State-building in Iraq since 2003: the Challenges and Lessons

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Introduction

In 2003, Iraq was invaded by the US-led coalition forces that ousted Saddam Hussein's regime from power before occupying the whole country. The intension, declared by the then American President George W. Bush, was to 'build a decent and democratic society at the centre of the Middle East' that 'will become a place of progress and peace.'[1] In 2014, three years after the withdrawal of the last American soldier, however, it is difficult to overestimate or exaggerate what is at stake. National unity and territorial integrity have never been so seriously threatened since the country is experiencing the most severe internal fighting in its modern history. Many parts of Iraq, including the northern oil-rich city of Kirkuk, long claimed as an integral part of the semi-autonomous region of Kurdistan, are out of the control of the central government. Large areas in the north including the strategic city of Mosul were seized by the fighters of the Islamic State, an *Al-Qaeda* offshoot, formerly known as ISIS, who threatened to invade the Kurdistan region before being attacked by airstrikes by the US. They proclaimed a caliphate on both sides of the border with Syria, where they also control vast territory.

The regime change after the military invasion was one of the major pillars of US foreign policy, which sees failed and rogue states as the biggest threats to world stability.[2] However, the country remained crippled with armed insurgency and inter-communal clashes, with deep divisions and widespread dysfunction in government institutions, military and police force. Terrible bloodletting became endemic with violent attacks escalating this year which began in almost the same way as the past year, which saw the highest death toll since 2006-2007. Ending eight years of tumultuous rule, Prime Minister Nouri Al-Maliki has recently relinquished power while the solution to the governance and peaceful settlement of the country remains unclear.

The scale of humanitarian emergencies, particularly in Baghdad and other cities, caused by the war featured predominately in most news media in every form. A Lexis-Nexis search of New York Times coverage in one-year slices (March to March) showed 1,848 articles concerning Iraq in 2006-07 and 1,350 in 2007-08.[3] They engendered debates among politicians and diplomats, largely under the scrutiny of the media, but much less academic examination, so that the public's view remained mostly shaped by media constructs and representations. For in the West, there were several media interpretations, trivialisation and dramatisation of events. Scholarly reviews tend to focus on replacing authoritarianism with a more democratic system as a technical process. On the crisis in Iraq, as literature reviews on state building show, there is a dearth of case-specific studies that

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[*] **Lecturer at the Department of International Relations, Faculty of Arts, University of Malta.**
[1] Record, Jeffrey (2010) p.110

[2] Boot, Max (2005) p. 93.
[3] http://www.truth-out.org/news/item/22570-the-iraq-war-forgotten-in-plain-sight (accessed on April 2014)

offer detailed contextual analysis of the critical underlying events and conditions, with adequate attention being given to the relationships between phenomenon and context without clear boundaries.[4]

The writer concerned himself with the inherent links between the dramatic changes unleashed in 2003 in the internal socio-political context in Iraq, with the lack of reconciliation and stability, which intensified after the adoption of the Iraqi constitution in 2005. This paper focusing on the US-sponsored state-building in Iraq, seeks to make a contribution to the scholarly and public understanding of the key interconnecting variables that run through much of the 'rich' tapestry of the obstacles facing the remaking of the national Iraqi constitution, in real-life situations. The aim is to shed more light on the conventional/received wisdom and contemporary political analyses in Iraq itself. Relevant information was drawn from the personal experience and observations of the writer, from direct contact and engagement with the people in Iraq during summer 2013 in a field study that sought to capture in more detail local perceptions and insights. The publications cited include available magazines, newspapers, journal articles and monographs as well as government documents.

The Challenges of state-building in Iraq since 2003

When the US took control of Iraq in 2003, it became directly responsible for governing 25 million people, for providing security and infrastructure, and stabilising state and society.[5] The aim was to depose tyranny and dictatorship and turn post-Saddam Iraq into a beacon of secular liberalism which would be held up as an example for its authoritarian neighbours. This would help to spread democracy in the troubled Middle East and bring accord between Israel and the Palestinians.[6] After all it was a long-held principle of liberalism that democracies were less likely to go to war.

