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Transcript

Iraq Ten Years On – Iraq's Political Systems

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Nussaibah Younis:

I feel very privileged today to be able to chair a panel that I think is going to ask some of the questions that are absolutely fundamental to understanding the current political situation in Iraq. We're going to be asking about the extent to which Iraq's political dysfunction stems from its structure as a nascent rentier state, and what the impact of the personalities of Iraq's leading politicians have on Iraq's political process. We're going to be discussing the role of sectarianism in Iraq's political landscape and, in particular, the inability of Iraq's sectarian and ethnic groups to admit the victimhood of others, and we're going to be exploring the impact of Iraq's political system, constitution and particularly its federalism on some of the more intractable problems that define contemporary Iraqi politics.

To guide us through the discussion today we have three excellent speakers who are really at the cutting edge of analysis on Iraq and of the wider region. Fanar Haddad, who is based at the Middle East Institute in Singapore, is the author of one of the most important books on Iraq published in the last five years. The book, titled *Sectarianism in Iraq: Antagonistic Visions of Unity*, is a deeply intelligent examination of the competing nationalist narratives of Iraq's two major sects, and I think it's a must-read for every serious Iraq analyst. Hayder Al-Khoei is a well-respected researcher based at the Centre for Academic Shia Studies here in London, and he's a familiar face at Chatham House. Hayder is a prolific speaker, writer, twitterer and commentator in Iraq affairs, and is known for offering a thoughtful, balanced and much-needed intelligent voice in the debate. Zaid Al-Ali is a senior adviser on constitution building for International IDEA and offers this session a wealth of expertise on constitution-writing processes from around the Arab world, and was a legal adviser to the UN in Iraq from 2005 to 2010.

Fanar Haddad:

Good morning everyone, it's good to be back in London. I've actually just returned from Iraq, where I was doing some research and trying to keep up to date with the ever-changing dynamics of sectarian relations, and it might be worth underlining that sectarian relations are ever-changing. Since 2003 they've undergone several phases, all of which are underlined by the fact that the political system born 10 years ago in Iraq is one based on ethno-sectarian apportionment. In other words, despite the rhetoric, identity politics are not an aberration in the new Iraq, they're a part of the state's political DNA. So from entrenchment in 2003 to 2005 to civil war in 2006–07, to retreat in 2008–09, sectarian relations then seemed to settle on a less than ideal *modus vivendi*

following the controversial 2010 elections. However, today the ongoing protests in Anbar Province and elsewhere are raising fears among Iraqis that perhaps sectarian relations are on the cusp of a new phase that threatens to further destabilize Iraqi politics.

Now, one of the problems with these protests is that they are Sunni protests, hence, regardless of their intentions, they will be divisive. Now, why are they Sunni protests? It's not just that the protesters happen to be Sunnis, nor is it just the sometimes questionable symbolism and rhetoric; it is that the protests to a large extent revolve around Sunni victimhood. Now that's perfectly legitimate, but in Iraq competing victimhoods are so pronounced and so politicized that publicly championing one is a trigger for immediate sectarian entrenchment, which is why even though rare is the Iraqi who is happy with this government, she or he sympathizing with these protests is even rarer. This is particularly unfortunate given that quite a few of the grievances are actually shared by the vast majority of Iraqis, regardless of ethno-sectarian identity.

However, in my view, three things stand in the way of cross-sectarian solidarity. Firstly, the ever present competition of sectarian victimhoods that has been so characteristic of post-2003 Iraq makes cross-sectarian sympathy unlikely. Secondly, views regarding the legitimacy of the post-2003 order play a role. For all its flaws, the new Iraq is seen as the guarantor of Shi'ism in Iraq by a significant body of Shia opinion; hence any threat to the political order, real or perceived, will be viewed as a personal threat by such people. And finally, the very nature of the political system militates against national solidarity.

Now, some of the protestors' grievances are inescapably linked to Sunni identity, and here I'm particularly thinking of anti-terrorism legislation and to issues relating to de-Ba'athification. But even with regards to issues that affect all Iraqis, things like services corruption, bad governance and so on, the situation is complicated by the fact that sectarian identity in the new Iraq very easily intrudes upon perceptions. So for example, a Basrawi or someone from Al Diwaniyah would see his city's shocking state of dilapidation as the result of corruption or theft or poor governance or what have you, whereas an Anbari or someone from Mosul is much more likely to see the same dilapidation in their cities as the result of sectarian discrimination. The reason for this is that a significant body of Sunni opinion views the current order as inherently anti-Sunni, a belief that is based in some very real examples of marginalization and sectarian discrimination.

