

**The Constitutional Amendment  
Crisis through the Political And  
Academic Vision in Iraq  
2005-2022**

**Bahr Alolom Forum**

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*The Constitutional Amendment Crisis  
through the Political and Academic  
Vision in Iraq  
2005-2022*

*Executive Summary*

*Translation of the Original Executive Summary  
(Arabic)*

*Editor*

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## **Introduction**

The Constitutional Amendments Crisis: Political vs Academic Visions

*Dr. Ibrahim Bahr Al-Uloom*

Under the auspices of the Bahr Al-Uloom Foundation, the Alalamein Institute for Higher Education cooperated with the Bahr Al-Uloom Forum for Dialogue and successfully engaged in another serious dialogue on a sensitive issue that is crucial to the country's political future. It is an issue pertaining to the amendment crisis of the Iraqi Constitution of 2005.

In the aftermath of April 2003, crisis after crisis have unraveled for two decades. They grew more frequent in recent years, which indicates many risks and proves that a real structural flaw exists. The government now generates crises by itself, hence the need to demand immediate reforms before it is too late.

We believe that most of the crises we are facing are simply the result of the absence – or imposed absence – over the past decades of a state building project. In the past, this was due to the domination of a totalitarian military regime. The recent events in our country seem almost normal in the context of change from a dictatorial regime to another reality. In such a situation, crises will definitely surface successively, but time will determine the ability of political actors to handle, contain, and manage these accumulations wisely in order to keep the peace.

We always aim to find channels for meaningful dialog to search for commonalities, identify flaws, and determine proper treatments. The Bahr Al-Uloom Forum for Dialogue was launched in 2012 to embark on this difficult national mission in the hope of contributing to the development of outlines that allow us to read reality, understand the dimensions and circumstances of the dilemmas, and develop an evaluative and corrective vision.

## The Political Regime Crisis

In its first season in 2012, the Forum adopted an initiative to diagnose the crisis of the political system in Iraq. That period was characterized by collision between political blocs and the legislative and executive powers. The Forum was successful in attracting political leaders to participate in this project and diagnose the crisis in a practical way in the context of a broad dialogue with Iraqi society. The season was concluded after reaching the conviction that the crisis is compound and requires dismantling and rearrangement according to priorities. The crisis is caused by the absence of a 'historical bloc,' a national project, a cultural and educational project, political will to fight corruption, the will of leaders and parties to solve problems, the will to amend the Constitution, ability to manage conflict, guarantees for State administration, and a state built around citizenship. This is further compounded by weak administration, planning, and programs, and poor confidence among components. It was a rich political experience that included free discussions between political leaders and Iraqi society. This encouraged us to continue in this process and look into the dilemmas faced by the new political system.

## The Foreign Policy Crisis

Everyone realizes that the secret to Iraq's strength is not just its geographical location, but also its social diversity that connects it to neighboring countries in different ways. Thus, any effort Iraq undertakes to solve problems with neighboring countries will contribute to the fortification and stability of the region. This is why, in its second season, the Forum looked into Iraq's relations with neighboring countries and countries around the world. It called for an open dialogue with the ambassadors of neighboring countries as well as regional and international countries to look into Iraqi foreign policy and ways to strengthen it. The Forum hosted the ambassadors of Iran, Turkey, Saudi Arabia, Britain, and international political figures in 2016 and 2017. Transparent dialogues were held with stakeholders to see what countries want from Iraq. The other part of the dialogue, which we consider more important, concerns



what Iraq wants from those countries. All of this seeks to recognize the obstacles and commonalities in bilateral relations and means of strengthening common interests through diplomacy between stakeholders.

### The Sovereignty Crisis of Iraq

In 2019 and 2020, the issue of sovereignty became more urgent in the Iraqi political milieu, eventually becoming a buzz word among stakeholders and in the media and streets of Iraq. Iraqi sovereignty underwent direct and indirect violations. This threatened social peace and security and the country verged on the edge of a war between its people under the pretext of the violation of sovereignty. In light of international power dynamics, the divisions among political and social stakeholders have served as proof to the absence of a defined notion of sovereignty. This has led to a flawed vision that cannot recognize the country's supreme national interests.

Therefore, the Forum cooperated with the Alalamein Institute for Higher Education to put forward an initiative in its fourth season entitled 'The Iraqi Sovereignty Crisis' in 2020 as a bold and distinguished step in addressing a fundamental issue and correcting the paths of the nation's construction. There was an atmosphere of support for academia playing a role in correcting the path of politics. Indeed, the Prime Minister and the Head of the Chamber of Deputies were subject to the distinguished critique of professors of political science and law in Iraqi universities, leading to a set of conclusions and recommendations. According to observers, this is considered a unique project that highlights the concept of national sovereignty after a change in political outlook. It has succeeded in joining political experience and political thought together. The first phase of this project was concluded on June 19<sup>th</sup>, 2021, with an open dialogue on the sovereignty crisis with the President of the Republic, Dr. Barham Salih, and the academics who participated in the project.

The recommendations of the first phase defined the second phase of the project. Several committees were formed, comprising political and academic experts specialized in different fields, in order to produce practical remedies for state building on the economic, security, political, legislative, constitutional, and social levels. The committees will study the methodology used to determine supreme national interests, and that will form the basis for a document to be issued called the 'National Sovereignty Initiative.'

### The Constitutional Amendment Crisis

One of the most important committees in the second stage of the sovereignty project is the Constitutional Reform Committee. One of its outcomes was highlighting the constitutional amendment crisis. Therefore, in cooperation with the Forum, the Department of Law at the Institute took the opportunity of the 16<sup>th</sup> anniversary of the vote on the Constitution of the Republic of Iraq on October 15<sup>th</sup>, 2005, to call for a conference for the discussion of the constitutional amendment crisis. This conference aimed to overcome the failures of the current stage and highlight the obstacles faced by the Constitutional Committees in amending the Constitution that has been in place for 17 years.

The Institute and the Forum undertook the mission to launch a broad dialogue that can contribute to building a vision to help decision makers formulate a position on whether to amend the Constitution or not. They have done so by holding their first scientific conference titled 'The Constitutional Amendment Crisis' on February 19<sup>th</sup>, 2022, to discuss the following crucial issues:

- The federal structure of the state and its effect on the formation of the relationship between the center and the regions.
- The nature of the political system and its effect on the balance of powers between the branches of government.

- The constitutional framework for the distribution of natural resources and its impact on the political stability of the state.
- The adoption of citizenship as a building block and unit that defines belonging to the state, and its impact on the construction of a national identity.

The conference began with a message from his Excellency the President of the Republic to the conferees, stressing the importance of holding the conference during this rough period that the country is going through. He addressed the attendees saying, "I am addressing this message to the sensible citizens of the nation and the stakeholders in society. Since the first government under the 2005 Constitution, the debate continued over its shortcomings. There is nothing wrong with that. The written constitution is artificial, and every man-made thing falls short in a particular place, even if its makers are keen on perfection. Moreover, suppose it was perfect on the day of its production. In that case, it will surely become flawed due to successive change, emergencies, and crises."

At the end of his speech, the President of the Republic said that he was looking forward to hearing the recommendations of the conference. "It is a pleasure to participate in this conference representing the Presidency of the Republic, as we look forward to its outputs. It will undoubtedly be a source for the Presidency of the Republic as it strengthens the resolutions to proceed with amendment, as it has become an indispensable societal and national necessity for the integrity of the political process and the completion of institutional state building. The most sound constitution is the one most responsive to the needs of society and the most capable of keeping pace with its developments."

The conference was characterized by extensive political and academic participation. To deal with the project of 'The Constitutional Amendment Crisis,' the conference adopted a methodology similar to that of the project on 'The Crisis of Sovereignty in Iraq.' Political and academic views were integrated. Two sessions were devoted to discussing the amendment crisis

from a political perspective, and two other sessions to its discussion from an academic perspective. We have documented them in two parts: The first part deals with the political vision and the second deals with the academic vision, supported by scientific conclusions and recommendations.

### The Political Vision

The first part of the book includes five chapters, the first of which contains three sections devoted to discussing the constitutional amendment crisis based on political experience. The first section deals with a number of political articles and working papers authored by political, academic, and human rights figures who contributed to drafting the Constitution in 2005. The second section of chapter 1 includes 15 papers authored by figures who participated in the parliamentary constitutional amendment committees in 2007 and 2019, and in the Presidential Committee in 2021. This is an attempt to critique the constitutional experience in Iraq 17 years after the adoption of the Constitution. This section also discusses the most important constitutional amendments proposed throughout the last period, which were not approved due to the lack of political will. The political experience was the subject of extensive and honest comments from professors of constitutional law and politicians, most of which are documented in the third section of the chapter.

The second chapter of the book provides a critical view of the Constitution of 2005. It addresses the following topics: the drafting of the Constitution, the discussion of controversial points on constitutional amendment and a review of the decisions of the Federal Supreme Court, constitutional interpretations, the administrative judiciary, the constitutional applications of the President, the Government, and the Parliament, as well as current applications in the Kurdistan region, the crisis between the federal government and the Kurdistan region, and the outcomes of the administrative decentralization experiment with regard to the applications of provinces that are not considered part of a region.

The third chapter is devoted to studying the proposed constitution of Sayyid Bahr Al-Uloom's committee, which was the starting point that pushed the Forum and the Institute to adopt this project. The proposed constitution was elaborated by a committee comprising prominent legal and political figures, and was submitted in July 2005 to the Constitutional Committee that emerged from the National Assembly to benefit from its content and ideas. The aim of highlighting the proposed constitution was to help understand the political and social circumstances that governed discussions at that time, as well as to explore and think along with the stakeholders who participated in drafting the proposed constitution concurrently with the Constitutional Committee; to learn about how they deal with the biggest controversial issues, most of which have yet to be resolved.

### Academic Vision

A selection of professors and researchers in constitutional law from different Iraqi and Arab universities participated in pieces of academic research on the constitutional amendment crisis and discussed various aspects, the most important of which are: the impact of the federal state on the formation of relations between the center and regions, the nature of the political system in the balance of powers, the problems of the federal system, the distribution of natural resources, and the mechanisms of constitutional reform. These pieces of research have been published in another volume titled 'The Sixth Season of the Forum Series,' bearing in mind that the Institute journal<sup>1</sup> published most of these pieces which discussed all the aspects of the constitutional amendment crisis.

### Conclusions and Recommendations

Chapter 4 of the book covers draft conclusions and recommendations for the political and legal insights presented at the conference. A team of 7 professors of constitutional law and

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<sup>1</sup> The Institute journal, Alalamein Institute for Higher Education, issue no. 9, August 2022.

political science reviewed the proceedings of the conference individually to draw conclusions and suggest recommendations for the constitutional amendment crisis. Chapter 5 offers an executive summary of the project in its five chapters, as well as an executive summary of the academic research included in the second part of the book.

### An Extensive Critical Review

We believe that the conference on the constitutional amendment crisis convened during a very complicated and sensitive period for Iraq and its people, who look forward to rectifying the political process and addressing the imbalances it suffered through the early elections triggered by the wave of protests in October. The conference sought to learn the reasons for the absence of a political will to execute the constitutional amendments proposed, and revealed insights and suggestions based on political experience and legal and political thought geared toward understanding the commonalities between the two directions.

The participation of stakeholder politicians, parliamentarians, researchers, specialists in constitutional law and political systems, and professors of constitutional law in Iraqi universities, 17 years after the Constitution was adopted, has led to a critical and objective review of the effectiveness of the Constitution in establishing political stability. Amid this crisis, stability represents a national need. We can consider the intensive participation in the conference a message on the necessity to make the necessary amendments, as they are a natural result of the developments in Iraq during the past period. Failure to do so poses more difficulty in the path of stability, especially since as the protests continue.

### Thanks and Appreciation

The Bahr Al-Uloom Foundation gives thanks and appreciation to the Deanship of Alalamein Institute for Higher Education, represented by its Dean, assistants, heads of departments of science, law, and political science, its directors, and distinguished teachers, for

discussing these important and sensitive issues. The joint efforts of the staff have made the Institute's first scientific conference a success. The participation of university professors, faculties, and political and community figures confirms the impression that this can be considered the first expanded national conference to discuss the constitutional crisis following 2005, seeing the national interest, presence, and participation it has enjoyed. We also thank the distinguished delegates managing the Bahr Al-Uloom Forum for Dialogue for their effective contribution to the planning and preparation of the conference, and the staff of the Foundation for the success of this project and for bringing it to light.

We hope that the Almighty may accept these workers' efforts to preserve and protect the unity of the people and the land.

September 1<sup>st</sup>, 2022

## **Inaugural Address**

Speech by His Excellency the President of the Republic Dr. Barham Salih

*Delivered by the Senior Adviser to the Presidency of the Republic,  
Pro Dr. Ali Al-Shukri*

In the Name of God, the Most Beneficent, the Most Merciful.

“And We sent not before you except men to whom We revealed. So ask the people of the message if you do not know.”

Ladies and gentlemen, peace, mercy, and blessings of God be upon you.

I address you with this letter in which I convey to you all my respect and appreciation as you contribute to the work of the scientific conference titled *The Constitutional Amendments Crisis*. People are watching, with gratitude and appreciation, your discussion of a topic that the majority sees as the root of the issue, and that proceeding with its implementation is the solution.

Since the Constitution of 2005 entered into force, the governors and the governed, along with specialists, have diagnosed the defects and suggested solutions. Nevertheless, the will to proceed with constitutional amendment is absent due to the belief that everyone is victorious and not defeated. Everyone is satisfied, even if they claim injustice against their enemies. This went on until problems piled up, interests conflicted, and priorities differed. This resulted in a political gridlock and successive crises until Constitutional provisions were abandoned.

The country and the citizens looked to the last window, the window of the Federal Supreme Court, hoping to find a solution to decide what the Constitution does not stipulate and where it does not provide a clear answer. Furthermore, judicial action began to replace the amendment process in treating these problems and



addressing these variables. Certainly, the cure is not in the solutions of the Federal Supreme Court. However, they are immediate and temporary solutions to solve the current blockage. The court is a legitimate authority, and the constitution remains supreme.

Today, I am addressing this message to the sensible citizens of the nation and the stakeholders in society. Since the first government under the 2005 Constitution, the debate continued over its shortcomings. There is nothing wrong with that. The written constitution is artificial, and every man-made thing falls short in a particular place, even if its makers are keen on perfection. Moreover, suppose it was perfect on the day of its production. In that case, it will surely become flawed due to successive change, emergencies, and crises. If imperfection in writing is expected and logical in the safe conditions under which the constitution is written, the possibility is more significant in light of the military presence of foreign forces and terrorist assassination, and the time constraints of the drafters of the constitution. Otherwise, the wheel will return to square one. The texts of the constitution were written in light of a boycott from one component, a second eager component, and a third component that believes that a deficient constitution is better than its absence. Its absence meant chaos and a return to running the country with arbitrary decisions and perhaps temporary constitutions. The vacancy can be filled, and the variable can be noticed.