A stable Iraq, in the middle between Turkey, Iran and Saudi Arabia, not far from Israel, all of them regional powers with conflicting interests and positions in international relations, holds notable importance, not only in a region like the Middle East, but far beyond, for international politics and the world economy. Iraq has access to the Persian or Arabian Gulf, one of most energy-rich and strategic waterways for global oil transportation and the world economy, with the world's fourth-largest proven oil reserves, and may prove according to many estimates to possess huge still undiscovered deposits, the largest extractable in the entire region.[7]

The US embarked on laying the foundations of democratic governance, and preparing for some kind of Iraqi self-rule, which needed systematic and effective ways to stop social fragmentation that could not be achieved without functioning state structures and mechanisms.[8] Activities and initiatives tailored towards reconstructing the state, implemented between 2003 and 2007, were considered crucial by the US Army and administration as many, both inside the academic world and beyond, saw the establishment of order, the overcoming of deep divisions, the consolidation of democracy, and the emergence of well-functioning economies, as impossible goals without a strong, effective state.[9] It was a neoliberal state-building paradigm which had emerged during the 1990s: advocating democracy and market-economic reforms as

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[4] Scott, Zoe (2007).
[5] Hippler, Jochen (2005).pp.81-97.

[6] Record, Jeffrey (2010). p.110.
[7] Luft, Gal (2003).
[8] Record, (2010) p.110.
[9] For example, Sebastian Mallaby (2002); Francis Fukuyama (2004); Dani Rodrik (2008);

essential means of rehabilitating public authority.[10]

However, the military operations, comprehensive stabilisation, wholesale transformation, and as Ward noted, the plan of the US to organise a 'replacement regime,' which required solid commitment to provide massive political, military and financial resources over a long stretch of time, all turned into extremely difficult tasks to achieve.[11] There were huge losses on both American and Iraqi sides, in life and property, which forced the complete withdrawal of the US troops by December 2011, in spite of the enormous investment in what has become the biggest relief and construction operation in American history, of a magnitude not undertaken since the time of Germany and Japan just after the second world war.

The US experience with democratisation or democracy building after Saddam, exposed the starkest evidence of the many challenges facing the realisation of sustainable governance. The US, as Katz pointed out in a commentary for the Middle East Policy Council, was unable to halt the massive violence, looting and infrastructure breakdown, and had little success in persuading or cajoling important Iraqi groups to fully, or even just less than fully, cooperate with one another to form a stable government.[12]

The Americans could not bring about agreement between different communities, factions, and parties on the writing of the constitution as a fundamental act of political reconstruction, which is considered the most appropriate legal instrument to establish political compromise between various entities, groups and individuals within the state. What became exceedingly problematic

was state-rebuilding, increasingly accepted as the most critical in post-conflict change through external action[13] (while some studies single out operational limitations and unintended, but undesirable, consequences of international aid, and others focus on institutional lacunae).[14] Its legitimacy, application and method have all been questioned,[15] together with the extent to which it served to bring order and peace, or on the contrary induced upheavals and disorder, deepened anti-US (and anti-Western) sentiment in the region, and harmed the Arab-Israeli negotiations.[16]

The articulation and outcome of the US mission of state-building in a country like Iraq, arguably a watershed that could for some years to come set research agendas on a number of subjects in International Relations, with implications for theory and practice, needs to be surveyed and interpreted in a 'unique case orientation' where each case is treated as special and unique.

This analysis adopts a holistic viewpoint to the whole phenomenon under study which is understood as a complex system, more than the sum of its parts. However, it attempts to capture the details of the individual case being studied. It seeks to go beyond system dynamics, in order to highlight in some meaningful way a linear cause-effect relationship between decisive, case-specific variables. The focus is on the links between

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[10] For a summary and critique, see Paris, Roland (2004).
[11] Ward, Celeste J. (2005) and Katz, Mark N. (2010)
[12] Ibid. Katz, Mark N. (2010), op.cit.

[13] See, for example, Fukuyama, Francis (2004) and Paris, Roland (2004).
[14] Samuels, Kirsti (2006).
[15] See publications by the Iraq Institute for Strategic Studies (mostly in Arabic). http://www.iraqstudies.com/
[16] There is the view that suicide attacks (a particularly effective form of terrorism) are driven by the strategic objective of forcing the US and other countries to pull out their military forces from the territory regarded in historical and cultural-religious terms as the homeland. It implicates the US (and Western) foreign policy in the causes of the terrorist attacks across borders. Pape, Robert (2005), p.28.

foreign intervention, change in the internal socio-political context, and interrelated, external and internal divisions undermining the remaking of the national constitution.