At the same time, this is all exacerbated by the fact – and this isn't just relevant to Iraq, elsewhere as well – the fact that the underdog in sectarian dynamics, whether it's the Shia before 2003 or the Sunni since 2003, the underdog cannot seem to voice a dissenting political opinion without being labelled and bracketed, often unjustly, as being sectarian, which brings us back to the nature of the political system. It seems that in today's Iraq, political difference will inevitably be accompanied by sectarian entrenchment unless the protagonists are of the same ethno-sectarian group, and that to me seems about as counterproductive a formula for politics as one can conceive.

Now the fact that all of this is happening in election season makes it all the more pronounced, and supports the view that the new Iraqi elections have been as much a curse as they have been a blessing. With the sole exception of the 2009 provincial elections, every single round of elections have been accompanied by sectarian entrenchment, and indeed today we see many political and religious figures on both sides of the sectarian divide emphasizing the sectarian side of the protests in order to rally some otherwise very undeserved support. In addition to that, developments in neighbouring Syria, a source of sometimes fantastical Iraqi hopes or fears depending on who you ask, have added to the toxicity of sectarian dynamics in Iraq. What I find myself asking is how many electoral rounds and how many rounds of sectarian entrenchment can Iraqi nationalism withstand? And there are enough actors in Iraq and beyond whose political fortunes are served by sectarian entrenchment to ensure that this pattern continues, and hence many people see an uncertain future for Iraqi nationalism and Iraqi identity. Only time will tell how that will pan out.

Now, regarding the future of these protests, as others have mentioned or as others have commented, the protests seem to have reached a dead end. There's no way that their demands will be met, particularly their more maximalist demands, and the Iraqi government has little incentive to compromise, at least not before the upcoming provincial elections and perhaps not even before the parliamentary elections. Nevertheless, despite that, the protests are set to continue, a combination of good funding on the one hand and political intransigence on the other means that the protests are not going away any time soon.

I'm not normally one to make predictions regarding Iraq's future but here goes. Whatever happens with these protests, I do not see a return to 2006–07. I think the state is simply too strong for something like that to happen again. Of course that doesn't mean that renewed sectarian violence is

impossible, just that it would have to take on a different form. Equally possible is that the protests will eventually fizzle out as a result of concessions or some back room elite dealings or just fatigue, or a combination thereof. My money says that if and when the protests end it will not mean that the root cause of the crisis has been resolved. As is the case with many pressing issues in Iraqi politics, when a crisis passes it usually means an agreement has been reached to delay a resolution rather than achieving, which makes me sometimes harbour some serious doubts about the long-term sustainability of the entire post-2003 political order.

Without addressing many of the many structural problems that have festered for 10 years, I fear that there are dark clouds on Iraq's political horizon. In fact, I'd argue that sectarian entrenchment is simply the most immediate and visible symptom of a broader illness, namely the profoundly flawed political system upon which the new Iraq is based, and the entrenched obstacles standing in the way of meaningful reform.

Hayder Al-Khoei:

What I'd like to do today is just make very brief remarks of the ethno-sectarian model that we currently have in Iraq, and there was a lot of debate on that in the first panel, and then go onto discuss the role of the marja'iyya, the religious establishment, and the role that it has played since 2003 and going forward now.

So despite the common belief that ethno-sectarian politics was introduced to Iraq by the American occupational authorities, it was not in and of itself a US creation. Ethno-sectarianism has become very visible since the failed uprising in 1991, and Fanar has detailed this in his book on sectarianism. The key thing here to bear in mind is the Iraqi opposition parties themselves in 1992, one year after the uprising, decided to organize themselves along ethno-sectarian lines. It was a deliberate choice made by the Iraqis, not by the Iranians, and not by the Saudis and not by the Americans, and this is what is referred to as the Salahuddin Quotas, and it was based on a virtual census. At the time in 1992, and I know a lot of Iraqis hate talking about ethno-sectarianism today, but in 1992 if you read the literature, people were boasting that this was an achievement by the Iraqi opposition.