Amending the constitution was one of the priorities of the Presidency of the Republic. For that, we formed a committee under the provisions of Article 126 that included in its membership a group of senior scholars in constitutional law and specialists from Iraqi universities. The committee included the President of the Supreme Council of Women in The Kurdistan Region and judges who are known for their competence, integrity, impartiality, and independence, as well as economists, civil society activists and representatives of the demonstrators. The Committee worked diligently for about a year to complete an integrated draft of the amendment. During its work, the Committee held several meetings

with representatives of the Prime Minister's Office because Article 126 of the Constitution requires that the draft amendment be submitted to the Parliament in agreement between the Presidency of the Republic and the Council of Ministers. However, the work of the Committee was halted following the resignation of the government of Mr. Adel Abdul Mahdi.

Today, Iraq stands on the threshold of a critical stage, a dangerous political and constitutional turning point. Partial interim solutions are unacceptable, and consensus to proceed without change is futile. Agreements reached at the eleventh hour will not be able to manage the upcoming period after reality has proven that the ship of political partners are in turbulent waters. The eyes of the people are watching for a solution to the political crisis. Corruption has reached stages that threaten the future of the country and people, unemployment has spread, inflation rates have risen, and drugs have become a widespread trade whose danger has knocked the doors of all society without exception. Terrorism has moved again after finding ideal conditions in the political and constitutional gridlock.

It is a pleasure to participate in this conference representing the Presidency of the Republic, as we look forward to its outputs. It will undoubtedly be a source for the Presidency of the Republic as it strengthens the resolutions to proceed with amendment, as it has become an indispensable societal and national necessity for the integrity of the political process and the completion of institutional state building. The most sound constitution is the one most responsive to the needs of society and the most capable of keeping pace with its developments. Our best wishes to the honourable Bahr Al-Uloom family, who organized this conference, and the participants and attendees. May the peace, mercy, and blessings of God be upon you.

February 19, 2022

## **Chapter One**

### **The Constitutional Amendments Crisis with a Political Vision**

#### *Section One*

*Constitutional Amendments in Light of the Vision of the Drafter of Iraq's Constitution in 2005*

#### *Section Two*

*Proposed Constitutional Amendments in the Constitutional Reforms Committees (2007, 2019, and 2021)*

#### *Section Three*

*Critical Academic Comments on Constitutional Amendment*



## *Section One*

# **Constitutional Amendments in Light of the Vision of the Drafter of Iraq's Constitution in 2005**

*Summary Compiled by: Dr. Salih Mahdi Khaeit  
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## *Contributors*

- *Mr. Adel Abdul Mahdi*
- *Dr. Adnan Al-Janabi*
- *Dr. Nadim Al-Jabri*
- *Mr. Mohsen Al-Saadoun*
- *Mr. Fadel Mirani*
- *Mr. Yonadam Kanna*

**(1)*****The Nature of the Iraqi Political System and its Impact on the Relationship Between Authorities******Mr. Adel Abdul Mahdi<sup>1</sup>***

The Constitution confuses fundamental necessities that would make it difficult for any government to succeed if it did not act as a ruling majority. The principle applied in most states when forming governments implies that governments must represent a political majority that puts forward its platform during its tenure – to implement a program on the one hand and be monitored and held accountable for that on the other hand. However, the concept of national partnership "consensus" ensures the participation of all winning parties in forming the government. This concept renders them caretaker governments rather than governments that make efficient decisions. In this manner, competition transfers, in its proper form, from public opinion and legislative authority to the executive authority and the Council of Ministers. Anticipated competition among the former turns into destructive obstruction, conflict, and sometimes despotism among the latter. That is unacceptable. Perhaps the most critical factor leading to this situation is the ambiguity of constitutional philosophy towards the five core elements – by which I mean electoral law, the parties, the Electoral Commission, the agenda and procedures of the Parliament, and the formation of the government and provincial governments and their functioning. Also, the legacies of previous regimes affected the political system; in terms of legislation that is still in force and represents a philosophy (radically different from the current constitutional philosophy) directly affecting the system's effective functioning. For example, we face plenty of issues related to the following:

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<sup>1</sup> Former Prime Minister

1. De-Baathification and its interpretations,
2. Ownership rights,
3. Disputed borders,
4. Arms outside the State's control,
5. Prisoners, martyrs, dismissal based on political affiliation,
6. Emigration, immigration, and depriving the people of their civil rights,
7. The role of the armed Iraqi opposition forces such as the Peshmerga, Badr, or the role of the Popular Mobilization Forces in confronting ISIS in this regime,
8. Foreign presence of various states which accompanied the occupation or the coalition forces and the problems imposed by their presence and arrangements for their withdrawal,
9. Foreign opposition groups that push neighbouring or distant states—with or without justification—to intervene militarily and establish permanent bases, such as Turkey,
10. Issues such as compensation imposed on Iraq, the effects of the destruction of services and infrastructure, or the imposition of sanctions by specific regimes on neighbouring states that directly affect Iraq's economy and internal and external relations.

In addition to all this, Iraqi democracy is still fragile and young. The relationship between its authorities and the separation between them is still unclear. There is still much push and pull surrounding the idea of federalism and decentralization. There is confusion between the federal government and its components. Moreover, confusion also emanates from the federal government, local governments, and sub-authorities. So, amid repetitive crises, Iraq's political system has not established a procedural relationship between the legislative and executive authorities. During my tenure as Prime Minister, we tried to organize a shared written 'code'

between the two authorities based on the laws in force. However, despite the detailed discussions between the two authorities, we failed to approve the 'code.' For this reason, either the latter controls the former or vice versa.

Moreover, there is an evident shortcoming in the electoral system, especially in terms of its role in establishing effective and robust governments that can overcome obstacles and challenges, especially when they are at the core of the system's functioning. There are also shortcomings in how the parties function, their relationship with constituencies, and their role in state-building and forming public opinion. The judiciary suffered the influence of social sources and governmental pressure. This is despite the resistance of the judicial authorities, who exercised their power to varying degrees.

Moreover, the laws in force contain contradictions, and some laws blatantly contradict each other and the Constitution. Therefore, the impact of external economic or political factors on the operation of the various authorities in Iraq remains significant. This is the reality, both internally and externally. In addition, the internal and external media lack objectivity, which contributes to frustrating, dark perceptions, and erodes citizens' confidence in their government. At the same time, we cannot deny the flaws that the Iraqi political system suffers.

As I said at the beginning, it is difficult to address the negatives without taking note of the achievements. Despite all the challenges, the system was able to resist and end the occupation, sanctions, siege, and measures taken under Chapter VII (Charter of the United Nations). It reassumed its roles in foreign politics, achieved the withdrawal of foreign forces from its territories, and defeated the armed terrorist groups that tried to fuel sectarian strife and avert the constant threat of civil war. The political system was also able to approve or restore many rights, hold a series of elections and a peaceful transfer of power, protect the State's unity and personal and public freedoms, and improve the relationship between



components. In addition, the Constitution preserved the components' right to participate in the political process and governance, not to mention a tangible improvement in living standards.

## (2)

*The Imbalances and Necessary Constitutional Amendments on the Economic Level*

*Dr. Adnan Al-Janabi<sup>1</sup>*

Within the framework of the overall political process in Iraq and the available possibilities, it is impossible to think of writing an entirely new constitution for Iraq. However, it is possible to make constitutional amendments according to what is allowed constitutionally. That, in turn, requires the amendments to be made by the Iraqi Parliament, followed by a popular referendum.

The main issues surrounding the Constitution are how its draft was passed in the so-called 'political kitchen,' due to which the texts contain many editorial paradoxes and a lack of cohesion in its details.

The necessary amendments to the Constitution provoke disagreement. The most severe flaw in the Constitution is the weakness and ambiguity of the 'exclusive powers of the federal government,' which means that everything not mentioned as part of the federal government's exclusive powers becomes a power of the regions and governorates. Also, the priority in legislation is the laws of the regions and governorates. It is necessary to reverse this mechanism and consider what has not been set out as a power for regions and governorates as part of the federal government's powers, prioritizing federal legislation. For example, the 'Federation Council' is mentioned [in the Constitution]. However, it did not set the mechanism for its formation and the powers entrusted to it – which must be specified in the Constitution, not in legislation from the Parliament.

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<sup>1</sup> Vice President of the Constitution Drafting Committee, Member of Parliament, and former Minister

The unity of Iraq, its social fabric's cohesion, and its people's well-being depend on the excellent management of all natural resources, including oil and gas. This wealth should be in the hands of the federal government, be that in terms of investment, management, or marketing. However, necessary economic and financial adjustments are needed. Unfortunately, the current situation has created mismanagement in these resources' contracting, investment, and trade. This ambiguity also allowed the Kurdistan region to act unilaterally in the investment and trade of oil and gas, creating conflicts between the federal and regional governments. The solution is to put all of these powers related to natural resources in the hands of the federal government, with clear foundations for wealth sharing.

There is a lack of clarity in the federal government's powers in the field of taxes and customs—which requires more clarity from the Constitution in this area. Water resources should also be placed conditionally in the hands of the federal government. This power is essential, especially when dealing with external climate change or aggravated regional conflicts over water. The absence of a stipulation to establish a sovereign fund for generations to which we allocate transparent funds from oil and gas revenues presents an apparent problem.

Constitutional amendments require setting explicit texts on the federal government's powers regarding the environment and emerging technologies, which requires increased international cooperation.

## (3)

*The Option of Federalism in Iraq**Dr. Nadim Al-Jabri<sup>1</sup>*

This session seems like the writing of memoirs, especially when it comes to the period when the Constitution was drafted. Therefore, I want to point out some of the mistakes we made while drafting the Constitution.

It was possible to write a better constitution. In addition, it would have been better if a specialized committee had written it instead of an elected one. However, the elected committee consisted of 55 figures that lacked specialization in constitutional law, political science, or even public law. Instead, it would have been better if the political class proposed constitutional ideas. Then, a professional committee can elaborate on the constitutional articles and arrange them according to the type of idea presented, such as ideas related to the parliamentary or federal system. The Constitution would have been much better this way, in my opinion.

A third stage was supposed to occur after the Constitutional Committee finished formulating the ideas put forward by the political class. Supposedly, experts in Arabic should set the language used in the Constitutional texts. As a consequence [of not doing so], the texts of the Constitution are weak, so there was much recourse to the Federal Court, especially from 2010 onwards. In addition, the Constitution suffers from ambiguity and wrong terminology due to the urgency to draft it under pressure from the United States. President Bush pressured the U.S. embassy to finalize the Constitution to mark it as an accomplishment. These factors coerced the Committee to commit errors and mistakes until reaching the stage of impasse in 2010.

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<sup>1</sup> Member of the Constitution Drafting Committee, Professor of political thought at the University of Baghdad

(4)

*The State's Federal Structure and its Impact on Shaping the Relationship between the Regional and the Central Authority*

*Mr. Mohsen Al-Saadoun<sup>1</sup>*

We must remember the situation in Iraq well. Iraq has had many constitutions, including the Permanent Constitution and Interim Constitution. However, there was no continuity under those constitutions, and the system of government under them was centralized. After 2003, one of the most important goals of the political process in Iraq was to eliminate the dictatorial regime and create stability. The implementation of such measures was only achieved through constitutional plans. At first, there was the Law of Administration for the State and the Coalition Authority Law, but they did not achieve anything. Hence, the National Assembly gained the authority to draft the Constitution. It formed a specialized committee to draft the Constitution, and, indeed, after seven months, the Constitution was drafted. Finally, it was presented to the Iraqi people and voted on.

The Iraqi Constitution was a stabilizing factor throughout this period, yet some of the mentioned crises eventually arose. In light of this conference, we must mention that there were essential legislations to resolve the crisis and stabilize the Constitution. Nevertheless, unfortunately, the Iraqi Parliament has not been able to legislate the Federation Council, the second legislative chamber after the legislator, because the Parliament has so far used the right of veto. Thus, decisions proceed, without oversight, to the Presidency, then to the President, and published in the Official Gazette. So, we need important legislation, including one for the Federation Council. Also, through this conference, we must proceed

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<sup>1</sup> Former President of the Legal Committee in the Parliament, Leader in the Kurdistan Democratic Party

with a law for the Federal Court, a vital legislation under the Iraqi Constitution to achieve political stability.

(5)

*The Federal Structure of the State and its Impact on Shaping the Relationship between Central and Regional Governments*

*Mr. Fadel Mirani<sup>1</sup>*

The political tensions that may occur in society due to internal or external circumstances, both voluntary or involuntary, solidified the will to treat these issues seriously. I do not want to provoke anyone, nor will I start the introduction of my research by requesting to evoke a copy of the current Iraqi Constitution to compare the language in which it was drafted with the reality that the Constitution is used to defend. I will not [evoke] any group of political opponents or the condition of the Iraqi citizen and what the future will be for upcoming generations. I do not want to waste my words only writing [theoretical] research without touching on the defects in a many governmental actions that resulted from twisting Constitutional texts and its laws and regulations according to interests and selective interpretations. This includes interpreting the relationship between the central and regional authorities, generally without specifying the centre and which region, such as Baghdad and Erbil. Instead, this mode of comprehension tackles any centre and region under federalism. The reality differs from the text, in form and essence, because of the mismatch between legal practice in Baghdad and Erbil.

Federalism is a response to diversity, apparent in the its elements of ethnicity, politics, and economic interests. This is more than a mere evaluation, view, and judgment added to the decision-making process. However, like any theory, federalism is not safe from misapplication if it does not balance national integration and the consolidation of its components that come together and take the form of a federation. Governance in Islamic history has seen several federations, but it could not overcome the authoritarian

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<sup>1</sup> Secretary of the political bureau of the Kurdistan Democratic Party

understanding of governance inherited from the so-called 'Islamic Conquests' era.

The Kurds of Iraq chose the federal system before codifying it in the Constitution of 2005. Our choice of federalism by political thought and popular vote did not come as a reaction but also as a growing human awareness, which no longer accepts unilateral decisions, regardless of their source. Over the past 100 years, we could only be opposed to the legal rule of 'innocent until proven guilty.' The opposition by the ruling regimes was because they applied varying degrees of pressure and looked at citizenship according to their standards. In short, we are a nation just like the rest of the Arabs and any other nation; we add value to the land as others do.

Furthermore, they were unfair standards that considered those who did not belong to their ideology treacherous. This case is true for the military and ideological regimes that isolated Iraq from its surroundings, took hold of decision-making, and opened the door for coups and the emergence of an associated administrative and financial class. These regimes showed individuals the most dangerous thing one can imagine: the regime meant to be served, not to serve. They used propaganda to this end in education, religion, and ethnicity, legitimizing that with laws and decisions that acquired the force of law.