1. The external division

The authority to mount the military operations in Iraq was claimed by the US and British governments under United Nations Security Council Resolution (UNSCR) 1441, the last in a long line of resolutions calling for Iraqi disarmament. Veto-wielding members of the Security Council like France, Russia and China refused to give support for a second UNSCR explicitly authorising the use of 'all necessary means.' For Operation "Iraqi Freedom" and for much of the war in Iraq, Multi-National Force-Iraq (MNF–I), often referred to as the coalition forces, could only draw military contingents from EU countries like Spain, Italy, the Netherlands and Poland, in addition to the UK. With no second UN resolution forthcoming, along with the overt objection of France and Germany (who found themselves in an unlikely alliance with Russia against the war), unity was lacking in the EU. Belgium, Greece, Luxembourg, and some other neutral EU member states were on the Franco-German side, while the UK, Spain, Italy, the Netherlands, Portugal and Denmark supported military action. This led to a crisis in the EU's Common Foreign and Security Policy and a rift between the US, and France and Germany, which was criticised by the Secretary of Defence Donald Rumsfeld as representing the 'Old Europe' in comparison to the 'New Europe,' the latter being the countries that were compliant with the US.[17]

Since the invasion of Iraq there have been persistent differences between the EU and the US. When sanctions, a major tool of the US foreign economic policy had been applied, EU member states had already differed with Washington and this became deeper with disagreement on the extent of the threat posed by Iraq, and the appropriate response to it.[18] The EU member states were unable to reach a consensus, which turned into a direct challenge to their organised, agreed foreign policy, diplomacy and actions, under the aegis of the Common Foreign Security Policy (CFSP). The Iraq crisis, as Spyer pointed out, 'exposed the dilemmas and paradoxes at the heart of European attempts to build a common foreign and security policy.'[19]

For the territorial defence of Europe and peace-making, the CFSP relies on NATO, though since 1999 the EU has increasingly been taking responsibility for implementing missions of peace-keeping' and policing of peace agreements (Kosovo, Georgia, Atlanta off the Coast of Somalia etc). There is a relationship between the EU forces and NATO, which is often described as 'separable, but not separate.'[20] However, some of the major powers of the EU showed little attachment to the US's policy of using NATO for bringing democracy to the Arab states, thus moving from a policy of containment to one of regime change, which became particularly evident in 1998 with the passing of the Iraq Liberation Act, signed into law by President Bill Clinton, and which was later cited in October 2002 in support of the authorisation of military action against Iraq.[21]

With many EU member states concerned about the military ambitions of the Iraqi regime and the possibility of its concealing weapons of mass destruction (WMD) from UN inspection, a UN Security Council resolution offering it 'a final opportunity to comply with its disarmament obligations'

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[17] Spyer, Jonathan (2007) pp.93-95.

[18] Gordon, Philip H and Shapiro, Jeremy (2004).
[19] Spyer, p. 93
[20] Military Reform Project (2002).
[21] The Iraq Liberation Act was a bill approved by the American Congress and signed into law by President Clinton, setting up a programme to support the transition to democracy in Iraq which effectively meant regime change.

(that had been set out in several previous resolutions) was adopted unanimously on 8 November 2002. However, as has been noted, there was a European divergence on the use of force in Iraq as the UK committed troops, while France and Germany disapproved.[22] French President Jacques Chirac criticised the countries of Central Europe and the Baltic states who were joining the EU and who had demonstrated their support for the Americans, when he accused them of missing 'an excellent opportunity to keep silent.'[23]

With the post-Saddam government, the EU showed more interest in re-engagement notably from June 2004, when a strategy paper envisaged inviting Iraq to join the EU's Strategic Partnership for the Mediterranean and the Middle East, and recommended a concerted effort to have Iraq admitted to the World Trade Organization (WTO), and reinstate favoured trading partner relations with Baghdad. The EU announced its commitment, shared with the US, to support the Iraqi people and the fully sovereign Iraqi Interim Government to build a free, secure, democratic, unified and prosperous country, at peace with itself, its neighbours and with the wider world. The EU became involved in assistance for the delivery of basic public services, employment and poverty reduction and strengthening governance, civil society and human rights. The aim of the EU was to offer support for the rule of law and civilian administration, and to use its relations with regional neighbours to encourage positive engagement and support the political settlement and economic improvement of Iraq. The EU played a positive role in negotiations on Iraq's external debt and on trade issues. It also enhanced its representation in Iraq.[24]

The American intervention had turned Iraq into the first Arab-majority country to be ruled by Shia followers since 1171 when Salahiddin overthrew the Fatimids in Egypt.[25] Following this, the rivalries between the regional powers, in particular the historical rivalry between Saudi Arabia and Iran, became very evident. More than that, in the words of Salah Nasrawi, a veteran Iraqi journalist, since 2003 Iraq had become an 'arena for the Saudi-Iranian tug-of-war.'[26]

In the conflict in Iraq, Arab Sunni Muslims and Arab Shia Muslims are supported by Saudi Arabia and Iran respectively. Iran and Saudi Arabia are longstanding regional rivals, whose heavy involvement in this particular conflict is a reenactment of what they do in many other parts of the Muslim world.[27] The Shia Muslims are a minority in the Muslim world but they can exercise a lot of influence.[28] With Iraq and its vast oil resources and huge Shia population, Iran sought to forge a larger Shia alliance, essential for its strategic aims in the region. Inside Iraq, as Nasrawi pointed out in 2013, Saudi Arabia, through close connections to Sunni tribes and Sunni religious leaders, and its 'traditional cheque-book diplomacy,' opposed Iran's hegemonic aspirations when these threatened its national interest, and its

[22] Lemaitre, Philippe (2003).
[23] Evans-Pritchard, Ambrose (2003)
[24] Council of the European Union (2004), EU-US Declaration of support for the people of Iraq. p.2.

