

THE SHAPE OF IRAQ'S FEDERAL SYSTEM AFTER ISIS

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ABSTRACT

The Modern Iraq and the region between Tigris and Euphrates rivers, known as Mesopotamia in ancient times. This region from the past to the present has been an important location in the history of civilization. However, in this region civil war came out with the invasion of the United States. Many of the Middle East and Arab countries based on the rule of the Central Administration System. Political parties applied discussions for long time how administrate Iraq state post Saddam's regime. However, Iraq has adopted the federal system in the 2005 Constitution.

Keywords: Iraq, Federal system, Constitution, Arabs, Kurds, Turkmen.

IRAQ'S SOCIAL STRUCTURE

The people of Iraq state consists of many ethnics. Iraq ethnic groups are scattered in different regions. Some of them are in the North, while some others in middle and South of Iraq. Despite these groups are live together a thousand years they have vary and different traditions and cultures. The most important ethnic groups among these groups are; the biggest part of the country's population is Arabs, the second-largest ethnic group is Kurds and last big part is Turkmen. In addition to the three main ethnic groups there are small ethnic groups in Iraq. There is no clear data about the mentioned groups. In 1940 Iraq's population was 3.7, in 1960 6.8 million, 13.2 million in 1980 and 1990 17, and in 1993 had reached 21 million¹. But in Iraq since 1958 there has not been a reliable population count. Population counts were made before 1953 are considered as reliable census especially when Baas regime seize authority by military cop applied Arabization policy in Turkmen and Kurdish regions². Iraq's current census is 37.056.169.3

ARABS

The Arabs are migrated to Iraq in different times from Arabic half island by the time they came the majority of Mesopotamia's population. After Sadam Hussein seized power in Iraq a new era of Arab nationalism started. Some Arabs were forced to migrate from the South to the North where Turkmen and Kurdish- inhabited cities. The same thing can be said for Turkmen and Kurds. They forced to migrate to Arabic regions.

Today Arabs are consist the vast majority in Iraq. Except three cities -Kirkuk, Sulamaniyah and Duhok- in all of the Iraqi cities Arabs are considered either majority or all of city. It's difficult to give precise information about the count of Arabs because there is no census in recent years. Arabs constitute slightly 75-80 of the Iraqi population⁴. Arabic adopted the only Iraqi formal language before the 2005's constitution but later beside the Arabic language Kurdish adopted the second Iraq's formal language. Turkish language in areas where Turkmen live is an official language⁵.

KURDS

Kurds are accounted about 17 -20 of Iraqi mixed ethnic structure⁶. Iraq Kurds are live mainly in the North of Iraq As seen from the map they live in border of Iran and Turkey. Kurds in the Ottoman imperator period were in custody of Mosul. After the British occupation of Iraq, Mandatory Iraq state founded in 1921, Kurds have taken place in Iraq as part of the Iraqi state. In relations with the Iraqi government and Kurdish has always been the biggest problem since Iraq foundation and the problem is still growing. After long conflict between Kurdish and Iraqi governments in 1970 Kurdish got autonomy. Unfortunately the Kurdish autonomy in – Erbil, Sulaymaniyah, Duhok, did not end the conflict because Kurdish were trying to get Kirkuk within autonomy. There is deep-seated differences among Kurdish groups Kurmanji in North and Soran in South in cultural and political opinions. The group division between Kurdish groups go back to the advent of Iraq. The existence of two sociopolitical groups, presented by two rival, occasionally warring, political parties and leader is just one manifestation. Talabani, representing the Soran under umbrella of PUK (Patriotic Union of Kurdistan) and the Barazani, representing Kurmanji under umbrella of KDP (Kurdistan Democratic Party) are just billboard of this primary group division between Kurds. This two groups have been warring each other, lasting into mayhem of the 1990s and slaughter of thousands of Kurds in hand of other Kurds⁷.