Hence, the forces of the Central Authority have hidden the people and nurtured a unilateral thought process to serve its survival in authority, even though its national laws are not in line with international law. In the Kurdish national group, we believe in federalism with its Iraqi particularity that cannot be neglected, like the federalism in Asia. However, the Kurdish national group and other Iraqi groups realize that, for subjective and objective reasons, many ambitious entities hold on to an authoritarian mentality. It is their choice to do so. Nevertheless, it is considered a precedent when a mechanism perpetuates authoritarianism within the system. Hence, dealing with this issue focuses on neglected issues, including the population census, the management system for



financial resources, education, healthcare, and political independence.

The whole point is to work full force on fixing these factors at the legislative level. The Kurdish national group and the rest of the Iraqi national groups have always been realistic. It is difficult to overcome a past full of flaws and move on to a future based on broad principles. We are no strangers to Islam, Iraq, or its society, and we are one of the oldest partisan and political groups that demanded democracy for Iraq. Nevertheless, we have respected the political sphere, the law, and internal interests to build a relationship with the central government, away from any other framework. The supreme law is the Constitution. It was and remains our reference, and its interpretations are legal and within the jurisdiction of a specialized judicial authority.

In conclusion, any review of the current rule of Iraq must start from the intellectual readiness of the government and society to abide by the provisions of the Constitution (e.g., the federal State and the relationship between regional and central governments). Such reviews must explain and acknowledge the defects so that what needs to be changed gets amended. Also, authorities must take a large-scale decision to better relate the method of governance with the restriction of harmful behaviour between the ideas of universality and pluralism. The citizen, who pays taxes in the form of blood and money, is not a tool for projects with no political feasibility. The states that we supposedly share a similar political system with are providing social services that surpass military endeavours. The Kurdish national group and other Iraqi groups exercise influence that can make the federal State succeed and create a balance between Iraq's central and regional authorities (possibly even other regions in the future) without the lens of propaganda.

## (6)

*The Constitutional Amendments Crisis**Mr. Yonadam Kanna<sup>1</sup>*

The problem concerning the Constitution is not only its drafting but also the language. Its language must be enhanced in over 50 constitutional articles to avoid multiple interpretations. However, first, should it be a civil or religious constitution? For example, Article 92 states that the Supreme Court must include 'experts in Islamic jurisprudence.' Article 3 of the constitution prohibits discrimination and sectarian policies, and its counterpart is Article 9, which demands that balance and symmetry be observed. The same goes for the section on rights and freedoms and in Articles 37-46; the government has not adhered to these principles. This does not mean that the constitution needs to be amended. In 2007, more than 50 amendments were proposed, but political stakeholders failed to codify these amendments. The same occurred in 2019, as the committee fulfilled its duties but the proposed amendments never saw the light.

The process of amending the constitution started in 2007. We discussed the amendment of 50 articles, and bolstering some of them, to avoid misinterpretation that leads to loose-ends which put the state at risk of gridlock and crisis. For example, this could occur during a parliamentary period in terms of election of the President of the Republic or Parliament. Such articles leave loose-ends that could push the country into crises, forcing Parliament in every crisis to go to the Federal Court in search of a solution; thus placing on the Federal Court the responsibility for all of this.

In conclusion, the secret of our lack of success in dealing with the constitutional amendment is not the absence of experience or experts, but rather the absence of national identity in light of the constant suspicion of others. This is what took place in the last

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attempt to amend the Constitution in 2019. The committee finished drafting its report, except for Article 140, in which a committee of Kirkuk's representatives was formed from all its components to come up with a convincing formula for all. But the committee did not come up with any wording and put the change draft on the shelf again. This is just like the previous committee of 2007. Constitutional amendments will not see the light without a national identity being the umbrella under which we all belong, while protecting and respecting all the sub-identities of all Iraqis.



## ***Section Two***

### ***Proposed Constitutional Amendments in the Constitutional Reforms Committees (2007, 2019, and 2021)***

*Summary Compiled by: Dr. Salih Mahdi Khaeit (Academic  
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## (1)

*Constitutional Amendment Requirements**Sheikh Humam Hammoudi<sup>1</sup>*

The Iraqi Constitution of 2005 is an essential document that the political establishment wrote at a pivotal stage in the political history of Iraq. Furthermore, any objective study of this document should not ignore the circumstances of writing the Constitution. This Constitution succeeded in crystallizing a vision acceptable to the political parties who sat for the first time in the history of Iraq at a dialogue table that was keen to involve everyone and extended to include even the boycotters.

Hence, any upcoming constitutional amendment should consider restoring balance to the existing parliamentary system. The constitutional amendment can be accomplished by: (1) expanding the powers of the executive authority in a way that secures the transition to the foundations of the traditional parliamentary system and guarantees non-singularity in governing: (2) controlling the form of the central government, and representation of the regions and governorates in it.

In addition, amending the Constitution can be achieved by establishing the House of Expertise represented in the Council of Union, which should be granted Constitutional powers that make it in sync with the Parliament. It is worth mentioning here the efforts made by the Constitution Amendment Committee, which was formed primarily for Article 142. The Committee completed its report, and these amendments would have seen the light had it not been for the political inconsistency that hindered the effort. Here, we stress the need for a comprehensive vision as a necessity to pass any amendments. Furthermore, we stress studying the

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<sup>1</sup> Chairman of the Constitution Writing Committee and Former Deputy Speaker of Parliament

aforementioned points and others carefully and with broad societal representation that will secure a beneficial amendment to meet our people's demands for stability and well-being.



(2)

*The Seven Stops in the Constitution**Dr. Amer Hassan Al-Fayyad<sup>1</sup>*

**First:** The Constitution is the supreme law for everyone, including its writers. Contrarily, what happened is that the writers thought that they were above the Constitution and were not interested in obeying it. Therefore, the politics of consensus prevailed over constitutional supremacy in all aspects of the political system.

**Second:** As much as we find harmful viruses in the Constitution, we also find helpful antibiotics. One of the best things in the Constitution is the chapter on freedoms.

**Third:** Constitutions are a road map for the future, meaning it is a document of the future and not a document that stirs up sorrows. The Chairman of the Amendments Committee, Dr. Ali Al-Shukri, remembers how we agreed that the amendment should take place. Furthermore, we must begin at the preamble because it rehashes the struggles of the Sunnis as pariahs, Shiite oppression, and Kurdish exclusion. There is no such preamble in other constitutions. Instead, constitutional preambles typically state, “we aspire to....” They do not mention the history. The Constitution is a document for the future.

The crucial issues we stopped at, mentioned in the first session, were the subject of the preamble, and Article (76), especially paragraph (4), in which a single word caused many problems. Specifically, we mean the issue of granting confidence to the new ministry, given that granting confidence is accompanied by two conditions:

- Passing a ministerial program.

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<sup>1</sup> Member of the Constitutional Amendments Committee in the Presidency of the Republic - Dean of Al-Amal University College

- Approval of each minister separately.

Hence, this has deepened and solidified the quota system. Furthermore, because ministers are selected separately, the Prime Minister's decision is undermined. The Prime Minister, his/her platform, and his/her ministers must fall under the same authority.

## (3)

*A Roadmap to Amend the Constitution**Dr. Hassan Al-Yasiri<sup>1</sup>*

There is a map we put in place for everyone interested in making constitutional amendments in the future. I am sure the map will raise in your mind many questions that I will not be able to answer due to lack of time.

The map consists of four axes in amending the Constitution:

- The process to amend the Constitution.
- Who is responsible for the amendment?
- What to achieve through amending the Constitution?
- Resolving controversial issues with can only be resolved by political consensus.

First, to amend the Constitution, we must utilize an amendment process. The Constitution has drawn two paths. The first path is what I might call temporary and exceptional, while the second path is called permanent and regular. Article 142 drew the exceptional temporary path in the Constitution, which is a dead-end path that does not exist now – contrary to all you hear from analysts, experts, judges, lawyers, politicians, and parliamentarians in the media. When enacted, the Constitution contained 138 articles, and Article 142 was not present in the first edition that the United Nations printed. However, it was added and printed later to gain the Sunni component's buy-in. It is a guarantee for the Sunni component to re-draft the Constitution again because they did not participate in the drafting phase, and the Shiites insisted on giving this right to the Sunnis, and the Kurds stood by it. Accordingly, the opportunity was given for amendment through consensus.

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<sup>1</sup> Member of the Constitutional Review and Amendment Committee - Former Chairman of the Integrity Commission

Second, I suggest that a committee of experts should amend the Constitution. The committee members should have political, legal, and administrative experience and representation in the Parliament. However, before forming the Committee, there must be a political decision from the leaders of the blocs to be convinced of the amendment; otherwise, it will be ineffective. For example, The Constitutional Review Committee worked for three years, but one case sabotaged all their work. Therefore, the current committees will not succeed unless they consider obtaining a political decision of approval before proceeding with the amendment.

Third, what is the path we should take in amending the Constitution? I have a political track, a complementary track, and a technical track.

Fourth, some issues can only be resolved through political consensus. They are of two types:

- First type: intractable issues that can only be resolved through a difficult political consensus. This includes three issues:

- Oil and Gas Issues (Article 112).
- Disputed areas and Article 140.
- The supremacy of the law, which has been an issue of political conflict (Article 115).

- Second type: resolving Controversial issues by a political agreement that is not difficult, such as the vacancy of the position of the President of the Republic, the identification of the Majority parliamentary bloc, the establishment of offices for the regions, and the authority of a president to ratify death sentences.

## (4)

*After 16 Years: Constitutional Reform in Iraq between Legal Idealism and the Requirements of Reality*

*Dr. Luqman Othman Ahmed<sup>1</sup>*

Constitutions are manufactured expressions of a social contract between citizens. They are considered to be consensual documents of citizens' orientations that keeps pace with societal changes and developments. Usually, these constitutions - even if they are rigid - include ways to amend them to keep pace with existing societal developments. Sometimes, states may witness inevitable conflicts, but the Constitution contributes to building societal peace in the country through amendments.

Today, there is talk about repealing the Constitution and writing a new one. There are two sides: one believes the occupation authority wrote the Constitution and does not recognize the entire political process. Therefore, they demand the repeal of the Constitution. This would require change in the system of political legitimacy, which is impossible. The second side believes in the principle of the authority to amend the existing Constitution. We can amend all the clauses of the Constitution based on the political legitimacy of the current political system.

The third method is through the constitutional judiciary's broad interpretation of the Constitution. Observers of constitutional law can see the effective contribution of constitutional courts worldwide by extracting implicit rules and reviewing constitutional values. In addition, Constitutional courts expand the definition of constitutional rules and give meaning to constitutional texts (i.e., returning to the origin of these texts and what was the intention of the original founding authority).

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(5)

*The Crisis of Constitutional Amendments and Legal Reform*

*Dr. Munther Al-Fadh<sup>1</sup>*

By August 2005, the Constitutional Committee elected by the National Assembly completed the constitutional draft. Many parties, blocs, political and legal figures, and clerics from all ethnicities, religions, and sects participated in writing and drafting the Constitution. Fifteen Arab Sunni members also contributed to the Constitutional Committee. The Sunnis boycotted the political process and the election of the first elected National Assembly that exercised its work from March 16, 2005, until the end of December of the same year. One of its most significant achievements was the preparation of a permanent constitution for the country that lays out constitutional institutions and the rule of law by adopting the principles of peaceful transfer of power, separation of powers, and respect for human rights under the principle of the federal form of Iraq.

What followed were negotiations between Iraqi political parties and personalities participating in power with political blocs of Sunni Arabs to include them in the administration of the new Iraq. On September 13, 2005, they agreed to edit some paragraphs and add other paragraphs to the Constitution's draft before submitting it to the general referendum in October 2005. Among the added paragraphs was Article 142, related to amending some articles of the Constitution, later following constitutional mechanisms as a condition for participation in the political process. The text included the formation of a temporary parliamentary committee whose mission is to submit a report to the Parliament within a period not exceeding four months, including the necessary amendments to the Constitution, and that the Committee dissolves after deciding on its

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<sup>1</sup> Member of the constitution writing committee

proposals. Also, Article 122 of the Constitution stipulates another usual way to amend the Constitution.

In March 2005, the preparation for the new Iraqi Constitution began after electing a committee of various parties, personalities, and political blocs. Lengthy discussions took place between the Committee members, sometimes marred by emotions and calm at other times due to the importance of the topics raised and the strangeness of the proposals of some members of the Committee. The topics were diverse: charges of treason against dual passport holders; return to central rule on the pretext that federalism is a division of Iraq; discrimination between Iraqis living in the country and abroad; and the absence of minorities' rights. The topics also included confiscation of the rights of the Kurds and restrictions on their institutions that they built over many years or considering Islamic Sharia the only source of legislation in Iraq.

It is impossible to talk about all the developments in writing and drafting the Constitution along these lines, which reveals the mentalities of some that are unsuitable for occupying any position in the new Iraq. We were among the first to have reservations about some provisions of the Constitution after its writing, especially the weakness of the rules of human rights, democracy, and women's rights in it. These reservations still exist in our desire to build a federal and democratic Iraq based on the rule of institutions and the rule of law so that everyone is subject to it – both governors and the governed – to cut off corruption and put the interest of Iraq before the interests of individuals.

The position of many independent parties and personalities on the constitutional amendments is clear. They do not deny the necessity of making some amendments to the Constitution to enhance the building of democracy and the federal state institutions based on the participation of all in power and wealth, provided that these amendments should follow the procedures specified by the Constitution. However, the rise of voices for amending the Constitution from some parties - and it is clear - is not in order to build the new foundations mentioned above. Instead, the purpose

is to return to central rule and retreat from the fundamental principles that affect the core of the form of the Iraqi civil State and its system of governance.

As we mentioned in our book “The Problems of the Iraqi Constitution,” many problems arose about the Constitution, and there is no space to explain them all. As a result, many political figures and several constitutional and legal experts called for the amendment of some constitutional texts. So, a committee formed under Article 142 of the Constitution proposed to amend some texts of the Constitution, but due to differences between political parties, the Constitutional amendment did not happen.



## (6)

*Constitutional Implementation Crisis**Dr. Shorsh Hassan Omar<sup>1</sup>*

The implementation of constitutional amendments has gone through crises. Article 142 stipulates that when forming the Parliament, a committee must form within four months and submit the amendments within six months. However, the Committee did not carry out its work. So, after the November 2019 negotiations, specialized committees in the Parliament, the Presidency of the Republic, and the Council of Ministers took place to amend the Constitution. However, the work of these committees did not lead to a result either. So, I support the conference's title, the crisis of constitutional amendments.

Worldwide, constitutions have flaws and shortcomings. The lesson is the quality of the Constitution and its respect and application; we do not deny the existence of loopholes in this Constitution. However, the selective dealing of components or political parties with this Constitution created several crises, as we ask the Federal Court for an explanation to clear texts. There are explicit texts, and we ask the court to give another explanation to deal with the text, as happened on many occasions. For example, the largest bloc in number, even after clarification by the Federal Court, the parties requested a second, third, and fourth clarification from the court. Federal Court based its ruling on the concept that the largest bloc is formed within the Parliament until amended in the last decision to become the bloc formed even after electing the President of the Republic.