[25] According to most sources, including the CIA's World Factbook, the majority of Iraqis are Shia Arab Muslims (around 65%), and Sunnis represent about 32% of the population.
[26]
http://www.aljazeera.com/indepth/opinion/2013/11/iraq-saudi-arabia-between-rock-hard-place-20131128638344586.html
[27] See the Iraq Institute for Strategic Studies publications (mostly in Arabic). http://www.iraqstudies.com/
[28] Though estimates vary considerably, there are around one and a half billion Muslims in the world, and between 10 and 20 per cent are Shia, minorities in a Sunni homeland in most countries, but in majority in Iraq, Bahrain and Azerbaijan, in addition to Iran.

historical self-proclaimed position as the leader of the Arab Muslims.[29]

Iraq, like in many of the major political shifts in the Middle East after the fall of Saddam, as Wehrey *et al* noted, came under the heavy impact of the often tense relationship between Saudi Arabia and Iran, conditioned by the different sects that the majority populations in both countries follow.[30] The sectarian hostilities increased as leading and influential clerics in both countries deemed each other's religious beliefs as incorrect while the two governments remained in strong antagonism, leading to deep-rooted concerns in the wider security, economic, energy, and geopolitical issues. The Islamic Revolution in Iran, and its declared anti-US policy, regards Saudi Arabia as an agent of the US serving US interests, while Saudi Arabia has always looked very sceptically at Shia Iran's religious and political strategy in the Persian (or Arabian) Gulf, and its intentions of greater influence in the region and in the entire Muslim world.[31]

2. The internal division

In Iraq, contrary to the US government's plans and predictions, the Americans were regarded as occupiers, not liberators, and that is one of the major reasons why the war was not over quickly. Since 2003, the country saw some of the worst armed rebellion and clashes between different groups on territory, rights, the sharing of political-power and oil revenue, which overshadowed the loss of life as a direct result of the allied military actions. There was what many called an Iraqi civil war, in a

security situation that could be described as disastrous, for it led to the curtailment of oil production, its foremost source of income,[32] hindered urgently-needed rebuilding and recovery, and terribly lowered living standards for most of the population.[33]

Since 2003, Iraq has become one of the world's 'top' unstable states in *Failed States Index*, produced by *Foreign Policy* magazine and the Fund for Peace. Between March 2003 and June 2006, 151,000 violent deaths were reported by the largely local Iraq Family Health Survey. The UN High Commission for Refugees has estimated that nearly two million Iraqis have fled the country since 2003, mostly to Syria and Jordan. The Internal Displacement Monitoring Centre estimates an additional 1.9 million are currently displaced within the country.[34] Iraq's vital oil industry, after more than a decade of sanctions and two Gulf Wars, became considerably constrained by the insufficiency of infrastructure, and lack of skilled labour, investment and modernisation.[35] Iraq is in need of billions of dollars to fix field development and exports.[36]

In Iraq, after the US intervention, which empowered Arab Shia and sidelined Arab Sunni, the ethnic and sectarian rifts deepened, with grave consequences. While the Kurds in the north, relatively prosperous and stable, appear closer than ever to breaking away, the Sunni are in a vicious insurrection, fighting to regain old dominance. As Vali Nasr, the author of *The Shia Revival* explains, the main threat to the political power, livelihood and sense of

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[29] http://www.aljazeera.com/indepth/opinion/2013/11/iraq-saudi-arabia-between-rock-hard-place-20131128638344586.html
[30] Wehrey, Frederic (2009).
[31] The Saudi King told Hervé Morin, then Defense Minister of France, according to Le Figaro, on 5 June 2010, that there are 'two countries in the world that do not deserve to exist: Iran and Israel.'