Now, of course, the Americans could have and should have done things differently in Iraq, but what I'm trying to say is that the Iraqis have not inherited the ethno-sectarian model from the Americans – the Americans inherited it from the Iraqis. Now this was problematic for the Sunni community

in Iraq, because while the Shia parties and the Kurdish parties had clear and obvious leaders the Sunnis didn't, they didn't work and organize themselves as a single block. And indeed the Shia Islamists, or at least some Shia Islamists, actively encouraged the secular Sunnis to work as a Sunni opposition group. We have one example of Sayyid Mohammad Baqir al-Hakim telling Pachachi – and Ambassador Istrabadi might have actually been in that meeting – he says, 'We organize ourselves as Shia, the Kurds organize themselves as Kurds, why don't you organize yourselves as Sunnis?'

Now, as Ali Allawi has written in his memoir, post-2003 the Sunnis did begin to form a caucus in the Iraqi Governing Council, because in the meetings of the IGC they could clearly and distinctly feel that the Shia Islamist, even though they're from rival parties, and the Kurdish parties were voting as distinct groups. And of course going forward, the Sunni insurgents and Shia militias exasperated the ethno-sectarian tensions in Iraq, the former regime officials and foreign jihadists found in the Sunni areas of Iraq a very hospitable environment from which to undermine the American occupation authorities and the Iraqi government. Now on the other hand, Iran used its porous border with Iraq to throw in aid, arms and fighters into the mix.

The role of the marja'iyya, I thought, would be key to mention here, specifically because Ambassador Collis referred to the 'Shi'ite restraint' when it comes to the conflict in Iraq, and I think not many people still today get this. Just briefly, the marja'iyya is a religious establishment that's based in the holy city of Najaf in southern Iraq, and it's one of the centres of Shia scholarship and power in the Islamic world, the other of course being Qom in Iran. Now whilst the marja'iyya was suppressed during the Ba'ath regime, since 2003 it has seen an opportunity for it to flourish. Led by Ayatollah Sistani, it has played a key role in shaping Iraq's political system right from the onset.

Initially the marja'iyya has three challenges. They didn't want to be associated with the American occupation authorities because that was sensitive, they didn't and still do not want to be influenced by Iran which is, of course, as I said, a major power of Shi'ism in the world, and thirdly the Shia political parties themselves, the ones who are currently running Iraq – and many people forget this – at the time they were weary of the marja'iyya, of the so-called 'quietest' apolitical stance that it took. And of course the Shia Islamist parties, some of which lean towards the Iranian model of revolutionary and very active role in politics.

Now, despite the marja'iyya's ideological stance which is markedly different from Iran, it did become a rallying point for the Shia politicians, and indeed many other politicians in Iraq. Ayatollah Sistani made a couple of interventions, or a few interventions I should say, at the beginning. Sistani's interventions forced the occupational authorities to hold direct elections much earlier than they would have liked, and he forced them to abandon their plans of appointing a group to write the constitution. Sérgio Vieira de Mello, the UN envoy who was tragically killed in the summer actually went to Sistani and said, 'I hear you want Iraqis to write the constitution.' Sistani held the translator's hand and said, 'No, I want elected Iraqis to write the constitution.' And as Larry Diamond, who was involved in the process, has written in his memoir, Sistani repeatedly assumed positions that were more pro-democratic than the United States itself.

Now the Iraqi National Alliance, the quote unquote 'Shia alliance', was set up in Sistani's home. Election posters, if you remember from 2005, carried his picture and the Shia politicians did use the marja'iyya to gain legitimacy. Now Sistani prevented, and again this may be lost on people, he prevented the sectarian conflict in Iraq from turning into a genocide. Following the attacks in summer in 2006, at that point the Shia who were involved in violence were the militant groups, they weren't your ordinary laymen, they weren't the ordinary Shia masses. But following the attack on Samarra there was uproar in the Shia community, and we have tribes from the south, and the history books will one day write the tribal leaders and the scholars who accompanied them, they came to Sistani and said, 'Enough is enough, we've kept quiet for three years, the Sunnis, Al-Qaeda, the insurgents, the former Ba'athist officials, they have been constantly attacking us, beheading our followers, blowing up our mosques, we need to act.' Had Sistani kept silent, you would have seen a totally different Iraq in 2006.

I mean you've all seen the millions, or you've probably all seen the millions of Shia pilgrims who peacefully marched to Karbala every year, some say five, some say 10, some say 15 million, so you can sort of imagine what would have happened had these 15 million Shia had been angry, armed and given the green light from Sistani to march to Samarra through Baghdad. And of course, Sistani's famous quote in trying to pacify and calm down the Shia said, 'The Sunnis of Iraq are not our brothers, they are ourselves.'

