amend the application of the national legislation within that region, as well as determining the powers of the executive, legislative and judicial; the establishment of offices for the regions within the Iraqi embassies and diplomatic missions to follow cultural, social and developmental affairs. The Constitution also authorized the regional governments to take responsibility in all the administrative requirements, particularly the establishment and organization of the internal security forces for the region such as police, security forces, and guards of the region².

Indeed, the federal Constitution has circled the powers of the federal government to the degree that made it incapable of practicing full jurisdiction over the entire Iraqi soil. Although there were times where the two governments were able to come to partial solutions regarding the oil and gas problems, and postponing the issue of the disputed areas, still the question connected to the guards of the region (Peshmerga) composes a big problem that raises the concern of the Federal Government. This case came to surface when the Peshmerga forces deployed in Kirkuk due to the popular demonstrations and mass sit-ins that took place in the Sunni provinces to protest the federal government's policies without the knowledge of the Prime Minister of Iraq, the General Commander of the Armed Forces, which has no authority over these forces; moreover, the Iraqi Army was not able to secure the borders between Kurdistan and Syria (which are the limits of the federal state) from the terrorist intruders.

¹ The Iraqi Constitution of 2005, Article (115).

² The Iraqi Constitution of 2005, Article (121).

The Kurdistan Government on its part has been on a quest to link its Region with the neighboring and other European and Asian countries through large investment projects and encouraging these countries to have diplomatic missions in Erbil, as well as sponsoring international exhibitions in different fields. The government of Kurdistan keens to participate in international conferences, all of which gives the impression that the Kurdistan Regional Government is preparing to stand on the Confederate threshold.

Conclusion

The Kurdish question in Iraq could to be an input for communication and cooperation as well as it may form integration with the federal government. It may also be a model for the rest of the Iraqi provinces looking forward to forming federal regions, instead of being a problematic political issue reflecting factors of instability.

It is of an error to conceive that the solution of the Kurd nationals, at the long range, be solved through pressure imposed on the Federal Government, or by depending on foreign factors. Indeed, it may be achieved through promoting national identity as part of the Iraqi people, as well as taking into account the national interest of the Federal State of Iraq. This requires an objective political participation that preserves its unity and keeps it away from the fear of fragmentation.

In order to reach into symmetrical relations between the Federal Government and that of Kurdistan, some important recommendations must be taken into account, such as:

1. Coordinating the power sharing between the federal government and the regions or provinces according to the provisions of the constitution and related legislatures in a manner that preserves mutual interests.
2. Reconsidering the provisions of the Federal Constitution concerning the Articles regulating the intergovernmental relations in a manner that eliminates the ambiguity and lack of clarity in the form of this relationship.
3. Reconsidering the provisions of the Federal Constitution concerning the relationship between the Federal and the Regional authorities in a manner that insures the priority of the

- federal legislation, particularly in the common terms of reference.
4. The need for mutual understanding and consensus and alienating political disagreements through real participation in decision-making according to the Constitution.
 5. Establishing the Federal Council as an upper chamber, enacting the law of oil and gas to resolve inter-fiscal problems, and implementing Article (140) concerning the disputed territories and historical claims.
 6. Representing Iraq in the foreign sphere is an exclusive responsibility of the Federal Government.

The Intergovernmental Relations in Federative Iraq (An Assessment Vision to the Relationship between Baghdad and Erbil)

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