It is impossible to form regions represented within the central government through Parliament only. We need it so that the region can represent itself, regardless of the number of representatives. At

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the same time, the Constitution allocated one Article to the Council of the Union, which created a constitutional impasse. The legislative branch cannot reject a decision or forbid the passing of a law to the Parliament except through this second chamber. So, considering the federal foundations is a must if we believe in the embodiment and empowerment of federalism. However, if we do not believe in the embodiment of federalism and the regions' rights, that is a different issue.

Therefore, we call for this conference to come out with successful solutions and proposals to contribute to solving the country's problems and strengthening the basic principles approved by this Constitution. These principles were not present in previous constitutions before 2003, such as democracy, federalism, the parliamentary system, and administrative decentralization.

(7)

*Amending the 2005 Iraqi Constitution**Deputy Hassan Karim Al-Kaabi<sup>1</sup>*

The papers I am carrying are the documents of the first session of the Iraqi Parliament regarding forming the committees in according to Article 142. The conference organizers copied these papers, and they are part of your rights as Iraqi citizens, researchers, and specialists to familiarize yourselves with the effort of the Iraqi Parliament and what stage it has reached.

The first Committee, headed by Sheikh Humam Hammoudi and membership of several members of the Parliament, wrote its report and fulfilled its obligations towards you as a people and the legislative authority. Regardless, the Parliament, despite voting on these amendments and their approval, they were not taken and constitutionally continued.

The last parliamentary session formed the second Committee, and I supervised this Committee. It also held more than 20 meetings and sent official correspondences to unions, federations, and institutions. I met with colleagues, including Dr. Ali Al-Shukry, the honourable Dr. Amer Hassan Al-Fayyad, and some brothers who are members of the Committee. Together, we hoped that we would engage with this topic to come up with some ideas and opinions. We have reviewed the controversial constitutional articles which are lacking or ambiguous. The Committee found a deficiency in eight constitutional articles (Article 2/Second, Article 24, Article 38, Article 46, Article 61, Article 94, Article 68, and Article 110/Seventh), as well as ambiguity in about 15 constitutional articles (Article 48, Article 53/ Second, Article 56/First, Article 59/First, Article 61/First, Article 65, Article 72/First and Second, Article 76/first and third,

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<sup>1</sup> Former First Deputy Speaker of Parliament - Vice President of the Sadrist Bloc - Fifth Session

Article 102, Article 103/third, Article 110/second and seventh, and Article 121).

## (8)

*The Most Significant Amendments to the 2005 Iraqi Constitution*

*Dr. Mohsen Abdel Aziz Al-Hakim<sup>1</sup>*

The Iraqi Constitution of 2005 was written under complex and tortuous circumstances and needed reconsidering in proportion to the reality of a new social and political contract. It should consider the developments of Iraqi events to facilitate the process of social harmony and national unity and strengthen the Iraqi national identity and the right of citizenship away from any religious, ethnic, or sectarian considerations. Consequently, while drafting constitutional amendments, we need to address the following:

**Amending Article 9 / First – C**

The article prohibits Members of the military and security apparatus from running or voting in any general elections or advertising for a candidate or political force, except after submitting a resignation or permanent exemption of work.

**Amending Article 43**

First: Followers of every religion or sect are free to:

A - Practice religious rites, including the Husayni rites.

B - The management of endowments and their affairs and religious institutions shall be regulated by law.

Second: The State guarantees freedom of worship and the protection of its places.

Third: Offense to freedom of belief or social diversity is considered an offense to civil peace.

**Amending Article 49**

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<sup>1</sup> Leader in the National Hikmah Movement

First: The Parliament consists of 200 seats elected by direct secret ballot, distributed among the population, and representing the entire Iraqi people.

Second: A candidate for membership of the Parliament must be a fully qualified Iraqi, and he/she does not possess the nationality of a second country or his/her other nationality must be suspended at the time of membership.

Third: A superior law shall regulate the qualifications of the candidates and the voters.

Fourth: The election law aims not to grant exceptions to any Iraqi based on gender, nationality, tribe, religion, belief, and political affiliation.

Fifth: The electoral law aims to ensure the rise of political entities that obtain 5% of the region's or governorate's total votes to qualify for membership in the Parliament. Then, the law should distribute seats to the parties and forces that obtained this percentage and exclude parties and other entities that obtained less than this percentage. However, the law can guarantee independent seats not subject to the parties' conditions.

Sixth: The Parliament shall enact a law dealing with cases of replacement of its members upon resignation, dismissal, or death.

Seventh: It is not permissible to hold both membership in Parliament and any other official job or position.

### **Amending Article 76**

First: The President of the Republic assigns the candidate of the parliamentary bloc with the most significant number of winners in the elections to form the Council of Ministers within fifteen days from the election date of the President of the Republic.

Second: The designated Prime Minister shall nominate the members of his/her cabinet within thirty days from the date of the designation.

Third: The President of the Republic assigns a new candidate within fifteen days when the designated Prime Minister fails to form a ministry within the period stipulated in this Article's second section.

Fourth: The designated Prime Minister presents the names of his/her cabinet members and the ministerial platform to the Parliament to gain approval in the ministers and the ministerial platform by an absolute majority.

Fifth: The President of the Republic assigns another candidate to form the ministry within fifteen days if the ministry does not gain approval.

Sixth: Each year after the formation of the government, a review session by the Federation Council, is held to match the government's performance with the government platform approved when granted confidence. When the government fails to implement the government platform, it is required for a joint session of the Federation and Parliament to withdraw confidence from it.

Political offices are temporary jobs whose holders receive temporary rewards that end with the assignment's expiry and do not entail any permanent privilege.

## (9)

*When Amendments Happen, Where Will the Crisis Be?*

*Dr. Alaa Al-Rikabi<sup>1</sup>*

The issue of constitutional amendments is related to the first parliamentary session. However, the Iraqi people have the right to amend the Constitution, similar to what happened in the United States Constitution, which reached 27 amendments. Why should the amendment be in the first session? Why do we not do legislation and amendment whenever possible and required? When we have a specific circumstance that requires amendment, we form a new committee and move the amendment.

One of Iraq's popular demands is to change the government system from a parliamentary system to a semi-presidential republic. This system is excellent because the people elect the Parliament members, and their role ends there. Then, the Parliament elects the Presidency of Parliament, and after that, the President, his/her two deputies, and perhaps the Prime Minister. The people would play their role in the first phase of the parliamentary elections, and all these positions would come due to consensus within the Parliament. These consensuses do not give the President or the Prime Minister the power to act, so we hope one day that the Prime Minister will be elected directly. Nevertheless, we have hope in this idea we put forward.

Colleagues from the various groups in our country will object to the semi-presidential system. For example, the Shiites will take the prime ministership for life. Whenever we work on building citizens and thought – meaning that Shiites will elect Sunnis, Kurds, or Turkmen, whom they deem appropriate for this work – I think we can put forward this reasoning at that time.

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<sup>1</sup> Head of Imtidad political Movement



Finally, the Iraqi Constitution says that the legislature consists of the Council of Union and the Parliament, but the Council of Union has been disabled since the Constitution was approved. Perhaps it is time for us to make more room for young people in the Parliament and for people with experience in the Federation Council to be in the process and to establish a better future for the country.

(10)

*Proposals for Constitutional Amendments*

*Dr. Ghazi Faisal Mahdi<sup>1</sup>*

First, I have a note regarding the title of the conference. We are not in a crisis, but we are debating the necessity of constitutional amendments. Furthermore, the observations and proposals for amending the Constitution are as follows.

When it comes to drafting, some articles of the Constitution are poor and inaccurate. For example, when the Constitution talks about the tasks of public authorities, one time, it uses the word responsibility, and another uses the word authority or jurisdiction, which is confusing in legal terms. It is more imperative for the Constitution to use accurate legal terminology than it is for the legislature.

In regard to Article 59/Second, it speaks about the quorum for making decisions of the Council, that is, legislative decisions. It does not mention the quorum for voting on laws. Therefore, there must be a provision that applies to voting on laws.

Some have mentioned that the Federal Supreme Court deviated from the provisions of the Constitution regarding the vote on the President of the Republic; I cannot entirely agree with that. The quorum of the session is complete with the presence of the majority in the Parliament. However, the special session to elect the President of the Republic requires a vote of two-thirds of the Parliament members. So, one of the requirements to hold a presidential election session is to be attended by two-thirds of the members.

As for Article 60, which is related to draft laws and proposals for laws, this is an old dispute. We should not restrict the Parliament as

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<sup>1</sup> Member of the Constitutional Amendments Committee in the Presidency of the Republic - Advisor to the Legislation Department in Parliament - Alalamein Institute for Graduate Studies

the foremost authority of the State, and there are laws issued based on proposals from the Parliament. This simple technicality should not rob the Parliament of its actual competence in making laws.

Regarding dissolving the Parliament, the Constitution adopted a self-dissolution, which is that the Parliament dissolve itself based on a proposal from the President of the Republic and the Prime Minister, which did not achieve a balance between the legislative and executive powers. The legislative authority can withdraw confidence from the government and force it to resign. However, the executive's authority cannot dissolve Parliament, so I suggest we adopt the presidential or ministerial solution and take this popular demand that achieves the people's control over the work of the Parliament. In other words, when the Parliament fails to perform its function, the people can dissolve it and thus elect a new parliament.

There is a shortage in the Constitution of articles regarding the judiciary. It does not specify the head of the judiciary because the head of the Supreme Judicial Council is the head of the ordinary judiciary. We have an administrative and military judiciary, and the deficiency must be filled in this case. The Constitution stipulated that the Federal Supreme Court is part of the federal judiciary and supervised by the Supreme Judicial Council. This is not acceptable because the Federal Supreme Court is a supreme judicial body outside the ordinary and administrative judiciary.

## (11)

*Constitutional Amendment Limits**Dr. Mohamed Elhamawdy<sup>1</sup>*

Amending the Constitution - in general - differs in procedures and methods from one State to another. The difference is due to political and geographical reasons, the legal nature of the political system in the State, and social reasons in terms of societal nature in it. However, on the other hand, another consideration (and the most important) is maintaining mutual respect for the principle of human rights and freedoms.

There are internal reasons for amending the Constitution, including fundamental reasons arising from the need to change the State's system or to remove the contradiction in some of its articles, such as for human needs (e.g., amendment of the Algerian and American constitutions). Alternatively, it can be for political reasons that require maximizing the powers of the ruler in the face of Parliament, including amending the sovereign powers and sometimes having to amend because of a change in the balance of political power, stabilization, and compatibility. Also, international reasons sometimes require a change in the Constitution, as the rules of public and humanitarian law began to overshadow the provisions of internal law and restrict state constitutions. Accordingly, it affected the exercise of national sovereignty, the principle of independence of judges, and the principle of equality before the law.

All states are undergoing gradual change, especially in the political and social aspects. Self-confidence, consistent work, minimizing promises, and preserving the State in one way or another is essential to the change. Amending the Constitution is part of it; in most cases, it is a constitutional text at the heart of the Constitution.

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<sup>1</sup> Alalamein Institute for graduate Studies

Hence, we must adopt what is constitutional, which is why we resort to amending the Constitution.

(12)

*The Impact of Partisan Quotas in Amending Iraq's Constitution of 2005*

*Dr. Adnan Ajel Obaid<sup>1</sup>*

Amendment is necessary for the Constitution to keep pace with the needs of the generations. I want to point out that constitutional amendment in all states starts with the people, not the political class. The political class always reflects people's will regarding the amendment. The issue of amendments always appears after the escalation of widespread protests that revolt against the political system.

Before the protests, there was no open and robust call for amendments. However, it appeared after the recent election, considering that among its tasks was to amend the Iraqi Constitution of 2005. Article 142 is considered a lifeboat, whose amendment procedures are usually more accessible than Article 126 because voting on Article 142 is by an absolute majority, and Article 126 is to be voted on by a two-thirds majority.

What is the impact of partisan quotas on amending the Constitution? Everyone knows the system of distribution of ministerial offices. For example, suppose you have obtained 60% in Parliament. In that case, it is converted into points, distributing ministries down to the deputy minister, which is the points system, in light of partisan quotas, which is more accurate than sectarian quotas, making the amendments a sham. I have seen the amendments made by the Constitutional Amendments Committee in the Parliament stipulated in Article 142. These amendments do not touch the essence of the political system. In addition, the effects are mere theorizing by the respondents. The link has been broken between the need for amendment and working on getting it done.

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<sup>1</sup> College of Law-University of Al-Qadisiyah

(13)

*Iraq's Constitutional Amendments Crisis**Dr. Ali Al Yaqoubi<sup>1</sup>*

The effectiveness of the 2005 constitution stems from controlling the issue that Iraq has suffered since the establishment of the Iraqi State, which is the issue of military coups and the lack of peaceful power transfer. Organizing the successive elections after 2003 contributed to addressing this issue effectively. This Constitution set the pace of a peaceful transfer of power that the political process has lacked for more than 80 years. We formed five parliaments and more than seven governments thanks to this Constitution. Who threatened this Constitution? Throughout 17 years, two things threatened the existence of this Constitution as a document agreed upon by most of the parties.

**First threat:** The presence of ISIS, which occupied more than a third of Iraqi territory.

**Second threat:** The call for a referendum in the Kurdistan region was the most significant painful hit to the Constitution; instead of studying the violation of the political process, we started talking about side issues.

After this Constitution succeeded in resurrecting again from the failure of these two attempts, the political process returned with force. The liberated Sunni areas from ISIS and the Kurdish areas, when the referendum failed, returned to Baghdad with strength. Therefore, this Constitution has strength and merit. Though many criticize this Constitution, it is thanks to it [and the freedoms it affords] that they reached the possibility of criticizing the Constitution. It is another element of the political effectiveness of this Constitution and its ability to manage this diversity again.

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<sup>1</sup> Al-Mansour University College

The truth is that this Constitution has many positives as a document, as it is within the framework of pluralism and has made it possible to refer to the judiciary as a constitutional reference. However, on the other hand, there are many negatives and a widespread call for amendments. First, these efforts for amendment are evidence of the nation's vitality and activity. Secondly, the political class that wrote the Constitution, even if it wrote it for the future (debatably), their concerns were centred on getting rid of the heritage of the past and are not like the concerns required for development today. It is natural for young people in a society with a demographic gift as high as Iraq to find political discourse distant from it. Today, the youth need a new discourse. The call to amend the Constitution with its exact mechanisms is evidence of the vitality of the Constitution and society.

I conclude with three primary axes upon which every Constitution is based. These axes need to be reconsidered, but on the condition that the amendments should not take place except in a calm, comprehensive, and responsible dialogue. We must not start with imposition or make minor amendments to break the psychological barrier. No, we must link the amendments to the impact of societal stability. Because the Constitution is the last levy of the political process. If we change it and do not achieve stability, the public will lose confidence in the political process. Therefore, the amendment of the Constitution must be comprehensive and responsible. As European philosophers say, "The cure for democracy is more democracy." This means dialogue until reaching results. The following three axes are the basis for every Constitution:

- Rights and freedoms (developed in our Constitution).
- The nature of the political system is parliamentary, and here I call for staying in this parliamentary system. The presidential system is dangerous for transforming our society. Our guarantees are weak, and the current laws give enormous powers to the executive authority. The experience of Tunisia led by a constitutional jurist is hazardous. Egypt's



experience is tyranny, and the experience of other Arab states alarms us for not switching to a presidential system. Adjusting the work of the parliamentary system, restoring its balance, and granting powers to the executive authority are solutions to this system, which gives comprehensive representation.