TURKMENS

Turkmen have been living in Mesopotamia more than thousand year. Turkmen is a Turkic people who were living in Central Asia. They converted to Islam when faced with Islam religion. Turkmen have been living in Iraq for centuries intertwined with other ethnic groups and have always preferred to live in peace and harmony. Turkmen people always chose peaceful methods

in their political efforts. Turkmen people are known as a nation rejects the armed conflicts to get their rights. Turkmen constitute about 5-10 of the Iraqi community⁸. Turkmen can play very important rule in the near future of Iraq Turkmen have very important rule because the regions that they live in considered disputed territories. The future of this areas are depends on the Turkmen political opinion if they decide to join to Kurdistan it will become part of Kurdistan. But till now some Turkmen leaders are looking for Turkmen federate others are stated their opinion staying under the rule of central government.

OTHER COMMUNITIES

Beside three major communities there are also many small ethnic groups. These are; Assyrian, Yezidi, Chaldeans. But there is not clear data bout these communities count but they live in different regions but a lot of them are live in Mosul, Bagdad and Kirkuk.

IRAQ'S RELIGIOUS STRUCTURE

In addition to the complex ethnic structure in Iraq, ethnic groups contain various religious groups within ethnic communities, the Arabs; Sunni and Shiite, Turkmen; Sunnis and Shiites, Kurds; Sunni, Shiite and Yezidi, Chaldeans, Assyrians, Christians are divided into different religious⁹. 96% of the Iraqi population is Muslim. Shiite Muslims in Iraq are the largest segment.¹⁰ They live in South of Iraq. Iraqi Shiite are believe in twenty imam first of them Imam Ali and last Imam Mehdi cording to Shiite believe the last imam is alive but he did not appear yet, one day he will come to save the world from injustice. Iraq In terms of Shiites it has become a religious center. Because most of Shiite important shrines are in Iraq. Shiites all over the period and especially by the Baath party regime have faced severe repression and violence. After the establishment of the Iraqi state the authority had been delivered to the Sunni elites. Sunnis had an important role in Iraq after Ottoman imperator, they ruled Iraq till 2003. After later date Shiite controlled the authority. Sunni are constitute about 30% of Iraq community. They live mainly in the middle and north of Iraq. Sunni Arabs are live in middle and North West of Iraq, Sunni Kurds are live in north of Iraq as it seems from figure1. In 2014, Al- Qaeda splinter group known as the Islamic State of Iraq and Syria, or ISIS (also known as the Islamic State of Iraq and the Levant, or ISIL), have gained control of vast tracts of land along Sunni inhabited regions (Mosul, Selahaddin, Anbar, and Falujah) in Iraq, and are pushed south toward Baghdad. But by July 2016 Iraq army and Al-Hashid Al- Shabi recaptured the cities by military operations except Mosul the second largest Iraqi city.