[32] Crude oil export revenues accounted for over two-thirds of GDP in 2009 (Inter-Agency Information and Analysis Unit, UN, Various Reports).
[33] Dodge, Toby (2013).
[34] The figures available on different types of casualties vary, with information on both military and civilian loss of life not always precise and consistent.
[35] Donovan, Thomas W (2010).
[36] Skibiak, Nicholas (2010).

security of the Shia in Iraq is the 'war with their Sunni countrymen.'[37] The real problem in Iraq, as the deputy speaker of parliament pointed out, is that the 'Sunni do not accept power in the hands of the Shia.'[38]

After the external intervention that turned the internal balance of power in favour of the often brutalised Shia majority and the Kurds, the Shia led government remained deeply troubled by the Sunni insurgency struggling to end the policy of marginalization, while at the same time Sunni rebel groups became more determined to eliminate Shia rule. With Shia leaders unable to share power in a stable way that satisfies the Sunni community, the backlash against Shia dominance was strong. Shia holy sites and Shia neighbourhoods in Baghdad and other cities were attacked by Sunni rebels, who first embattled foreign troops but later, with the involvement of *Al-Qaida*, began targeting ordinary Shia civilians, thousands of whom have been abducted and murdered.[39] The Shia, notably after the bombing of their shrines and mosques by the Sunni, fought back in a cycle of violence that became overtly sectarian, in which *Al-Qaida* in Iraq played a significant role with deadly suicide bombings of Shia targets. Extremists from both sides fought each other, with hundreds of suicide bombs in streets, markets, hospitals, offices, weddings and funerals.[40]

The replacement of the Sunni dominated government by a predominantly Shia government led to a situation in which Shia clerics assumed leading roles and functions.

Shia banners and posters of religious Shia figures decorate the government fortified block-houses in the Green Zone and much of the rest of Baghdad, together with checkpoints, prisons and police stations, where the sectarian allegiance is on display. Thus the Shia began showing much higher levels of religious and sectarian identification, representation and institutionalisation, after long periods of systematic discrimination by the minority Sunni, who for centuries ran the country. Historically, Iraq, where Arab Sunnis make up roughly 20 percent of a population of 26 million, had been ruled by Sunni groups, who came mainly from geographically specific areas, since attaining independence in the 1950s. The top posts in the government and security services, and army's corps commanders were mostly occupied by Sunni members of Saddam's Baath Party that ruled with an iron fist since the 1960s. The bulk of the Shia, in the relatively more depressed region of the country in the south, experienced a tragic history in which their aspirations were systematically suppressed.[41] The American intervention changed all that.

The Sunni bitterly opposed the government led by Nouri al-Maliki, the secretary-general of *Al-Dawa*, a Shia Islamic Party, who became the Prime Minister following the period of the Transitional Government, before stepping down in August 2014. They accused the Shia government of disregarding agreements over sharing power in a nominally fair way, adding that this was in effect preventing reconciliation and causing paralyses in the political process. They strongly resisted the high concentration of authority in the hands of the Shia. This concentration of power in Shia hands cannot be denied when all the important positions such as those of acting Interior Minister, acting Defence Minister, and acting National Security Minister were all held by Al-Maliki in his second Cabinet since December 2010. Maliki's first Cabinet

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[37] Nasr, Vali (2007).

[38] http://www.independent.co.uk/news/world/middle-east/the-shia-are-in-power-in-iraq--but-not-in-control-8523280.html

[39] The group al Qaeda in Iraq, which has carried out many of the worst attacks, assassinations and beheadings, laid out its ideology in a manifesto with vows to destroy the American empire.

[40] See the Iraq Institute for Strategic Studies publications (mostly in Arabic). http://www.iraqstudies.com/

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[41] Nakash, Yitzhak (2007)

was approved by the National Assembly and sworn in in May 2006.

Most Sunni, as Ali Abel Sadah, a Baghdad based writer for both Iraqi and Arab media, pointed out in 2013, feel threatened with sectarian cleansing, deeply concerned about the future of the Sunni under a Shia government, loyal to Shia Iran. They attribute the political and economic alienation at the hands of the Shia government to Iran's hegemonic strategy across the region, which is firmly on the side of Shia groups. They believe that the devastating sectarian conflict is the result of Iran's interference in the internal affairs of Iraq, which has to be liberated from what they regard as the 'Iranian occupation.' Troubled by their sect's uneasy situation in Iraq, and implicating Iran, Saudi rulers and religious leaders have criticised Iran, while they (the Saudis) and the Gulf States have poured in funds for Sunni rebels.[42]

Before the overthrow of Saddam, the Sunni ruled in all the countries of the region, and the Shia never governed a modern Arab state: they were only in control of Persian Iran. After Saddam's demise, the Shia acquired an Arab Shia titleholder in Iraq, at the core of rising Arab Shia power, which widened the schism that runs like a tectonic fault-line along what is known as the Shia Crescent, stretching from Lebanon through Syria and Iraq to the Gulf and to Iran and further east.[43]

The fault-line became more exposed with the wave of anti-government protests in 2011, commonly referred to as the 'Arab Spring,' and the large-scale civil unrest. Though not entirely religious in their composition, the uprisings aggravated the Sunni-Shia divide, posed serious threats to the existing regional political order, and

alarmed both Saudi Arabia and Iran. In sectarian clashes in many countries, driven by poverty, inequality, and struggle for a larger share of power, and privileged access to government, wealth or religious authority, the Sunni-Shia rivalry has turned from a 'regional cold war'[44] into a truly hot war.

