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The Necessity of Collaborative Federalism for Oil and Gas Management in Iraq

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Abstract

The distribution of power and wealth is a contentious issue of federalism in Iraq. It has caused major conflicts between the federal government and the Kurdistan Regional Government (KRG), especially over the management of oil and gas. This paper aims to clarify the nature of those disputes and their possible solution through Elazar’s theory of collaborative federalism. After presenting the principal elements of collaborative federalism, it provides eight rationales for adopting collaborative approach in Iraq. The rationales are mainly examined in the context of managing oil and gas between the central government and KRG. The paper then discusses some potential challenges for changing the nature of federalism in Iraq from competitive to collaborative.

I. Introduction

Since the constitutional adoption of federalism in Iraq in 2005, several political, economic and legal issues have remained unsettled, and caused conflicts and disagreements among major political groups in Iraq. While drafting the constitution, major socio-political forces of Iraq, the Shiite, Sunni, and the Kurds well understood the difficulty of the distribution of power and wealth, especially with respect to oil and gas.¹ The best they could agree on was designing two principal articles 111 and 112 in the constitution. These articles have raised several points of contention and conflict over the distribution of legislative and executive powers regarding the management of oil and gas in Iraq. This has evidently been reflected in the ongoing conflicts between the Kurdistan Regional Government (KRG) and the federal government (FG). This paper aims to clarify the nature of these disputes and to propose an effective approach for managing the conflicts over oil and gas within the Iraqi federal system.

The theoretical framework of the paper is generally based on Elazar's collaborative theory of federalism. This theory emphasizes the role of collaboration and coordination among different tiers within a federation based on cooperation and bargaining, thereby providing an institutional framework for the division of power between the federal and subnational governments as equal partners. This approach is chosen as the theoretical foundation of the paper because its major elements are capable of contextualising federalism within the constitutional and socio-political structure of Iraq.

The paper considers whether resolving the conflicts among Iraqi stakeholders, especially between the FG and KRG, can be best accomplished through a collaborative model, and how power over oil management should be distributed and shared between the federal and regional governments such as the KRG.

II. Collaborative Theory and Federalism in Iraq

The main question of this paper is addressed through examining the collaborative theory of federalism as it has been developed by Elazar. The paper presents the rationales for adopting collaborative approach in Iraq; it provides practical considerations for the implementation of Elazar's theory on the issue of oil and gas management in Iraq. Then, it discusses the challenges of collaborative federalism in the context of Iraq.

1. Elazar's Theory of Collaborative Federalism

Elazar's theory of federalism is fundamentally constructed upon institutional collaboration.² His approach for understanding federalism is unique because he believes that "federalism is not just a set

¹ The Iraqi public budget is highly dependent on the production of Oil. More than 90% of its revenue comes from oil. Iraq exports around 3 million barrels a day (115 b. barrels). See: <http://www.resourcegovernance.org/our-work/country/iraq>. Accessed on: 20/06/16.

² Elazar's theory is called the covenantal political theory of federalism, founded itself on the theological base of the Hebrew Bible. The covenant, he argues, helps to understand federalism as "a political and social concept, particularly to understanding that federal arrangements involve compact, partnership, negotiated cooperation and

of arrangements, but an approach of life that informs the entire civil society and establishes the basic character of human relations.”³ Accordingly, he defines federalism as “self-rule plus shared rule”.⁴ He suggests that the essence of federalism needs to be found “in the institutionalization of particular relationships among the participants in political life.”⁵ For Elazar, federalism is based on a non-centralized and non-hierarchical model; it is a matrix model and the powers are constitutionally diffused and shared among many centres (cells) which are constitutionally protected.⁶ Based on this assumption, he states “polities are established by equals who come together to do so by design in such a way as to protect the respective integrities of the founders or partners even while they join together to form a new body politic.”⁷ To ensure that this model works properly, there must be interaction among these centres (cells) that are linked together within a network of dispersed powers, with lines of communication and decision-making process that force them to interact based on a collaborative interaction.⁸ This theme is the core idea on which Elazar builds his collaborative theory.

According to Elazar, federal systems are characterised by cooperative intergovernmental relationships, primacy of bargaining, negotiated cooperation and real partnership as basis of sharing powers and wealth among several power centres. This notion of federalism has been further explained by other academics. Burgess, for instance, argues “the notion that the federal idea is best established through covenants, compacts, bargains, and other contractual arrangements lies at the heart of Elazar’s line of reasoning.”⁹

Furthermore, it has commonly been assumed that “jurisdictions in federal systems can never be distributed so precisely as to avoid overlap between the responsibilities and authorities of different levels of government”.¹⁰ Consequently, the activities of each level of government unavoidably affect those of the others.¹¹ Accordingly, Watts argues that “the inevitability within federations of overlaps and interdependence in the exercise by governments of their powers has generally required the different orders of government to treat each other as partners. This has required extensive consultation, cooperation and coordination between governments.”¹² Similarly, when there is a con-

sharing.” See: Elazar, D. J. (1971) The themes of a journal of federalism. *Publius: The Journal of Federalism*, 1(1), 3-9.