However, following sort of this period of direct intervention, the marja'iyya has taken a step back from Iraqi politics, and this is due to a dismal performance of the Iraqi government which sort of came to power under the auspices of the religious establishment. But because of their failure to provide even the

most basic services and security for its citizens, Sistani has boycotted politicians, he will not meet them. His son might meet them but usually it will be in somebody else's house. Politicians are forbidden from entering Sistani's house. And during Friday prayer sermon, Sistani's representatives continually criticize the performance of the government. Now today the marja'iyya has given a series of recommendations to the government, which if not taken seriously could see Iraq go down a very dark and bloody path.

Regarding the Sunni protest – and I know some people think the Shia do not or do not want to sympathize – but Sistani has told the government it should meet the protesters' demands. Now that doesn't mean, as Fanar rightly suggested, all the maximalist demands they want, the abolition of the Article 4 of the terrorism law, but Sistani has said to the government as long as these demands do not contradict law or the constitution you should meet them. Now for Sistani, the dissolving of parliament, which was a threat which was initially suggested by the Islamic Dawa Party, Sistani made it very clear to Maliki's delegation that this would be a red line and they should not contemplate dissolving parliament. He's called for a civil state, not a religious state, and again that indicates the difference of opinion with Iran. He has refused the internationalization of the crisis and any foreign interference, wherever it comes from, and he has stated the political conflict should not be sectarianized domestically, and whatever disagreements the politicians have should not spill over onto the streets.

I'd just like to conclude by saying the marja'iyya today is in a very awkward position. It's between a rock and a hard place. On the one hand they very clearly do not want to see a return to one man, one party rule under whoever that may be but, on the other hand, the collapse of the political order is a red line and they will make sure that things will not escalate to an extent where the political order collapses. And though the marja'iyya only gets involved in politics quite reluctantly when it sees itself forced to intervene, we can expect it to continue playing a moderating role should the conflict in Iraq take a turn for the worst.

Zaid Al-Ali:

I won't be engaging in the type of discourse that we've been hearing so far today, which is the sectarian discourse; I won't be using either the dreaded 's' words or the 'k' word today. I'll be sticking with my expertise, which is I'm a lawyer, I focus on constitutional issues, so that's where I'll be focusing on. And one of the reasons why I'll be doing that is because other countries in the

world have had far worse divisions than we have had in Iraq – in Africa, I'm thinking specifically about South Africa and Kenya and among many, many others – and they have overcome their divisions, not perfectly albeit of course, but they have made very good progress. There are far worse divisions than we have, and yet we are simply incapable of overcoming this discourse that we're constantly going back to. It's important, we have to engage in it, but it is something that we wouldn't necessarily have to if we had better leadership, which is what I will be focusing on today.

We have an annual state budget, which has reached astronomical proportions, compared to our history. We have a constitution that was approved by 80 per cent of the population, but we have a dysfunctional government, we have corruption, and we have political tensions that apparently never cease to increase. Why? There are many reasons. One of the reasons why is the constitution. One of the questions that was put in this, the agenda for this session is 'does federalism still offer our governance solution?' and the answer to that is yes, it does, federalism does. Decentralization also does; there are many different forms of governance that offer solutions for Iraq, but not the form of federalism or not the form of decentralization that are provided for under our constitution, and I'll explain a little bit why, first of all by explaining the background to how the constitution was put together and then by providing some examples of what's wrong with it.

So the first issue, the first problem with our constitution was that it was rushed. It was drafted in six months officially but unofficially in far less time than six months. We only worked for a small proportion of that time. Other countries in comparison worked for years. A multi-party negotiation, particularly after a long period of despotic rule, takes years. In South Africa it took seven years, in Kenya about the same amount of time, in other countries years. In Iraq we drafted our constitution in a matter of weeks, and in weeks, what that means is that you leave gaps open that only come to the surface afterwards.

The other main feature of our constitutional drafting process – and this is going to come as a surprise to many people, particularly after Hayder's comments earlier – is that our drafting process was undemocratic. What I mean by that is that although we had elections and that officially the people who drafted our constitution were elected, because of the timeline and because of the fact that we were forced to finish by August, and because of the fact that we could not finish by August, because of the fact that it was complicated, we couldn't reach an agreement, the constitutional drafting

committee was dissolved and replaced by a small group of people that held extremist views and very undemocratic views, and who satisfied, who took control over the constitutional drafting process and reshaped the constitution to satisfy narrow interests, which I'll be going over slightly now. And those are reflected partially in our system of federalism, which is included in our constitution, which is the first example of why, that I'm going to be getting now why our constitution is dysfunctional.