3. The Constitution of Iraq

In Iraq, after 2003, the revision of the legal codes, reforms of the judiciary, police, penal system and laws to govern the new democracy required a new constitution, a high-stakes sensitive exercise in which the future rights and interests of all groups in society, that are often in conflict, are implicated.[45] It became urgent for political and governance transition, sustainable peace-making, security and order, all fundamental for the rebuilding of public institutions.[46] In countries such as Iraq, a successful outcome of a constitution making process is not only dependent on the final document, but on the path to producing and adopting it, which if properly organised and given adequate attention and resources could become transformational for society, according to what was concluded in a 2003 study by the US Institute of Peace on constitution making, peace building, and national reconciliation.[47]

A glance at Iraq's constitutional history also offers some insights into the challenges which constitution writing involves. Iraq's first constitution, the fundamental law of the country, which established a constitutional monarchy, entered into force under the auspices of the British military occupation in 1925 and remained in effect until 1958, when a republic was established after the 14 July Revolution – also known as the 1958

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[42] http://www.almonitor.com/pulse/originals/2013/10/iraq-sunni-leader-incitement-shiites.html#

[43] See the Iraq Institute for Strategic Studies publications (mostly in Arabic). http://www.iraqstudies.com/

[44] Nakash, Yitzhak (2007).

[45] Krtitz, Neil (2005) .

[46] Samuels, Kirsti (2006) P.

[47] http://www.usip.org/publications/constitution-making-process-lessons-iraq (accessed August 2014)

Iraqi *coup d'état* – that overthrew the Hashemite kingdom.

Interim constitutions were adopted in 1958, 1963, 1964, 1968, and 1970, the last remaining in effect until the time of the Transitional Administrative Law (TAL), drafted between December 2003 and March 2004 by the Iraqi Governing Council, an appointed body selected by the US-led Coalition Provisional Authority as the transitional government after the invasion of Iraq.[48]

In a referendum in October 2005, the permanent constitution, drafted by members of the Iraqi Constitution Drafting Committee, was approved, before the first government of Iraq led by Al-Maliki took office on May 2006. This Constitution superseded the TAL.[49] The purpose was to 'bring settlement and stability' since Iraqis need to 'come together to build a new nation,' pointed out Hajim al-Hassani, the National Assembly's speaker.[50]

However, the outcome of the country-wide referendum went contrary to what the Sunni Arabs wanted, who had hoped for the insertion of a veto provision designed to protect minorities. Hence they actively rallied two-thirds of the voters in three provinces to vote against it. A two-thirds rejection vote in three of the country's 18 provinces (of which three are thought to include Sunni majorities) would have required the dissolution of the Assembly,

fresh elections, and the recommencement of the entire drafting process.

The possibility of veto by the majorities of three or more governorates was originally written into the interim constitution to ensure that the permanent constitution would be acceptable to the Kurdish minority. However, the constitution was the least acceptable among the Sunni, whose veto would have resulted in the constitution's rejection. Of the 18 provinces, two recorded 'No' votes greater than two thirds, but one province fell short of a veto. In other words there was rejection by solid majorities in three Sunni-majority provinces, but the two-thirds threshold was only reached in two provinces.[51]

Sunni negotiators refused to accept the constitutional deal, after months of painstaking negotiations and weeks of deadlock, despite warnings from the Shia and Kurds of the danger of greater sectarian clashes if the process encountered further delays. As representatives of Sunni Arabs, Shia Arabs and Kurds failed to find solutions agreeable to all of the three major groups, the writing, approval and amendments of the constitution became a major bone of contention. The majority of Sunni Arabs, suspicious of the intentions and actions of the Shia and Kurds, voted against the constitution, or stayed away to signal disapproval of the document and the process by which it was drafted. The task of preparing a draft constitution had been given to Constitutional Committee, appointed by the Transitional National Assembly. It was obligatory, according to the TAL, for the Constitutional Committee to complete its work by 15 August 2005, and for the draft to be submitted to national vote by 15 October 2005.[52] Reports from Baghdad confirmed

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[48] A draft constitution was prepared in 1990 but never promulgated in the turbulent years that followed the outbreak of the Gulf War.