- The form of the federal State (for example, federalism in Iraq) needs adjustment through exclusive and joint powers. The issue of oil and gas is a floating issue between the central and regional governments. What does Iraq mean without oil, gas, and antiquities? The court's recent decision tried to remedy this shortcoming. Nevertheless, the establishment of the second chamber, the House of Expertise, which controls the federal system by rationalizing the populist trends of Parliament, is very important. So is clarifying the terms used by all and establishing the Revenues Distribution Commission.

Another point to add to the three axes is the distribution of wealth. The core of the problem in Iraq is economic, in light of a rentier economy dependent on oil. When we control the economy and treat it with explicit and specific texts, this will be an important stabilizing factor for the political process.



## **Section Three**

# **Critical Academic Comments on Constitutional Amendment**

*Summary Compiled by: Dr. Salih Mahdi Khaeit (Academic & Researcher, Alalamein Institute for Higher Education)*

## **Contributors**

- Dr. Ali Al-Shukri
- Dr. Luqman Othman
- Dr. Adnan Ajel Obaid
- Dr. Hassan Al-Bahri
- Dr. Ali Saad Omran
- Dr. Fawzi Hussain Salman
- Dr. Mossadeq Adel
- Dr. Haider Al-Wazzan
- Dr. Mohamed Ezzat Mustafa
- Dr. Mohamed Anouz
- Sheikh Sabah Al-Saadi



## Critical Academic Comments

*Dr. Ali Al Shukri<sup>1</sup>*

We always give the example of the United States Constitution, which now has 26 amendments. If we compare it to the Iraqi Constitution, we may accuse the United States Constitution of shortcomings.

We hear from specialists and non-specialists that if we put a temporary constitution or govern without one, it would be better than our permanent Constitution. A minor deficiency in the Constitution is better than the absence of a constitution. I am confident that if the Constitution was not written in 2005, Iraq would have been without a constitution, as in Libya.

I am an advocate that the majority bloc is one formed in the Parliament, not one formed before that. The evidence is that the Constitution did not say 'an electoral bloc,' but rather 'a parliamentary bloc.' Representative does not acquire the status of representative except after the approval of the Federal Supreme Court. Hence, they exercise their rights after taking the oath, so the parliamentary bloc forms in Parliament and not before that. Parties' coalitions are the base for the parliamentary system.

More than two months ago, the German Chancellor Scholz formed a government with 25 seats. If we apply the electoral bloc principle, Germany must be without a government today because 25 of the total 188 seats is a percentage that does not reach one-tenth of the number of members of the Council.

*Dr. Luqman Othman<sup>2</sup>*

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<sup>1</sup> Chairman of the Constitutional Amendments Committee in the Presidency of the Republic

<sup>2</sup> Member of the Constitutional Amendments Committee in the Presidency of the Republic - College of Law - University of Mosul

First of all, I thank the Alalamein Institute for giving us this opportunity to meet again as Iraqis from the far north to the far south.

There was a constitutional, political, and moral obligation for the political forces that held power in 2005 to have a constitutional amendment under Article 142 (which was added at the last moments of writing the Constitution) to convince the political forces to accept this Constitution. Today, 16 years later, the three provinces that boycotted the Constitution are calling for the implementation of the Constitution and activating its requirements. However, the residents of these provinces are presented marginally within the military forces. The Constitution stipulates military balance and that it comprises all Iraqi components. Also, these areas suffer in their allocations from the state's general budget, which are not commensurate with the number of residents. The best example is the Nineveh Governorate and the destruction it witnessed to liberate Mosul.

I want to say that this Constitution has many advantages that need quick amendments. I believe that it was a factor of stability and is still the guarantor of Iraq's unity, and preserving the Constitution is preserving Iraq and the unity of its people.

***Dr. Adnan Ajel Obaid<sup>1</sup>***

I think from what I noticed during the session, there is agreement that the problem is not in the Constitution but the political aspect. At the same time, there are defects in the Federal Supreme Court, which is a 'foreign court,' as preferred by the chairman of the session.

If the flaw is in the implementation, then the Constitution draws the mechanisms to deter the authorities responsible for the non-implementation. However, if the politicians are the ones who bear the responsibility, what is the solution? Although the constitution-

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<sup>1</sup> College of Law - University of Al-Qadisiyah

writing Committee wrote the Constitution in challenging circumstances, did those who drafted it in 2005 think about dedicating immediate political gains, or did they foresee the future? Did they think of drafting a constitution for future generations, or did they think of perpetuating an existing situation out of fear of the past and preserving the current situation?

*Dr. Hassan Al-Bahri<sup>1</sup>*

Thanks to Bahr Al Uloom Foundation and Alalamein Institute for this kind invitation.

People judge Constitutions by their results. The Constitution in which the state prospers appears significant, so it is revered, quoted, and measured. In comparison, the Constitution that burdens the state will be replaced by another, even if supporters resist.

As a specialist familiar with the modern Iraqi constitutional experience after the fall of the previous regime, I thought this Constitution was subjected to great injustice because the writing process was under challenging circumstances, such as the U.S. occupation and the withdrawal of some blocs and boycotts.

In constitutional law, there are multiple methods for drafting constitutions. One method is the democratic one consisting of electing a Constituent Assembly; the people elect members, but on the condition that they are specialists, not politicians from among the Parliament members. The other issue is that the Committee that drafted the Constitution was not competent. In 1958, a specialized committee of senior scholars, jurists, and specialists in political science and constitutional law wrote the De Gaulle Constitution. As a result, the Constitution of the Fifth Republic was one of the finest and longest-lived constitutions.

This Constitution, in contrast, drew me to the fact that it talks about critical content for the first time in Iraqi constitutional history. The

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<sup>1</sup> Head of the Public Law Department at the Faculty of Law, Damascus University

Constitution talked about good neighbourliness, the rule of law, political and cultural pluralism, and the emphasis on identities and that this country is diverse in identities, nationalities, and ethnicities. Credit goes to the drafters of the Constitution. Also, among the other principles that caught my attention is Article 18, with its long paragraphs about citizenship. I think that for the first time, the Iraqi woman grants citizenship to her children. The other issue is demographic change, which Article 18 was keen to mention.

***Dr. Ali Saad Omran<sup>1</sup>***

The question is whether this Constitution is a stabilizing factor or a factor in creating crises. From my point of view, the Constitution created some crises at the political level in Iraq, and perhaps these political crises stem from, as the distinguished members of the constitution-writing Committee said, the political disagreement among them at the time of writing the constitutional texts.

Many constitutional articles state that rights and freedoms must be regulated by law. So why do we blame the Constitution? Why don't we say the problem is in Parliament? The political relationship between the legislative and executive authorities is unbalanced from a constitutional point of view. Over the eight years after 2010, we noticed the delaying of important laws. Foremost of these is the Law of the Federation Council and the constitutional amendments, especially Article 126, which requires consensus between the Presidency of the Republic and the Prime Minister in presenting the proposal for the amendment. Moreover, so many laws have stopped due to the lack of political stability organized by a constitutional text. Therefore, I consider it necessary to make fundamental constitutional amendments and reforms to save the political system in Iraq.

***Dr. Fawzi Hussain Salman<sup>2</sup>***

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<sup>1</sup> Alalamein Institute for graduate Studies

<sup>2</sup> College of Law - University of Kirkuk



My interjection concerns the people of Kirkuk province, which was and is still the focus of a great struggle over whether to annex it to the Kurdistan region or leave it like the rest of the Iraqi provinces. In Kirkuk, everyone loves one another, and their social bonds have increased day by day. When I came to Najaf, I put the keys to my house and my car with my Kurdish neighbour. I am not sensitive about that at all. The masses are not obliged to go along with the politicians in everything they propose. I assure everyone that Kirkuk will remain a safe place for all the Iraqi people. There is no conflict, but the solutions that may exist are costly.

Article 23 did not succeed because of the political class representing Kirkuk. Even Article 140 needs to be re-read again; who determines the will of the citizens of Kirkuk? In other words, Article 140's formula must be re-read over and over. What are the other disputed areas? Are they the regions with a component or a particular nationality? Are nationalities an emerging event to the State? Nationalities exist everywhere, and no governorate is free from the presence of more than one nationality or more than one sect. Nevertheless, if we sink into this issue, we will not come out with a result. I say, leave Kirkuk to its people, away from conflicts. Kirkuk is stable. It remains the city of brotherhood, as the late Mam Jalal called it.

***Dr. Mossadeq Adel<sup>1</sup>***

There are significant constitutional problems that the current Parliament may not be able to undertake, namely 83 issues the Constitution referred to be regulated by a law. Approximately 45% such laws were issued.

Today, far from political considerations and consensus, we need constitutional amendments related to oil and gas ownership, given the Federal Supreme Court Decision No. 59 of February 15, 2021, declaring the Kurdistan region's oil and gas law unconstitutional. Therefore, we need to redraw the natural resources distribution

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<sup>1</sup> College of Law - University of Baghdad

map, including oil and gas. For example, Dr. Ali Al-Shukri and I agreed in the Presidential Constitution Amendments Committee to create a text in Article 111 to distribute a fair share of oil and gas to all the Iraqi people. It is not enough for citizens today to be the owners of natural wealth if they live a destitute life.

Concerning the newly discovered fields, after the decision of the Federal Court, we need to reconsider Article 112 to limit oil and gas and make it one of the powers of the central government in light of the decision and the regional government's refusal to deliver oil and gas. Also, Article 112 is a crucial issue related to the joint management of oil and gas.

Therefore, we present this issue to Dr. Alaa Al-Rikabi and Mr. Hassan Al-Kaabi, to inform the public about the previous constitutional amendments and their intention regarding Iraq's natural resources after the Federal Court's binding decision, as well as about the newly discovered oil fields after 2003.

### ***Dr. Haider Al-Wazzan<sup>1</sup>***

Despite the advantages associated with the Iraqi Constitution – as it allowed for the democratic process from 2005 till today – we believe, from a specialized point of view, that the constitutional errors that accompanied the writing of the Constitution caused this constitutional crisis. The Constitution is supposed to be the fortress where individuals shelter and defend their rights, basic needs, hopes, and aspirations for a decent life. However, unfortunately, the Constitution, in some areas, immunizes its powers from punishment.

Constitutional principles are considered safe rules that politicians cannot violate. Therefore, to say that some principles are regulatory has disrupted the work of many constitutional institutions. We believe that the Constitution establishes the state and creates its legal system as the legal state's first foundation. In addition, the

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<sup>1</sup> College of Law- University of Kufa

Constitution establishes the state's public authorities. So, the validity of the Constitution means the correctness of the actions of public authorities. Moreover, if we began to reform the Constitution, we would achieve many reforms because everything derived from the Constitution is a product of this document.

Like in neighbouring states, the solution was supposed to be resorting to explanatory memos in interpreting some ambiguous texts (e.g., the Kuwaiti Constitution). This memo included all the clarifications regarding some ambiguous words and considered it an integral part of the Constitution. Furthermore, the memo took the same legal status as the Constitution. Otherwise, we resort to what the Transitional State Administration Law resorted to when it issued the Appendix to the Transitional State Administration Law, which clarified and even resolved many issues.

### ***Dr. Mohamed Ezzat Mustafa<sup>1</sup>***

Any intended amendment is to keep pace with the modern changes that the Iraqi people aspire to achieve through amending the Constitution. Amendment should not maintain the same constitutional contents or mistakes that occurred in the political process, such as quotas, weakness of the federal government, the weak relationship between the Parliament and the executive authority, and the weak relationship between the central government and the current regional government.

As an alternative to quotas, we need to strengthen the participation of the regions and governorates through a specialized council, the Federation Council, and to activate it and provide it with actual competencies, such as being an alternative to the abhorrent quotas. Those with certain opinions and demands can say it through the Federation Council, with the need to forbid the government, the Presidency, and the Parliament from any utilitarian sectarian practices.

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<sup>1</sup> College of Law - University of Mosul

***Dr. Mohamed Anouz<sup>1</sup>***

Thanks to Bahr Al Uloom Foundation and Alalamein Institute for holding continuous dialogues on topics affecting Iraqi security within their specialization in the legal and humanitarian fields.

In my opinion, the crisis is a consequence of the trust issues between the political parties. The conversations that I heard today and since the application of the Constitution are justifications, not treatments. Who does not know that people's opinions are imperfect, and therefore the Constitution is also imperfect? We have heard today more than a hundred times that the Constitution has a deficiency; what are the solutions to these shortcomings? I say half-solutions are the product of imperfect minds. If there were a political mentality that respected the sacrifices of the Iraqi people, we would not have rushed to write the Constitution. In addition, we would have written it accurately and reached results if the committee did not rush into issuing the current draft. Even the writing of the State Administration Law was in the light of an agreement on October 15, 2004, between Bremer and the late Jalal Al-Talabani, which stated, "Iraq should be a constitutional democracy." This is similar to the 1922 agreement that "Iraq is a constitutional monarchy."

***Sheikh Sabah Al-Saadi<sup>2</sup>***

Thanks to the Bahr Al Uloom Foundation and the Alalamein Institute for their conference on the constitutional amendments crisis.

I focus my interjection on the interpreter and the guarantor. Constitutionally, the interpreter is the Federal Supreme Court, and the guarantor of the implementation of the Constitution is the President of the Republic. This is according to Article 67, which states, "the President ensures compliance with the Constitution." Hence, the Federal Court is a speaking Constitution, as the

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<sup>1</sup> Chairman of the Parliamentary Legal Committee

<sup>2</sup> Researcher and former Parliament member

Constitution is a silent written document. Moreover, the Federal Court must determine the mechanisms of interpretation of the constitutional texts to avoid the personal opinions of members who interprets the Constitution. Therefore, when the courts change, interpretations should not change. However, currently changing a member of the Federal Court means that the interpretation changes, and there is no constitutional stability.

The Federal Court can change its opinions, whether after 10-25 years, or after a month or a year. However, the most important tools of constitutional interpretation need to be outlined. One of these tools is to refer to the minutes of Constitutional Drafting Committee because it is a document that refers to the opinion of the constitutional legislator, whatever their intention may be.

The Federal Court is an independent body that interprets the Constitution, while the President of the Republic is a guarantor of the Constitution and ensures that it is adhered to. Moreover, the President supervises all authorities, including the Federal Court itself. If the Federal Court violates a clear and explicit text of the principles or the provisions of the Constitution, the President of the Republic should stop it.