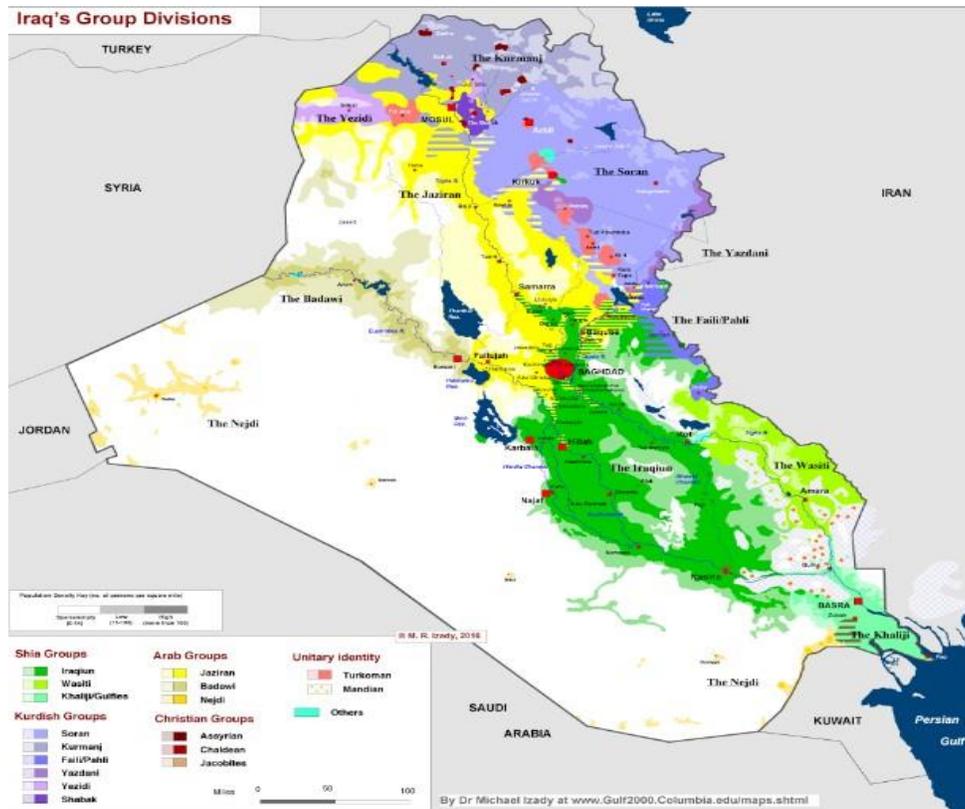


Figure 1: the geographic distribution of Iraq' ethnic and Religious Communities¹¹.

THE ADOPTION OF 2005 CONSTITUTION

The Transitional National Assembly, which was elected in January 2005 according to the Coalition Provisional Authority's Transitional Administrative Law, appointed a Constitutional Committee for the purpose of preparing a draft constitution by August 15, 2005. The Committee was initially made up of 55 members, all of whom were appointed from the Iraqi Transitional Government, but later its membership was expanded in order to allow representative from the Sunni Arabs community to participate in drafting permanent constitution. Iraqi ethnic and sectarian groups had been different points about the shape of the State. Shiites demanded the administrative federal system not based on ethnic and religious, but Kurdish wanted an ethnic based federal system. On the other hand Sunni Arabs were always against any kind of federal system in Iraq and they wanted to protect Iraq's Arabic identity. Article 61 of Iraq's Administrative Law¹² for the state of Iraq for transitional period, in effect since 28 June 2004, set down the rules for the approval of the proposed permanent constitution. The proposed constitution will be approved in referendum if majority of voters nationwide voted "yes" and there were no more than two of governorates two-third of voters voted "no". The people in the country who are entitled to vote in an election of Iraq went to the vote for proposed constitution

on 15 October 2005 in a referendum on whether yes or not to confirm the proposed constitution of Iraq. After 10 days later of calculation votes, the country's electoral commission declared that the constitution had been approved by a wide margin nationwide. 2005 constitution met Kurdish demand for protect their de facto federate and Peshmerga would be permitted retain their status as a regional force. After Kurdish built their successful federate in the north of Iraq, Sunni Arabs a few years later began to ask to create a Sunni federate even Selahaddin Provincial Council voted to create a new federate called Selahaddin federate but the federal government refused their request¹³.

FEDERALISM IN THE CONSTITUTION OF 2005

A critical debate took place in Iraq regarding the adoption of federal institutions, and there is a great deal to be gained by examining this debate in light of the definition of federalism particularly, by examining whether federalism typically forestalls or encourages secession.

Federalism has been used as a tool to achieve unity and maintain the existence torn state, at the same time used as a tool of secession at the State of the motherland. Actually, Federalism is an old concept, with positive meaning for some and negative meaning for others. Countries that have adopted the federal system include the United States, Canada, Germany, Switzerland, Russian Federation and the federal system of these countries are considered highly successful. There are failed federal government such as USSR and Federal Republic of Yugoslavia. One could also say that there is a vertical division of powers on at least two levels of government and that both levels of government have a certain degree of autonomy. In the federal state, the regional governments exercise the legislative, executive and judicial powers at the level of the territory. Federal governments exercise these power at level of federal state. That's mean a country can be considered a federation if there where to level of government rule the same land and the same people. Each level has its area of action in it is autonomous and there is some guarantee of autonomy in the constitution of each government on its area¹⁴.