[49] The TAL, signed on March 8, 2004 by the Iraqi Governing Council and coming into effect on June 28, 2004 with the official transfer of power to a sovereign Iraqi government, was principally drafted by a ten-man committee with advice from US and UN officials.

[50] http://edition.cnn.com/2005/WORLD/meast/08/27/iraq.main/

[51] http://www.washingtonpost.com/wp-dyn/content/article/2005/10/25/AR2005102500357.html

[52] See the Iraq Institute for Strategic Studies publications (mostly in Arabic). http://www.iraqstudies.com/

that consensus was elusive and the first deadline to submit a draft copy to the transitional national assembly was missed.[53]

The Sunni complained that the document, drafted in haste by Shia and Kurds, was completed under pressure from the US. Most negotiating parties were aware that they were still far from any final agreement on some of the constitution's most important prescriptions when the Committee was effectively dissolved and replaced by an ad hoc body (referred to as the Leadership Council) of no more than 6 members who continued to negotiate the constitution's final terms until three days before the referendum date. They protested that they were marginalised during the draft-writing, and that their objections had been ignored by the ruling Shia and Kurdish coalition determined to force an agreement and prevent any logistical challenges and delays that would have prolonged the preparatory stage and the referendum.

Only 3 of the 15 Sunni members of the drafting committee attended the signing ceremony, and none of them signed it. Shia leaders were accused by the Sunni of giving no concessions to bring them on board, which was, they argued, evident in the statements of the chairman of the drafting committee. The chief Sunni negotiator was reported to have urged his followers to vote against it, because the situation was not balanced and the compromise they sought in negotiations had not materialised. The office of Shia Prime Minister was reported to have confirmed that the document would be put to the voters, even without the approval of the Sunni.[54]

The constitution, a blueprint for a new state, was submitted to parliament without the

support of Sunni leaders, who argued that it was drafted by the US, not by the Iraqi people, and questioned the legitimacy of a document supposed to unite the country not to risk greater bloodshed. The charter was rejected by the 15 Sunnis on the 71-member constitution committee, and last-minute concessions did not win over most Sunni, or allay their fears. Sunni leaders, in a joint statement urged the UN, the Arab League and international organisations to intervene. The signing ceremony was shunned by the vice-president, a Sunni, citing illness. Enraged Sunni leaders and politicians were accused of inciting violence against the Shia, and of using abusive language riddled with anger when addressing the angry Sunni population. Thousands of protesters, chanting for the unity of Iraq, including some who carried pictures of Saddam, were mobilised by Sunni tribal leaders and religious scholars' associations.[55]

In the remaking of the constitution, the main contentious issues were the status of many former affiliates of Saddam's (largely Sunni) Baath party that had ruled since the 1960s, and the question of regional autonomy. The Sunni leaders (some are ex Ba'athists and Saddam sympathisers) disputed what has become known as de-Ba'athification, enforced by the Shia in power, in the state, government, administration, army and police, against members and collaborators of the Ba'ath party. They squarely opposed federalism.

One of the main Sunni resentments regarding the wording of the new constitution, concerned specific injunctions seeking to ostracise of all those who had served in the government of Saddam, failing to guarantee their rights and undermining national unity by enshrining federalism. They preferred instead a constitution that would lead to a strong and centralised state, preferably Sunni-led, while the Shia and

[53]
http://www.theguardian.com/world/2005/aug/29/iraq.rorycarroll2
[54]
http://edition.cnn.com/2005/WORLD/meast/08/27/iraq.main/

[55] See the Iraq Institute for Strategic Studies publications (mostly in Arabic). http://www.iraqstudies.com/

Kurds are firmly in favour of de-centralised governance with more regional autonomy. The Sunnis, located mostly in resource-poor areas in the west and centre of the country, regard the division of power between the federal government and regional governorates as no more than a plot to seize more regional autonomy and divert bigger shares of oil revenues to Shia and Kurdish areas, where the largest oil reserves predominantly lie.

The Sunni fear that the handing over of additional power to provinces dominated by Kurds in the north and Shia in the south can only severely diminish their rights and fortunes, leaving them marginalised and poor in a country divided into semi-autonomous regions, while allowing Iran to exert more influence over the Shia south and the Shia government in Baghdad.