What mechanism ensures compliance with the Constitution according to Article 67? It is a supervisory article over the State, not an honorary one. The constitutional guarantee mechanism is sovereign decrees. The President of the Republic has the right to issue sovereign decrees because the Constitution represents sovereignty. It dominates over laws, decisions, and regulations in legislative terms, institutions, and authorities. Hence, this calls for an amendment to clarify constitutional supervision (i.e., Article 67).

## **Comments**

### ***Dr. Alaa Al-Rikabi***

I take the opportunity to ask two general questions in the presence of these academic and constitutional law specialists, especially the personalities who participated in writing the 2005 Constitution.

The first question is whether the Constitution, during the writing process, was 139 articles, while the current one is 144, meaning there are five extra articles. So the public is asking, is this true? I hope that law professors or those who contributed to writing the 2005 constitution will volunteer to answer because we are representatives of the people. The people are looking for information and the truth as it is.

In October 2019, young Iraqis demonstrated their right in the Iraqi Constitution, and today we are saying that we have the most spectacular thing written in the freedoms chapter. So, was the performance of Mr. Adel Abdul-Mahdi's government and the President of the Republic Dr. Barham Salih (the guarantor of the Constitution), constitutional in suppressing the rising youth with this terrible bloodshed?

The second question is whether the Federal Court is a constitutional court. The Iraqi Constitution describes the Federal Court under the occupation authority, with a specific description and at a specific time. The Federal Court, formed by Paul Bremer, was supposed to end within a time limit and start a new federal court. Were we under an unconstitutional Federal Court for more than ten years, with all the laws and ratifications of the past parliamentary sessions?

### ***Dr. Hassan Al-Yasiri***

I describe Article 142 as a dead article. The Constitution is supposed to be 139 articles, and the amendment of the Constitution was mentioned in Article 126. However, there was tremendous pressure from the United Nations that we should satisfy the Sunnis with the approval of the Shiite and Kurdish parties. The Sunnis asked to add an article granting them the right to reconsider this Constitution, which was written in their absence, so the Committee added Article 142. To summarize the Article, the Parliament, when it starts working, forms a committee representing the main components of the Iraqi people to make the necessary amendments and then submits its report to the Parliament within four months. At the beginning of the Parliament's work, the intended time for the Committee was four months, but it extended for another four months until it lasted three years. After that, the Parliament neglected all the amendments when there was no agreement with representatives of the Kurdish component on the oil and gas law and federalism (i.e., Article 140).

Consequently, the Committee added texts to the Constitution's transitional provisions, so the Constitution became composed of 144 articles. The Committee submitted the draft to a referendum comprising 144 articles. However, the United Nations committed a technical error; it anticipated the event and printed the first unamended version. As a result, the voting Constitution was composed of 144 articles. Hence, I say Article 142 is dead and refer to Article 126; why? Because Article 142 is restricted, and its restrictions are:

1. The Committee must represent the main components, and we do not have quotas in amending the Constitution.
2. Two-thirds of the voters must not reject the Constitution in three or more provinces

***Dr. Ali Al Shukri***

If we go back to the Constitution, it says that all legislation remains in effect unless repealed or amended explicitly. Now, Order 30 of

2005 was amended and not repealed. Therefore, according to Law 25 of 2021, the Federal Supreme Court is legitimate, constitutional, and operates according to Article 130. So, yes, it was established by Order 30 under the Law of Administration for the Transitional Period, but our Constitution says it works until amended or annulled.

The Presidency of the Republic was the first to take action, and we had a committee to follow up on detainees' affairs and another committee that followed up on the wounded. We housed many wounded in the Republic's Presidency and brought specialized doctors for those in serious condition. Even the Constitutional Amendment Committee had five representatives from the demonstrators. When a request was submitted to us to dissolve the Parliament, we issued a decree dissolving it on the same day. Then, we received the Parliament's decision to accept the resignation, so I issued the decree. We were the first to voice solidarity, but the executive authority is two branches: the Presidency and the government.

### ***Dr. Jaber Al-Jabri<sup>1</sup>***

The Constitution recognizes in its preamble that this country is a country of civilizations, cultures, creators, poets, and writers. However, it only stated in one paragraph in Article 35 that this country is a sponsor of cultural activities according to traditions and customs.

I align with Dr. Nadim Al-Jabri's opinion that the Constitution neglected the cultural and intellectual aspects and creativity. Even the writing process lacked specialists in the grammar of the Arabic language, which caused the lack of clarity in the constitutional articles' texts. Therefore, the absence of the correct wording and sound language in writing the Constitution was reflected in its articles and created a crisis of constitutional amendments.

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<sup>1</sup> Senior Undersecretary of the Ministry of Culture



Especially with the effort made by Bahr al-Uloom Foundation and Dr. Ibrahim Bahr al-Ullom, who fought the sovereignty battle and came out with diverse historical data. I hope the Constitution will proceed from this conference for its amendments.

## **Chapter Two**

### **A Critical Reading to Iraq's 2005-Constitution**

*Summary Compiled by: Dr. Salih Mahdi Khaeit (Academic & Researcher- Alalamein Institute for Higher Education)*

#### **Contributor**

- By Judge Dr. Wael Abdel Latif Al-Fadl<sup>1</sup>

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<sup>1</sup> Member of the Constitution Writing Committee - former Parliament member and former Minister



**(1)*****Controversial Points in the Proposed Amendments and Judicial Applications***

Iraq's Constitution was not written in haste, as some say, but it took a longer time than all the constitutions of Iraq from 1925 - 2005. I say that because the law went through several stages, longer consultations, and contained new principles and texts outside the traditional texts in the permanent Constitution of 1925 and the temporary constitutions from 1958-2004.

In its third parliamentary session, it appears that the Parliament has resolved to initiate constitutional amendments, which are mandated by constitutional articles 126 and 142. It is a continuation of reforms adopted by the masses and to which the Councils of Ministers and Parliament responded. Therefore, the Presidency of the Parliament has invited members of the Parliament who wish to register in the Constitutional Amendments Committee [a temporary committee which dissolves after completing its work by submitting the proposals agreed upon and submitted to the Parliament for a vote]. The Presidency of the Parliament has also requested, to complete the work of the committee, the Federal Supreme Court to interpret Articles 126 and 142 of the Constitution, which are concerned with constitutional amendments. So, the Federal Court answered the Council with the interpretation of the two articles, which are appended to this research. I hope that this will help those who are in charge of the constitutional amendment process in their noble mission.

Constitutional amendments are now available to the Parliament under Article 142 of the Constitution. The provisions of Article 126 of the Constitution have been restricted and excluded. Hence, constitutional amendments can be made to articles of the Constitution that are subject to the approval of the Parliament and then through referendum by the Iraqi people as decreed in Article 142. The amendments are necessary today, after eleven years since the implementation of the Iraqi constitution of 2005. There are

numerous facts and events that help the Constitutional Amendments Committee to reach a recommendation on the amendments for the purpose of submitting them to the Parliament, including:

- The Implementation of the provisions of the Constitution from 2006 until now
- The decisions issued by the Federal Supreme Court (the constitutional judiciary) and many interpretations that constitute an enormous number of constitutional judicial decisions and explanatory decisions
- Ongoing applications of the constitution by the Council of Ministers, the Parliament, and independent bodies
- What leaders, specialized legal competencies, civil society organizations, and political forces see as the requirements for amending the constitution

Furthermore, the Parliament, by an absolute majority of its members, decides on these recommendations, and then the people decide by a referendum within a period not exceeding two months from the date the amendment was approved in the Parliament.

Now, after the 2006-2010 and 2010-2014 parliamentary sessions, the President of the Republic and the Council of Ministers collectively or one-fifth of the members of the Parliament have the right to propose an amendment that includes all articles except ones related to powers of the regions.

That being said, it is time to make constitutional amendments to every controversial issue that has lasted for seventeen years, from the issuance of the Iraqi State Administration Law for the Transitional Period on March 8, 2004, till now. The decisions of the Federal Supreme Court, the constitutional interpretations, and what was issued by the administrative judiciary represented by the State Council in Iraq (the administrative judiciary, the employees' judiciary, and the Supreme Administrative Court) represents a

qualitative addition to the sound legal understanding of the constitutional texts, which may give them the character of a judicial amendment to the Constitution. However, the safest way for the constitutional amendments to be valid is to pass their natural course stipulated in the heart of the Constitution regarding the required procedures and the articles prohibited from amendment. A formal amendment to the Constitution is better



## **Chapter Three**

### **A Proposed Constitution of the Committee of Dr. Seyyed Bahr Al-Uloom**

*Summary compiled by: Dr. Enas Abdel Hadi Al-Rubaie  
(Researcher at Ministry of Justice – Iraq)*

#### **Contributors**

- Dr. Saad Abdul-Jabbar Al-Alloush
- Mr. Muhammad Abdul-Jabbar Al-Shabout
- Ms Maryam Al Rayes
- Mr Abdul Faisal Al-Sahlani
- Mr. Hussein Darwish Al-Adly
- Dr. Abdul-Hussein Shaaban





## (1)

*Sayyid Bahr Al-Uloom's Efforts in Drafting a Constitution**Dr. Saad Abdul-Jabbar Al-Alloush<sup>1</sup>*

Mr. Muhammad Bahr Al-Uloom started from London to ink his constitutional studies in determining who has the right to rule and who is not entitled to be an equal in this regard. Thus, he presented on July 29, 1995, to a constitutional studies symposium held by the Iraqi Institute in Washington with the participation of the Institute of Oriental Studies at the University of London. He gave me - may God have mercy on him - a copy of his book "Iraqi Political Papers," which included his general constitutional perceptions of the future Constitution of Iraq. In addition, the book included the provisions that rulers and individuals adhere to as they conduct their public and private activities in light of the political, social, and economic doctrine. The goal, as he summed up in words, was creating "the state of the nation and the citizen."

In 2003, His Eminence returned to Iraq and had the same vision he had when residing abroad. Furthermore, he felt the responsibility of calling for writing a constitution in which "the state of the nation and the citizen" would be established. The Constitution would determine who has the right to rule, to issue orders and to direct prohibitions, and what were the rights and legitimate duties of citizens. For this reason, Mr. Bahr Al-Uloom called a group of his legal friends, judges, politicians, intellectuals, and those working in public affairs, and I was one of them. He suggested making an effort to write a draft constitution for the country that draws its provisions from the abundance of principles of freedom, equality, and religion, especially the principles of the noble Islamic Sharia. They held meetings in his Eminence's house in Baghdad, which he chaired within the framework of a constitutional committee independent of the governmental committee formed to draft a new constitution for

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<sup>1</sup> Al-alamein Institute for graduate studies

Iraq under the state administrative law. The independent committee began its work in May 2005 and completed it in August 2005. Its work resulted in a new draft constitution presented as a supplement to the governmental committee to build upon when writing.

(2)

*Sayyid Bahr Al-Uloom's Constitution*

***Mr. Muhammad Abdul-Jabbar Al-Shabout<sup>1</sup>***

As part of his continuous efforts to rebuild the Iraqi state after the fall of the Baathist regime on April 9, 2003, Mr. Muhammad Bahr Al-Uloom formed a committee to draft a new Iraqi constitution on the side-lines of the Constituent National Assembly.

The formation of this committee embodied awareness of the priority of writing a constitution in the state-building process. The Constitution is the first building block of any modern state. Historically, specialized legislators wrote constitutions for their states. The Prophet Muhammad wrote a constitution for his young state after he emigrated from Mecca to Yathrib, despite the existence of the Holy Qur'an and the divine revelation accompanying the new state. Aristotle dealt with many of the constitutions of these countries through study and analysis in his book "The Politics."

The issue of writing the new Constitution was one of the most important controversial issues in Iraq after 2003. The question of who writes the Constitution is one of these controversial issues. At the time, two opinions emerged. The head of the Coalition Provisional Authority, Ambassador Bremer, expressed the first opinion; he believed that the Coalition Authority was the one to write the draft constitution. Imam Sayyid Ali al-Sistani, the supreme religious authority [for Shia Muslims worldwide], expressed a second opinion. His Eminence emphasized from the outset that the new Constitution can only gain legitimacy through its approval by the elected members of the National Assembly and by a general referendum.

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<sup>1</sup> Writer and politician

In the meantime, members of the Bahr Al-Uloom Committee continued to hold meetings and conduct specialized constitutional discussions to develop a proposed draft. Finally, the draft gained agreement. It consisted of 155 articles in addition to the preamble, compared to 142 articles included in the permanent Constitution approved in the 2005 referendum, which we call the 2005 Constitution.

In contrast to the relatively long preamble to the 2005 constitution, the preamble to the Bahr Al-Uloom constitution was condensed and brief. Nevertheless, this was not the only fundamental difference between the two preambles. Each of them carried a different spirit. The preamble to the 2005 Constitution began with the phrase "we are the sons of Mesopotamia" as opposed to the Bahr Al-Uloom constitution which began with "we are the people of Iraq." This technicality reflected the difference between the two preambles, as well as the rest of the articles of each constitution. The 2005 Constitution spoke about the components of the Iraqi people, including "Shiites and Sunnis, Arabs, Kurds and Turkmen, and all components of the people," not "citizens of the Iraqi people." This issue was the main difference between the two constitutions.

## (3)

*The Bright Spots in the Proposed Constitution of Mr. Bahr Al Uloom's Committee**Lawyer Maryam Al Rayes<sup>1</sup>*

Lawyer Maryam Al-Rayes referred to many points in the proposal for the Constitution of the Mr. Bahr Al-Uloom's Committee. She considered them a source of ideas for the Parliamentary Constitution Writing Committee, where she held the rapporteur position. She emphasized many commonalities between the proposed constitution and the Iraqi Constitution, with points of difference in many chapters.

The first article of the proposed constitution called for a democratic republic, and the other articles called for a system of government closer to a semi-presidential system where the president of the republic is elected directly by the people while maintaining a balance of powers through the prime minister. This shows Mr. Bahr Al-Uloom's committee's awareness of the importance of this issue. However, other parties were afraid of the possibility of the return of dictatorship in the case of the presidential system. The irony is that the committee members of Mr. Bahr al-Uloom were looking forward to the future and expected a conflict or difficulty in implementing some paragraphs.

Also, Al-Rayes pointed out that there are essential paragraphs in the proposed constitution in the field of rights and freedoms, including paragraphs 18 and 19, which established a guarantee of the most significant degree of justice for the rights of individuals. In addition, if adopted, paragraph 24 of the proposed constitution would have contributed to curbing corruption that hinders the work of the state. It also showed the strength of the proposed constitution's

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<sup>1</sup> Rapporteur of the 2005 Constitution Drafting Committee

provisions in their proposed federal councils, such as the Office of Financial Supervision and the Service Bureau.

She also referred to the proposed constitution's definitions of exclusive and joint powers. The proposed constitution in Article 122 grants the Constitution and federal laws supremacy over the region's laws and the governorates' local legislation. The lawyer praised Article 136 of the proposed constitution, which proposed the presence of a federal representative in the region as a coordinator minister representing the federal government.