Iraqis overview on federalism were different. Iraqi people's thoughts about federalism as a tool to administrate the country, were reflects their religious and ethnic thoughts. Kurdish were insisting to adopt the federalism in the constitution because they wanted to protect their de facto federate since 1991 and maintain the Peshmerga as a Kurdish regional force. Sunni Arabs were looking for unitary state shape in the same time they were not against the Kurdish regional government as a Regional government within Iraq State, as well as they were asking decentralization in the ruling of the country. Shiite's point were in agreement with Kurdish point in the demanding for federalism but they were differ in the modality of the federalism. They wanted a federalism system not based on the ethnic and religious principles. As we know main aim of any constitution is to organize the relationship between the state and its citizens, to ensure

the right and liberties of the citizens. And any new constitution should arise from the demand of the citizens and it should contain the shape of the state they desire. But in Iraq, the majority of citizens were not desire the federal system. Despite to their undesired this system it had been adopted in the constitution because their point was a correspondence of their religious and ethnic opinion on the constitution in that period. The first article from the constitution adopted the federal system, and this constitution had explained that this federal system is made up of the capital, regions and the provinces of decentralization and local administrations¹⁵. At that period of time was necessary to meet the demand of the Kurds to stay within Iraq as the federal system state because the Iraqi government was very weak to protect Iraq's unitary system and was under the occupation of USA. Kurds have benefited from this exceptional situation and imposed their opinion on constitution. Figure 2 shows the Iraq's Kurdish Regional Government border.

USA had played very important role in the drafting the constitution. Because this constitution drafted during the invasion of US army and its allies. The US experiment in Iraq was not the first. It had the similar experiences in the Germany and Japan, in these latter countries had changed the governments successfully from dictatorship to democracies¹⁶. But in Iraq did not do the same thing because the aim of US was not build democratic state in Iraq¹⁷.

We can say this Constitution had pleased all the religious and ethnic groups of Iraq except Iraqi Turkman because it made the Turkman inhabited cities and village's future unclear and marked their regions disputed territories. Three main groups Kurdish, Sunnis and Shiite began to struggle for control their regions. As is seems from the map of disputed territories....



Figure 2: The official border of Iraq's Kurdish Regional Government.

Dividing Powers in the Constitution of 2005

Iraqi 2005 constitution divides powers between the central government and the regions and provinces. This Constitution defines the powers of the central government are limited in the article 110. Matters has been considered between the federal government's exclusive authorities are summarized as follows;

First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing, and ratifying debt policies and formulating foreign sovereign economic and trade policy.

Second: Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq's borders and to defend Iraq.

Third: Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank.

Fourth: Regulating standards, weights, and measures.

Fifth: Regulating issues of citizenship, naturalization, residency, and the right to apply for political asylum.

Sixth: Regulating the policies of broadcast frequencies and mail.

Seventh: Drawing up the general and investment budget bill.

Eighth: Planning policies relating to water sources from outside Iraq and guaranteeing the rate of water flow to Iraq and its distribution inside Iraq in accordance with international laws and conventions.

Ninth: General population statistics and census.

All powers not presented in the exclusive powers of the federal government belong to regions' and governorates' authorities that are not organized in a region¹⁸. Constitution also specified matters shall be shared between the federal authorities and regional authorities.¹⁹ In many areas, especially in economy, education, cultural areas 2005 Constitutions has been recognized wide powers to regional and provinces' governments. But the constitution was not successful on the modifying of the natural sources issue. The article 111 from the constitution state that Oil and

gas are owned by all the people of Iraq in all the regions and governorates. In the article 112, states that The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law. The statement of “extracted from present fields” made a very big problem between Kurdish Regional Government and Iraqi Federal Government because the later demands that oil revenues will be at the disposal of the central government and in cooperation with the governments of the regions however KRG says that extracted oil after 2005 from new fields is considered the possession of Kurdish Regional. It is possible to determine a certain percentage of the oil extracted from the regions for the development of the region by making a law. Oil problem is one of the big problems because oil revenues is the one of most important factor to determine the future of Iraq state shape. Today this problem still continuing between Federal Government and KRG.