State-building in Iraq since 2003: the Lessons

More than a decade after the US-led intervention, Iraq has become neither more secure nor more democratic. Iraq, since the collapse of Saddam's regime, has become enveloped in ferocious sectarian strife, a cycle of Sunni–Shia revenge killing, which the US was unable to prevent or stop. Thousands of soldiers and civilians were killed by gunfire and suicide bombs. In July 2013 alone, over 1,000 Iraqis lost their life, over 3,200 in the first half of 2014, according to the UN.[56] This year, after the offence by the Islamic state, the risk of more sectarian bloodshed is higher, the possibility of the eventual breakup of the country appears stronger, and the future remains uncertain. The costs of long-term reconstruction of Iraq, according to reports by various US government agencies, multilateral institutions and other international organisations, could reach

$100 billion or higher.[57] The 'story', as noted by Toby Dodge, on the role of the US in Iraq, had become too tragic, befuddling and complicated.[58]

This paper sought to shed more light on the challenges of bringing about change in Iraq, by means of exogenous force, outside the state, the opposite of endogenous, something generated or originated from within the state. It reviewed the links between foreign intervention, change in the internal socio-political context, and interrelated, external and internal divisions undermining the remaking of the national constitution, which exposes more than a decade of failed US policy, and brings to question the validity of exogenous action.

Since the US invasion, the severe social, political and economic fragmentation of the country have intensified with the rise of multiplicity of forces with different concerns, needs and demands, while at the same time religious and doctrinal divisions between Muslim communities increased. The sectarian split between Sunni and Shia has become wider, creating a generation of enemies, mostly in terms of sectarian identity, association and action, which is destabilising the state and society at great human and material costs. In Iraq, since 2003, the major stumbling block for return to peace and stability, and which is capable of plunging the country into more turmoil, and back into civil war, is the Sunni-Shia conflict, which constitutes the main challenge for constitutional remaking and state-building.

The Shia, after holding power in Baghdad, alienated Sunni leaders, resisting calls to bring the Sunni minority into government. The Sunni, feeling marginalised, are fighting, even at the cost of alliance with the most radical groups, calling themselves Islamic or Islamist, who are applying extreme violence. The Shia, supported by

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[56] Inter-Agency Information and Analysis Unit, United Nations (Various Reports).

[57] Donovan, Thomas W (2010)

[58] Dodge, Toby (2005a) I (2005b)

Iran, in cold war with the US, are at war with the Sunni who are supported by the Saudis and the Gulf States, and who for long ruled them mercilessly. In creating instability in Iraq, all neighbouring and bordering countries, notably Saudi Arabia and Iran are involved, each on one side or the other across the historical sectarian divide in the Muslim world.

The war in Iraq against terrorism and WMD empowered, for the first time in centuries, the Shia, the majority Arabs, and disempowered the Sunni, the minority Arabs in that country. The military intervention changed the balance of power between the Shia and Sunni in Iraq, and beyond. It brought Shia to the helm of an Arab country, Iraq, for the first time, since the early days of Islam. It altered the fundamental socio-economic and political order in a country like Iraq, highly heterogeneous, with many ethnic, religious, sectarian and linguistic divisions. The extremely complex, internal setting or context changed drastically, by external force, which derailed endogenous change, with many serious implications.

The war in Iraq has profoundly changed the Middle East, although not in the ways that Washington had anticipated. Unlike what the US government thought, after it toppled Saddam Hussein in 2003, the regime change did not help to bring democracy to Iraq and then to the rest of the region. The American intervention that empowered the Shia in Iraq helped launch a broad Shia revival that upset the sectarian balance in Iraq and the Middle East for years to come.

The case of Iraq shows that the US and the West failed to see that politics is more than the relationship between individuals and the state in a region like the Middle East, where people understand politics as the balance of power among different communities. They discovered that in Iraq, among the country's major communities, the fall of Saddam was largely viewed as an opportunity to redress injustices in the distribution of power and wealth.

The war in Iraq demonstrates that formal democratic procedures do not necessarily amount to democracy where national sovereignty, a non-negotiable prerequisite for stable governance, exists on paper only. The crisis in Iraq calls for attention to the underlying internal conditions, unique in each country or region, the result of a particular constellation of historical and geographical factors. The conflict underscores the strength and resilience of internal forces of continuity, which determine internal change. Iraq, seen as a particular case, shows the significance of endogenous change, which must be allowed while strongly nurtured towards a gradual move to more equitable economies and fair societies. It calls for a review in definitions of democracy and democratisation in the whole region, their significance outside the West, and a reconsideration of the scope and direction of the foreign policy of the US in the international system.

The war in Iraq brought lessons to Britain, a powerful member of the EU, widely criticized in Europe for strongly supporting much of the foreign policy of George W. Bush, with British armed forces on the ground in 2001 in Afghanistan and, more controversially, in Iraq in 2003. For the UK, in dealing with Iran, war appears off the agenda for the time being, as the British government has made it clear it backs the EU strategy of engaging rather than the US policy of isolating states that Western powers consider a threat to world stability.

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