(4)

*Sayyid Muhammad Bahr Al-Uloom's Constitutional Workshop**Mr Abdul Faisal Al-Sahlan<sup>1</sup>*

The religious authority in Najaf, led by Sayyid Ali al-Sistani, insisted on writing a new constitution and assigning the National Assembly, elected by the people, to write this Constitution. The National Assembly elected 79 members to form the committee to draft the permanent Constitution. This met the religious authority's demand to prepare a constitution written by Iraqis and approved in a general referendum. However, the process coincided with an essential component boycotting the elections, which weakened the component's representation. Despite the presence of members in the National Assembly of this component, it was not at the required level of representation. Nominating representatives of this component to be members of the constitution drafting committee resolved this defect at the time. However, they did not attend the assembly's meetings because they were not elected.

Mr. Bahr Al-Uloom initiated a weekly workshop unrelated to the Governmental Constitution Drafting Committee. However, it discussed and deliberated all the chapters of an Iraqi national constitution that includes a collection of all Iraqi laws that must be extracted and derived from the Constitution. Hence, Mr. Bahr Al-Uloom invited thinkers, political actors, jurists, legislators, and those with knowledge of the Constitution. In a literal, transparent, and scientific manner, Mr. Bahr Al-Uloom summoned some jurists and legislators to present ideas about the meaning of the Constitution at the beginning of each session. However, Mr. Bahr Al-Uloom did not impose an opinion or ask for emphasis on a specific subject in each chapter of the Constitution. Usually, politicians, intellectuals, writers, lawyers, and people with

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<sup>1</sup> Member of the 2005-Constitution Writing Committee



experience initiated the discussion first to discuss the main ideas in the concept of the Constitution, then specific vital articles.

His Eminence conveyed the discussions to the head of the drafting committee, Sheikh Humam Hammoudi. Not to mention, Mr. Bahr Al-Uloom invited many committee members to see these discussions and transmit them to the governmental committee, providing them with unique constitutional advice. Also, these meetings provided the workshop members with the latest findings of the constitution drafting committee. I enclose some documents of this highly organized workshop as a contribution and a national commitment towards our people. There must be a fundamental law that would be a common denominator among the components and segments of Iraqi society from north to south. The proposed constitution was submitted to the Constitution Drafting Committee in the National Assembly as a resource.

(5)

*The Constitution of Sayyid Bahr Al-Uloom*

*Mr. Hussein Darwish Al-Adly<sup>1</sup>*

Experts wrote the draft constitution of Bahr Al-Uloom in the summer of 2005, and I was one of the participants in the committee headed by His Eminence Sayyid Muhammad Bahr Al-Uloom. Endless meetings and political, constitutional, jurisprudential, and social competencies completed the constitutional draft in three months. The committee submitted the Constitution to the parliamentary constitutional committee that approved the current Iraqi Constitution in 2005. As far as I know, the parliamentary committee did not benefit from Mr. Bahr Al-Uloom committee's effort. We are not here to present a detailed study of this constitutional draft, as it has become history. Instead, I will stand on the most critical fundamental pillars that this constitution worked on and emphasized, as we find in the provisions of this constitution. This includes:

1. The unity of the state, land, and nation, and the prohibition of fragmentation under any circumstance. Thus, it does not legitimize any establishment of division nor establish the project of disguised states.
2. Citizenship as a building unit and a sole affiliation to the state, and considering the state as a nation united by citizenship, identity, and shared interests. Consequently, it exceeds "the component" and its danger to the unity of the state.
3. The centrality of humans/citizens and their human and national rights: to consider the state as the state of man.
4. Taking into account the facts of history and the benefits of Iraqi societal diversity by giving expression through natural,

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<sup>1</sup> Researcher and politician

civil, and legal means in a way that does not affect the unity of the state.

5. Adopting (somewhat) the semi-presidential system to ensure the best performance of the executive authority and taking into account the repercussions of the recent experience of the party-based parliamentary system.
6. Giving identity and sub-interests constitutional importance through constitutionalizing the regional system to ensure compatibility between sub-interest and national interests.
7. Adopting a flexible constitution regarding constitutional amendments to ensure the response to challenges and developments the country is witnessing in its integrative path.

## (6)

*Dr Sayyid Bahr Al-Uloom and his Constitutional Project**Dr. Abdul-Hussein Shaaban<sup>1</sup>*

We find that Mr. Abdul-Hussein Shaaban reviewed the situation from 2003-2005, referring to several events that accompanied that historical stage. He explained that the period that His Eminence lived through was a foretaste of fragmentation, divergence, and unfair competition. Therefore, His Eminence's initiative to form a committee to draft a new constitution for Iraq was a purely Iraqi project to build a state outside the circle of regional interests, characterized by intellectual independence – despite the intellectual and legal malaise and political obsessions prevalent in the Iraqi arena.

Dr. Shaaban stressed that the initiative of the Alalamein Institute to discuss the constitutional crisis in Iraq represents an extension of Sayyid Muhammad Bahr Al-Uloom's project in terms of approach and within the framework of that initiative. Dr. Shaaban represented the views delivered in the context of that initiative, which illustrated critical points for discussion among all parties.

Dr. Shaaban pointed out themes that are consistent with the aspirations for the principles of citizenship in the modern state, with an emphasis on the legitimate rights of all components of the people. This is a guarantee of Iraqi unity, which was the worrying concern of the parties to the political process. He also reviewed several points, including the formula of federalism. He did not acknowledge its establishment on an ethnic basis, or the basis of race, or sect. Rather, he emphasized its acceptance following geographical and historical realities (i.e., the dependence of its establishment on decentralized administrative principles by distributing state powers between the central and regional governments). Dr. Shaaban said that Mr. Bahr Al-Uloom's project

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<sup>1</sup> Academic and Researcher - Vice President of the University of Nonviolence - Beirut

avoided any mention of the so-called "components" which are expressly mentioned in the current Iraqi Constitution.

Dr. Shaaban finds His Eminence's initiative represents a review and critique of the previous stage that established the rule of components as a *fait accompli* in political life. From this standpoint, restoring His Eminence's constitution is a purification of the atmosphere surrounding the political process, which the current Constitution may be the source of many of its problems.

(7)

*Constitutional Reform Mechanism in the 2005 Constitution and the  
Constitution of Sayyid Bahr Al-Uloom*

*Dr. Ali Youssef Al Shukri*

Dr. Al-Shukri compared the constitutional reform mechanism in the 2005 Constitution and the constitution of Sayyid Bahr Al-Uloom. He began his participation by recalling the exact position of the supreme religious authority on the State Administration Law for the Transitional Period on two occasions. It directed the first message to the Security Council President, and the second was regarding the referendum. In both cases, the supreme religious authority rejected any legal system that did not gain legitimacy through ratification by an elected National Assembly. Dr. Al-Shukri pointed out that Sayyid Muhammad Bahr Al-Uloom was at the forefront of the recipients of the messages of reference in this regard, initiating the formation of his committee of specialists in constitutions, law, and politics. This coincided with the formation of the official committee to work in a parallel. Sayyid Bahr Al-Uloom wished to create an alternative should the official committee not be able to accomplish the task entrusted to it. Al-Shukri also referred to the visit of some official committee members to the committee of Sayyid Muhammad Bahr Al-Uloom. The two committees thus communicated, and this can be seen through the interpretation of the common ideas and principles between them.

Dr. Al-Shukri began presenting the origin of the term "the Supreme Document" to remove confusion and ambiguity from the concept of the basic law or the Constitution in its ordinary sense, to be a prelude to his discussion of amending the constitutional document. Also, he presented indications in the comparative constitutions and the Iraqi Constitution to discuss the amendment process according to each. Hence, he addressed the competent authority in proposing the amendment and referred to the jurisprudential opinions to indicate the competent authority to propose the amendment.

In this regard, he dealt with each according to the position of comparative constitutions in that framework. The considered options were as follows. First, the head of state has the authority to propose the amendment. Secondly, the legislative authority singularly has that authority. Third, to grant that authority to the executive and legislative authorities by suspending the entry into force of that amendment on the opinion of the people expressed in a general referendum, which is considered the dominant trend. Fourth, in some constitutions, the people are involved in proposing the amendment.

He detailed these trends to serve his research within the scope of the subject as a prelude to clarifying that His Eminence's Constitution intended to keep pace with the prevailing trend. It did so by granting the government and parliament the right to amend the Constitution, not specifying the majority required for the issuance of the government's proposal. Is it by the majority of the assembly members or those present? Or is the matter held with the approval of a special majority, with equal right to propose among the legislative authority?

Dr. Ali Al-Shukri discussed the issue of the authority concerned with approving amendment proposals and final approval of amendments. He reviewed the process in whole and in detail, so that this would be a guide for the informed reader to find out the importance of the constitution of His Eminence. This comes from the fact that it came in response to the directive of the supreme religious authority, which emphasized on more than one occasion that the constitution must be written by representatives of the people. It rejected any constitution issued by any other mechanism. Dr. Al-Shukri noted that the proposed constitution was prepared in conjunction with the work of the Constitutional Committee on preparing the draft permanent constitution. The Sayyid Muhammad Bahr Al-Uloom's committee was thus intended to be a supportive auxiliary to the original project, especially if they knew eagerly what was stated in his statement by informing and listening to some members of the Constitutional Committee in the National

Assembly about his Eminence's draft. This was effectuated though the participation of some members in the two committees, and the distinction of his Eminence's committee by involving senior specialists in constitutional law and the fields of law and politics. Thus, it can be described as a specialized committee with distinction.

In conclusion, Dr. Al-Shukri referred to approaches in his research by emphasizing the convergence between Sayyid Bahr Al-Uloom's proposed constitution and the 2005 Constitution regarding amendment procedures and their mutual influence. Thus, this evidence confirms the joint effort that left its mark on the constitutional text adopted in the end to be the permanent Constitution of Iraq.



## Chapter Four

### The Constitutional Amendment Crisis: Conclusions and Recommendations

*Summary compiled by: Dr Ali Yaghibi (Academic & Researcher at Mansour College-Baghdad)*

#### Contributors

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- Dr. Saab Aboud Naji - Academic - Alalamein Institute for Graduate Studies
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## **The Crisis of Constitutional Amendments**

### *Conclusions and Recommendations*

As a continuation of the efforts launched with the “Iraq Sovereignty Crisis” and the dialogues included in the paragraphs of this project, the “Constitutional Amendments Conference” was held and organized by the Alalamein Institute in cooperation with the Bahr Al-Uloom Forum under the theme: “The Iraqi Constitution of 2005 and its Effectiveness in Political Stability.” The conference was held in Najaf, on Saturday, February 19, 2022.

The country's exceptional circumstances (i.e., the mass protests in October, the government's resignation, and the organization of early elections) resulted in political blockage, a breach of constitutional deadlines, and altercations between the political blocs. Furthermore, it created high anxiety over the future of the political process, security, and social stability. In order to avoid further weakening of confidence in the political process, the organizers sought to extrapolate the opinions of specialists, academics, and experts in this field and present them to decision-makers, hoping that they would help evaluate the negatives and advance the reality that the young generations aspire to. Thanks to the enormous means of communication provided by modern technology, young people can now compare our experiences with other global experiences.

It is necessary to emphasize a fundamental issue: the importance of the 2005 Iraqi Constitution and its success in facilitating and codifying the process of peaceful transfer of power in Iraq despite all the internal and external challenges accompanying the change after 2003. However, the Iraqi experience needs political leaders' desire to leave the past and liberate themselves from the complexities that accompanied them. This will surely be difficult in practice, as the policies of the previous regimes negatively charge the historical memory. The feeling of injustice and marginalization negatively affected trust among these political leaders, as they began rehashing the past more than their future aspirations.

Nevertheless, a question arises about defects in the Constitution or the lack of application of Constitutional text. Assuming the necessity of amending it, who will carry out these amendments and develop their content? Will these amendments absorb the challenges and represent the Iraqi people? In addition to the constitutional, legal, political, administrative, and national experience, who will be assigned to these committees? On the other hand, if the political forces caused the problem or are the same forces that participated in drafting the permanent Constitution, what is the point of amending it on their part? However, if the forces charged with this are from the outside, will they be neutral and not affiliated with them, and will they not affect the amendments?

The Constitutional articles related to amendments (Articles 126 and 142) significantly impede the possibility of reaching an understanding to an acceptable and reasonable extent on the amendments. Any amendment that affects the Constitution means that some parties will feel deprived, others will be disinterested, and others will consider themselves winners – all according to the constituent divisions of the country.

Nevertheless, a group of academics and specialists tried to formulate results and recommendations through the Constitutional Amendments Conference. The conference research was presented to a specialists committee to unify its results and derive its contents. The conclusion was as follows:

1. Constitutional amendments are necessary due to the successive changes and developments resulting from Iraq's constitutional and political experience. However, many obstacles stand in the way of constitutional reform and the amendment of the Iraqi Constitution, the most important of which is the mechanism of Article 142. This is also complicated by the Federal Supreme Court's decision No. (54 / Federal / 2017) on 21/5/2017, in which it emphasized the necessity of taking the exceptional path mentioned in Article 142 in making any constitutional amendment before taking the usual path of

making constitutional amendments contained in Article 126 of the Constitution. This does not cancel or diminish the importance of an amendment to the texts of the Constitution. Nor does not diminish the amendments' importance, given people and the political authorities' awareness.

2. Deficiencies and ambiguities plagued some constitutional texts and weaknesses in legislative drafting, emptying them of their content, provoking many operations, distorting the legislature's intent, and effectively disrupting its provisions. This had a significant impact on the constitutional texts' stability. That is why we find that these texts are effectively disabled, which requires reformulating the constitutional texts in a straightforward manner that does not raise any confusion or ambiguity.
3. Amending constitutional texts is a natural and necessary matter, and the basis for amending these texts is keeping pace with the various developments that accompany the political process. There are circumstances surrounding the process and related to economic, political, and social developments that directly impact the legal system, which requires necessary amendments to the Constitution. Otherwise, the texts will become distant from reality, necessitating amending them illegally or through coups or revolutions.
4. Despite the constitutional acknowledgment that the federal legislative authority in Iraq is composed of two chambers, this authority is still composed of one chamber due to the constitutional disruption that hit the second Council (the Federation Council). This lack constitutes a fundamental defect in the structure of the Iraqi federal system due to the absence of the regional representatives' participation in this authority, causing an actual disruption of the Constitution and a violation of the two-chamber system that characterizes the federal state envisioned.