SUPREME COURT OF IRAQ

In all legal systems and in their different ideologies there is a court which considered the competent authority control over the constitutionality of laws, it is determines the rhythm of the movement of society in political, economic and social fields. Its judgments are important in rewriting the political, economic and social relations within the community. In Iraq, the Federal Supreme Court is the highest body of a federal lawsuit to have the control over the constitutionality of laws authority and regulations and the interpretation of other provisions of the Constitution and the terms of reference stipulated in the Constitution. According to the article 4 from The Law of Administration for the state of Iraq for the Transitional Period, the constitution of 2005 organized the Supreme Court of Iraq in the article 92 that is the an independent judicial body, financially and administratively. The existence of a supreme court is one of the requirements of the federal system. The Supreme Court of Iraq is settles disputes among or between the federal government and regions and governorates, municipalities, and local administrations, and settles against the President, the Prime minister and the Ministers and ratifies the final results of the parliamentary elections²⁰.

THREE FEDERATE OPTION

Although federal system as tool of rule country approval in the Iraqi constitution there is still one regional government. Kurdistan regional government gained self- rule since 1970 according to the agreement between Saddam Huseyin and Mula Mustafa Barazani. But this agreement did not

implemented at that period of time because Kurds was looking to Kirkuk as part of Kurdistan and Baath regime did not agreed to their demand as a result Kurds did not commitment to the agreement and started again warring between Baas regime and Kurds broke out²¹. Baath regime issued a law of autonomy unilaterally but Kurds did not recognize this law because Kirkuk city according to this law was out of Kurdistan region. After Iran-Iraq war Saddam Hussein decided to invasion Kuwait because he was looking to Kuwait state, Iraq's 19th province. Baathist Iraq decided to invasion Kuwait in 2 August 1990 Iraq's the invasion started within two days of intense combat most of the Kuwait armed forces were either overrun or fell back to gulf countries. Despite international warnings related to the withdrawal from Kuwait but Iraq authority had no intention to withdraw from Kuwait. As a result of Iraq's insistence to continue the invasion US-led forces started intervention against Iraqi forces and had been removed from Kuwait. After this Gulf war of 1991 or Iraqi-Kuwait war, two no fly zone were declared by US, UK, and France to protect Shiite Muslims in South and Kurds in Northern of Iraq. Iraqi aircrafts were forbidden from flying inside the zones. Kurds in North of Iraq benefited from the no fly zone and weakness of Iraq declared their autonomy in 1991²². And they insisted to admit federal system in 2005 constitution to protect their de facto federate.

Today question is this, will emerge a new federate after ISIS in the Sunnis region?

If we look to the question from the theoretical view it is easy to say yes, it will emerge after a few years later. According to the events that are happened after 2003 its possible to say that the new regional government will be emerge in the Sunnis region. Because Iraq had experience many event that encourage appearing of new federate, Iraq had seen occupation, experienced civil wars, faced with many terrorist organizations and today is at war with the world's most dangerous terrorist organization. It is called ISIS. It is an Al- Qaeda splinter group formed by the merger of the Iraq Islamic State and the other terrorists that are fighting Bashar Al-asad regime. The group called itself the Islamic state of Iraq and the Levant this group led by the successor of Abu Musab Al-Zarkawi, Abu Bakr Al-Bagdadi who took over the leadership of the group. This group occupied wide lands in Iraq and Syria in 2014 as it seems from the figure 3 but Iraqi government recaptured most of this areas from ISIS except Mosul is still under occupation of later.