So our system of governance, our federal system of government was conceived at a time of worsening violence, it was getting worse and worse on a day to day basis in 2005. And the conception was is that we have an example in Iraq, the Kurdistan region, where violence was not a problem so why not replicate that system of government elsewhere in the country so that we could have an equivalent amount of safety everywhere in the country. So instead of the Kurdistan region being an exception, it was uniformalized throughout the country. But you really have to imagine what this means. The Kurdistan region was cut off from Baghdad for a long period of time, for understandable historic reasons, but as an exception that's fine. As a single area in the country that has a unique relationship with Baghdad, that's understandable and workable, but if the whole country were to have the equivalent relationship with Baghdad that means you no longer have a country, that means you have different parts of the country which have no relationship with each other and no relationship with the capital.

On the other hand what you have is that you have a government that is made up by leads who have no understanding of decentralization or federalism themselves. Their version of decentralization is for central government ministries to send representatives at a local level to implement projects at a local level, without any input from local people. In that context, local elections are meaningless, what you have is you have local elections to elect local politicians who have no power apart from a very small number of areas where you have petrol dollars that they can use to spend, and that's it.

So for example, we heard earlier today from Ambassador Collis, his remarks that he's been hearing that over the past few weeks we've been hearing a little bit more about, that some power is possibly being devolved to the local level and that maybe Baghdad's powers will be reduced slightly. With all due respect, I've been hearing that for years now, I've been hearing that since 2005. Recently I received a phone call from former colleagues at the United Nations, who told me that they were going to accompany a group of Iraqi MPs to Berlin to organize a study tour there, in which they were going to debate the decentralization and the formation of a second chamber, and they asked

me whether I would be interested in participating. My immediate response to that was what is going to be the difference between that study tour and the dozens of study tours that we've had since 2005? We have not made any progress in devolution, in decentralization, in the formation of a second chamber since 2005, absolutely none. We've had study tours, conferences, in Switzerland and Canada and Australia, in Germany, and the, all of which have amounted to little more than holidays for Iraqi MPs.

The second example that I want to give of why the constitution is dysfunctional is the relationship with the armed forces. So many people have complained recently that Prime Minister Maliki has overstepped his mandate as commander-in-chief of the armed forces, and has taken control of over army divisions. Now the problem with that perspective is that what he's doing is not strictly speaking in violation of the constitution, because what does the constitution say about his responsibility as commander-in-chief of the armed forces? It doesn't say anything. It only says that he's commander-in-chief of the armed forces, with no explanation whatsoever. There isn't a constitutional provision, there isn't a legal provision, there isn't a regulation that says anything about how he is supposed to exercise his authority as commander-in-chief.

So it's not legal perhaps, it's not certainly enough illegal, so there's not much to complain about, at least from the perspective of the constitution. Had the constitution been drafted more seriously, then we could have had provisions that are similar to what it is in other countries. For example, national security councils, detailed provisions about how armed forces are supposed to be used, the circumstances in which they're supposed to be exercised, the operating procedures, the lines of command, all of those in post dictatorial settings are detailed over pages and pages in modern constitutions. In Iraq we have one line.

Another example is the courts. So what does the Iraqi constitution say about the courts? We heard about that earlier today, about the fact that the Iraqi government is now seizing control over the courts. What does the constitution say about the courts? It says that the courts are independent. Fine. That's what the 1970 constitution said about the courts. What else does it say? It says that the independence and the way in which that independence will be organized will be regulated by law. Fine. Who organizes the legal process, the law making process, according to the constitution? The constitution says that the government does, only the government has authority to regulate laws and to pass laws under the constitution. So what it effectively means is that the independence of the courts is under the authority of the government, so

strictly speaking if the government has influence over the courts, it's because the constitution is shoddy.

None of what I've discussed – and there are many other problems that I haven't discussed – are a secret. We've known about these things for many, many years, we've been talking about them since the day on which the constitution entered into force. Many proposals have been made, so many have been signed off on by some politicians, and yet no progress has been made over the past eight years. Now the question for me is not what solutions, because we know what the solutions are, but how can we reach the point where the solutions can come into effect? How can we expect for the current group of people who haven't been making any progress for the past eight years to suddenly reach a point of enlightenment and reach a solution today? How can we peacefully transfer power to a different group of people who'll be more capable of reaching a solution in the future?