5. The Iraqi Constitution did not include a clear and precise definition of a caretaker government, which did not set clear parameters for this term or define its work. Also, the absence of a fixed or objective criterion limits the work and power of the caretaker government. However, most constitutions give the caretaker government the right to exercise its powers in the narrow sense of conducting business.
6. There is weakness and ambiguity in the exclusive powers of the federal government. It gives everything not mentioned in the federal government's exclusive powers, to be within the powers of regions and governorates. So, the priority in legislation (in common powers) is the laws of the regions and governorates. Instead, the Constitution went even further when it gave the regions the right to amend the application of the federal law if it contradicts a regional or local law, which is contrary to what most federal states have followed.
7. The 2005 constitution tended to define the competencies of the Federal Supreme Court, but we did not find, within those competencies, the authority to monitor constitutional amendments explicitly. Suppose the court has the authority to interpret the provisions of the Constitution and consider the constitutionality of the procedures issued by the federal authority, including the procedures for amending the Constitution. In that case, the court has an essential role in constitutional amendments, manifested in Court Decision No. 45 of 2017, which invalidated *jus cogens* constitutional periods to organizational periods. Hence, it obligates the Parliament to complete the exceptional constitutional amendments under Article 142 of the Constitution before moving on to regular constitutional amendments.

### *Recommendations*

The following recommendations can be achieved, according to practical reality, on more than one stage and according to priority.

1. **Amending Article 76/First:** Allowing electoral lists to participate in the elections with different names and numbers for the bloc after the announcement of the electoral results and the formation of the most numerous parliamentary bloc that takes over the formation of the government, would lead to prejudice to the constitutional rights of the voter. Given the repeated problems and multiple interpretations of the expression “the most numerous parliamentary bloc,” we find the need to amend the text of Article 76/first of the Constitution by replacing the phrase “the most numerous parliamentary bloc” with the phrase “electoral bloc.”
2. **Amending Article 70/First:** Because of the great controversy, political obstruction, and the severe adverse effects left by the ambiguity of the expression “the two-thirds majority” required to elect the President of the Republic, we find the necessity to amend the text of Article 70/First of the Constitution regarding the required majority. It must either be a majority of two-thirds of the total number of members of the Parliament, or a majority of two-thirds of the members after achieving a quorum by an absolute majority based on the text of Article 59/First of the Constitution. Alternatively, the constitutional amendment includes the participation of the Federation Council in electing the President of the Republic in a joint session with the Parliament, and the President shall be the one decided by the majority.
3. **Amending Article 65:** We call on the Iraqi constitutional legislator to amend Article 65 of the Iraqi Constitution of 2005 regarding the Federation Council, provided that the amendment includes a text on the method of formation, terms, and conditions of membership, as well as the Federation Councils competencies, and its relationship with the Parliament and other authorities. Moreover, the new Article should stipulate the Constitution as a determinant of composition and competence rather than making it a prerogative of the Parliament to guarantee equality in their

constitutional organization. The Federation Council has a role in forming the executive and federal authority and holding it accountable. Also, it constitutes a fundamental guarantee for the representation of the regions as part of the federal authorities in Iraq. The need to expedite the issuance of the Federation Council law based on the above Article is a necessity of the federal system in Iraq.

4. **Amending Article 92/Second:** In order to preserve the continuity of the work of the Federal Supreme Court and ensure its independence, and to achieve effectiveness and accuracy in the decisions issued by it, we propose to amend the text of Article 92/Second of the Constitution and explicitly stipulate in it the number of court members, the term of office of each of them, the method of their nomination and selection, and regarding the number of members. Each judge has the right to choose nine original members and four reserve members from among the nominated judges. Their number is nine to ensure the diversity of ideas and visions in the court's work. As for the membership term, we suggest it be for ten years if no health or legal reason prevents the member from exercising his/her role in the court, or losing one of the membership conditions or qualifications to maintain work. This allows for consistency and stability, as well as to benefit from the experience of its members. Also, we suggest that the selection of members should be through election by the Federal Courts of Appeal judges in the region and all governorates.
5. **Amending Article 93:** to expand the powers of the supervisory court by adding an explicit paragraph allowing the Court to impose its oversight on the failure of the Parliament to fulfil its obligations arising from non-compliance with constitutional timings. This is especially important regarding those constitutional timings related to legislating laws (e.g., the condemnation of the President of the Republic, the Prime Minister, and ministers, the law on the formation of the



Federation Council, as well as the law of abandonment of nationality acquired for those who hold a high-ranking sovereign or security position). The amendment is necessary because of the importance of the oversight role exercised by the Federal Supreme Court and its tremendous impact in protecting the provisions of the Constitution and activating provisions contradicted by the legislative authority.

6. **Amending Article 64:** Concerning the nature of the political system, we see the evaluation of the parliamentary system and its balanced application through amending Article 64 of the Constitution to restore the balance between the legislative and executive powers. A balance of powers is one of the most critical features of the traditional parliamentary system. This can be achieved by adding the dissolution of Parliament to the competence of the executive authority (without returning to the Parliament) as a counter means of withdrawing the confidence of Parliament and linking the approval of the President of the Republic to a recommendation from the Prime Minister. In addition, another paragraph should include, "If elections do not take place within the specified period, which is sixty days from the date of the dissolution, the Parliament returns to carrying out its work as if there were no dissolution, until the holding of new elections and formation of a new parliament."
7. **Amending Article 115:** The aim of this amendment is to ensure that federal laws are given priority over regional laws in the competencies referred to in the Article above, with the exclusion of governorates that are not organized in a region as it has nothing to do with the common competencies. The amended text should read as follows: "Everything not stipulated in the exclusive competencies of the federal authorities is within the jurisdiction of the regions and governorates (not organized in a region), and the other powers shared between the federal government and regions, the priority of which is the federal law in the event of a dispute

between them." The amendment is in line with the general trend of strengthening federal authority.

8. **Amending the Preamble:** The Constitution mentions the term "components" in its preamble. This term may suggest a weakening of the principle of citizenship. It is necessary to amend the preamble and lift the phrase "components" and replace it with the phrase "the Iraqi people" while working to strengthen confidence between political parties.
9. **Customs Administration:** Amending the Constitution of the Republic of Iraq of 2005 in a way that makes the customs administration one of the exclusive jurisdictions of the central federal government and removes it from the common competencies, as there is a conflict between Article 114/First and Article 109 of the Constitution in this regard.
10. **Other Natural Resources:** The Constitution of the Republic of Iraq of 2005 did not address other natural resources such as iron, gold, uranium, and other minerals. An amendment should make those resources among the exclusive competencies of the federal government.



## Appendix

### List of Contributors: Participants in the Constitutional Amendments Crisis Project

- I. Introduction: Dr. Ibrahim Bahr Al-Uloom
- II. Speech of His Excellency the President of the Republic Dr. Barham Salih
- III. **Volume One: The Constitutional Amendments Crisis in Political Vision**
  - A. **Chapter One:** The Constitutional Amendments Crisis in Political Vision
    - i. **Section One:** The vision of participants drafting the 2005 Constitution
      - (1) Dr. Adel Abdul Mahdi - Former Prime Minister
      - (2) Dr. Adnan Al-Janabi - Former minister and member of Parliament
      - (3) Dr. Nadim Al-Jabri - Academic and a former member of Parliament
      - (4) Mr. Mohsen Al-Saadoun - Leader in the Kurdistan Democratic Party
      - (5) Mr. Fadel Mirani - Kurdistan Democratic Party (Secretary of the Political Bureau)
      - (6) Mr. Yonadam Kanna - Former member of the Parliament and head of the Assyrian Democratic Movement
    - ii. **Section Two:** Proposed Constitutional Amendments in the Constitutional Reforms Committees of 2007, 2019, and 2021

- (1) Sheikh Humam Hammoudi - President of the Iraqi Supreme Council - and Chairman of the Constitution Writing Committee 2005
- (2) Dr. Amer Hassan Fayyad - Academic and member of the amendments committee in the Presidency of the Republic
- (3) Dr. Hassan Al-Yasiri - Academic and member of the Constitutional Amendments Committee 2007
- (4) Dr. Luqman Othman Ahmed - Academic and member of the amendments committee in the Presidency of the Republic
- (5) Dr. Munther Al-Fadl - Academic and member of the Constitutional Amendments Committee 2007
- (6) Dr. Shorsh Hassan Omar - Academic and member of the Constitutional Amendments Committee in the Presidency of the Republic
- (7) Dr. Hassan Karim Al Kaabi - Former First Deputy Speaker of Parliament and Chairman of the Parliamentary Constitutional Amendments Committee 2019
- (8) Dr. Mohsen Abdul Aziz Al-Hakim - a leader in National Hikma Movement
- (9) Dr. Alaa Al-Rikabi – Parliament member and head of Imtidad movement
- (10) Dr. Faisal Ghazi Mahdi - Academic and Advisor in the Legislative Drafting Department of the Parliament
- (11) Dr. Muhammad al-Hamawandi - Academic
- (12) Dr. Adnan Ajil Obaid - Academic and member of the Constitutional Amendments Committee in the Presidency of the Republic 2020

(13) Dr. Ali Issa Al-Yaqoubi - Academic and member of the Constitutional Amendments Committee in the Presidency of the Republic

(14) Dr. Hassan Al-Janabi - Former Minister of Water Resources

iii. **Section Three:** Critical Academic Comments on Constitution Amendments

(1) Dr. Ali Al Shukri - Academic and senior advisor to the President of the Republic

(2) Dr. Luqman Othman Ahmed - Academic - University of Mosul

(3) Dr. Adnan Ajeel Obaid - Academic - University of Al-Qadisiyah

(4) Dr. Ali Saad Omran - Academic - Alalamein Institute for Postgraduate Studies

(5) Dr. Fawzi Hussein Salman - Academic - University of Kirkuk

(6) Dr. Mosaddeq Adel - Academic - University of Baghdad

(7) Dr. Ali Issa Al-Yaqoubi - Academic - Al-Mansour University College

(8) Dr. Haider Al-Wazzan - Academic - University of Kufa

(9) Dr. Muhammad Ezzat Mustafa - Academic - University of Mosul

(10) Representative Dr. Mohamed Anouz - Head of the Parliamentary Legal Committee

(11) Sheikh Sabah Al-Saadi - Academic and former member of the Parliament

- (12) Representative Dr. Alaa Al-Rikabi – Parliament member and head of Imtidad movement
- (13) Dr. Hassan Al-Yasiri - Academic - University of Karbala
- (14) Dr. Hassan Al-Bahri - Academic - University of Damascus

**B. Chapter 2: A Critical Reading of Iraq's 2005 Constitution**

- (1) Judge Dr. Wael Abdel Latif - Former MP and Minister

**C. Chapter 3: Dr. Sayyid Bahr Al-Uloom's Proposed Constitution of 2005**

- (1) Dr. Saad Abdul-Jabbar Al-Alloush - Academic
- (2) Mr Muhammad Abdul-Jabbar - Politician and writer
- (3) Lawyer Maryam Al Rayes - Rapporteur of the Constitution Writing Committee 2005
- (4) Mr. Abdul Faisal Al-Sahlani - Politician
- (5) Mr. Hussein Darwish Al-Adly - Politician and writer
- (6) Dr. Abdul-Hussein Shaaban - Academic, President of the University of Nonviolence - Beirut
- (7) Dr. Ali Youssef Al Shukri – Former Parliament member and former Minister- Senior Advisor to the President of the Republic

**D. Chapter 4: The Constitutional Amendment Crisis, Conclusions and Recommendations**

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- (3) Dr. Sivan Pakrad Mesrob - Academic - College of Law - University of Mosul

- (4) Dr. Tariq Muhammad Tayeb Al-Qassar - Academic - College of Political Science - University of Mosul
- (5) Dr. Maher Faisal Saleh - Academic - College of Law - University of Anbar
- (6) Dr. Morteza Shanshul Sahi - Academic - College of Political Science - University of Maysan
- (7) Dr. Yasser Attiwi Al-Zubaidi - Academic - College of Law - University of Karbala

**E. Chapter Five - Executive Summary**

- (1) Dr. Saleh Mahdi Kahit - Academic - Department of Law - Alalamein Institute for Graduate Studies
- (2) Dr. Enas Abdul-Hadi Al-Rubaie - researcher - the Iraqi Ministry of Justice
- (3) Dr. Saab Aboud Naji - Academic - Alalamein Institute for Graduate Studies
- (4) Dr. Ahmed Ghaleb Al-Shalah - Academic - College of Political Science - Al-Nahrain University

**IV. Volume Two: The Constitutional Amendments Crisis in Academic Vision**

- A. Speech by Dr. Zaid Adnan Mohsen, Dean of the Alalamein Institute for Graduate Studies
- B. The Political System Issues
  - (1) Dr. Abdul-Azim Jabr Hafiz - Academic - College of Law - Al-Nahrain University
  - (2) Dr. Ayat Salman Shahayeb - Academic - College of Law - Al-Mustansiriya University
  - (3) Dr. Wael Munther Al-Bayati - College of Basic Education - Al-Mustansiriya University



C. Disruption the Authorities Relationship

- (1) Dr. Hassan Mustafa Al-Bahri - Academic - Faculty of Law - University of Damascus
- (2) Dr. Haider Abdul-Redha - Academic - Al-Safwa University College - Baghdad
- (3) Dr. Ali Saad Omran - Academic - Alalamein Institute for Graduate Studies
- (4) Dr. Iman Qassem Hani Al-Safi - Academic - College of Law - Al-Mustansiriya University
- (5) Dr. Enas Abdul-Hadi Al-Rubaie - Researcher - Iraqi Ministry of Justice

D. The Federal System Issues

- (1) Dr. Shorsh Hassan Omar - Academic - College of Law - University of Sulaymaniyah
- (2) Dr. Karwan Urhaman Ismail - Academic - University of Human Development - Sulaymaniyah
- (3) Dr. Yamama Muhammad Hassan Kashkool - Academic - College of Law - Al-Mustansiriya University
- (4) Dr. Israa Alaa Al-Din Nouri-Academic-College of Political Science-Al-Nahrain University
- (5) Dr. Sarwah Jamal Haider - Academic - Erbil Technical University
- (6) Dr. Ammar Maher Abdul-Hassan Al-Khafaji - Researcher - Iraqi Ministry of Interior

E. Distribution of Natural Resources

- (1) Dr. Fawzi Hussein Salman - Academic - College of Law and Political Science - University of Kirkuk
- (2) Dr. Amal Abdel Rahman Ibrahim - Academic - College of Law and Political Science - University of Kirkuk

- (3) Dr. Asaad Kazim Wahish - Academic - College of Law - University of Dhi Qar
- (4) Dr. Zainab Sharif Al-Jazaery-Academic-Faculty of Law- Al-Nahrain University
- (5) Dr. Qatada Saleh Al-Saleh - Academic - College of Law - University of Dhi Qar

F. Building Security and National Unity

- (1) Dr. Muhammad Ezzat Fadel - Academic - College of Law - University of Mosul
- (2) Dr. Uday Talal Mahmoud - Academic - College of Law - Nineveh University

G. Constitutional Reform Mechanisms

- (1) Dr. Mosaddeq Adel - Academic - College of Law - University of Baghdad
- (2) Dr. Hassan Ali Al-Budairi - Researcher - Iraqi Parliament
- (3) Dr. Haider Naji Taher Abu-Saib' - Academic - Al-Furat Al-Awsat Technical University-
- (4) Dr. Laila Hantoush Naji - Academic - College of Law - University of Babylon
- (5) Dr. Shahla Idan Abed - Researcher - College of Law - University of Babylon