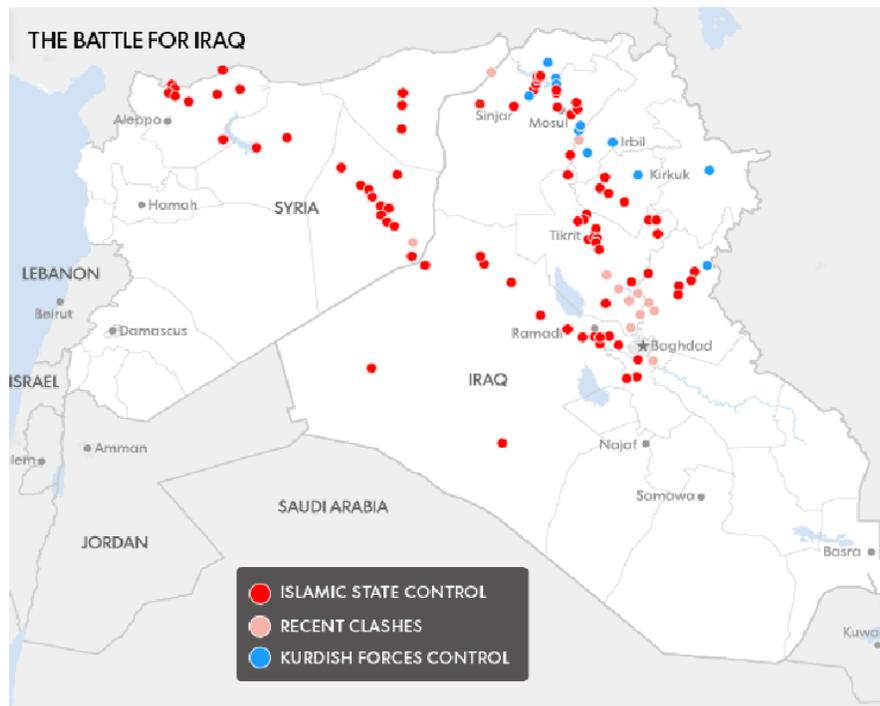


Figure 3: The areas that had been occupied by ISIS in 2014/2015

Despite all these events Iraq had experienced, but Iraqi people still see their fate within Iraqi state as it was before 2003. Despite adverse effects Iraq had experienced there have been many developments towards the unity of Iraq. For example Iraq state the only Arabic government that have been experienced democratic government change in the Middle East since 2003. In addition the majority of Iraqi people against of new federate within new Iraq. Especially Shite leader Al-Sistani in every situation declared to protect Iraq's unity. In addition when the ISIS occupied Mosul city, Iraq's second big city after Baghdad, and three important cities in the west of Iraq, Al-Sistani called all the Iraq people especially Shite people to fight against ISIS under umbrella of the federal government. As a result of this call from the biggest Shite leader in the Iraq Al-Hashid Al-shabi had been founded. AL- hashid Al-shabi today is the very strong organized army and Iraq parliament had been adopted a new law that regulates affairs of this organization. All these are indications that Iraq had exceeded new and old projects of division.

CONCLUSION

After 2003, Iraq have being experienced a new constitutional situation and different from those that prevailed prior to this date. What was the most important characteristic of this experience from its predecessor is that the federal experience Today Iraq is a federal state according to the 2005 constitution. Iraq state by adopting a federal system in the Constitution of 2005 removed

the Kurdish military rebellion peacefully. This experience partially solved the problem of the Kurdish demand independence from Iraq. Today in Iraq, there is only one regional government. About the possibility of the emergence of new regional governments is almost impossible, especially on a sectarian basis. Majority of Iraqi people intend to give wide powers to the provinces are not considered in the regions. This is had been achieved under the government of Haidar Al- Abadi. Iraqi 2005's constitution contained rules that are facilities the division of Iraq into regions. Especially those materials relating to oil and gas extraction and investment and fair distribution of resources to all the Iraqi people. Some sees the constituting a new a federate in the Sunnis region will stabile the Iraq security but may this options bring adverse results because the emergence of a new region will not be the end there will be emerge a Shiite region as a reaction to the Sunnis region. If emerge three region in Iraq and Kirkuk in a private setting will led to other countries to Interference in the internal affairs of Iraq. Like this situation will lead to the division of Iraq easily if Iraq exposed to a simple crisis in the future. Some Sunnis politician are aware of this dangerous plan but some are not. Shiite are always were against the fundament new regional government based on sectarian. Today Sunnis are the biggest affected by ISIS in Iraq they are looking for someone who can liberate them from this Terrorist organization, and the only capable to this mission is Al-Hashd Al-shabi. Al-Sistani the founder of the Al-hashd Al-shabi, calls for keeping Iraq's territorial integrity in every occasion. Therefore, the emergence of a new regional government based on sectarian in Iraq is not just seems impossible even thinking in these matter is looks impossible.

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