³ Elazar, D. J. (1987). *Exploring federalism*. University of Alabama Press.

⁴ *Ibid.* p12.

⁵ *Ibid.* p 12.

⁶ Elazar, D. J. (1978) *Harmonizing Government Organization with the Political Tradition*. *Publius*, 49-58.

⁷ Elazar, D. J. (1995). *Federalism: an overview*. (Vol. 1). HSRC Publishers. P 7.

⁸ Elazar, D. J. (1964) *Federal-State Collaboration in the Nineteenth-Century United States*. *Political Science Quarterly*, 248-281.

⁹ Burgess, M. (2012-12-20) *In Search of the Federal Spirit: New Comparative Empirical and Theoretical Perspectives*. P7. Oxford University Press. Retrieved 2 Dec. 2014. Available on <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199606238.001.0001/acprof-9780199606238>. Accessed on 02/12/2014.

¹⁰ Stevenson, Garth. (1989) *Federalism in Canada: selected readings*. Toronto: McClelland & Stewart. P 386.

¹¹ *Ibid.*

¹² Watts, R. L. (1996) *Comparing federal systems in the 1990s*. Kingston, Ont: Institute of Intergovernmental Relations, Queen's University. P51.

stitutional provision open to more than one interpretation, the coordination among different levels of a federation becomes almost inevitable.¹³

Therefore, collaborative federalism can be defined as “the process by which national goals are achieved, not by the federal government acting alone or by the federal governments helping subnational unit’s behaviour through the exercise of its spending power, but by some or all of the governments collectively.”¹⁴ It is a process in which autonomous or semi-autonomous actors interact through formal and informal negotiation, jointly creating rules and structures governing their relationships and ways to act or decide on the issues that brought them together.¹⁵ Thus, in the collaborative federalism model, the role of the federal government is a “facilitator, coordinator, and a provider of technical and financial resources, not an overseer of the subnational governments.”¹⁶ Consequently, resolving problems and conflicts requires the real commitment and engagement of all orders of governments.¹⁷

2. Collaborative Approach and Federalism in Iraq

Based on the above mentioned elements of collaborative theory, it can be suggested that collaborative federalism is an indispensable model for Iraqi federalism. Without this approach, it would be difficult for federalism to achieve its ultimate goals. Additionally, the legal system, social composition and political structure of Iraq altogether require a federation that facilitates a framework for institutional collaboration in different levels. The following rationales can better explain why collaborative approach is indispensable for the development of a sustainable federal system in Iraq.

First, Iraq is a parliamentary federation based on the fusion of executive and legislative powers. The executive power in both levels of governments is the dominant power that can easily weaken the legislative authority. As Watts argues, “the executive federalism is a logical dynamic resulting from the marriage of federal and parliamentary institutions.”¹⁸ Hence, in a parliamentary system such as Iraqi federalism in which both executive and legislative authorities are generally interdependent, collaborative federalism seems to be a necessary approach for exercising federal powers and resolving conflicts.

Second, Iraqi federalism, as it is reflected in the constitution, can be considered as a highly decentralized federal and parliamentary system with a weak regional representation in the federal institutions. This is an inherent defect in the legislative arrangements of the Iraqi federal system. In principle, the legislative authority in the federal systems in the world consists of two chambers or coun-

¹³ Stevenson, Garth. (1989), *Ibid*.

¹⁴ Cameron, D., & Simeon, R. (2002). Intergovernmental relations in Canada: The emergence of collaborative federalism. *Publius: The Journal of Federalism*, 32(2), p54.

¹⁵ Thomson, A. M., Perry, J. L., & Miller, T. K. (2007). Conceptualizing and Measuring Collaboration. *Journal of Public Administration Research and Theory Advance Access*.

¹⁶ Babcock, H. M. (2008) Dual Regulation, Collaborative Management, or Layered Federalism: Can Cooperative Federalism Models from Other Laws Save Our Public Lands. *Hastings W.-Nw. J. Env't'l L. & Pol'y*, 14, 449. P473.

¹⁷ Trench, A. (2006) Intergovernmental relations: in search of a theory. *Territory, democracy and justice*, 224-56. 230.

¹⁸ Watts, R. L. (1989) *Executive federalism: a comparative analysis* (Vol. 26). IIGR, Queen's University. p1.

cils.¹⁹ Despite the legal and political importance of these two bodies, the Iraqi federal constitution (2005) has given little emphasis to the existence and importance of the upper chamber (the Federation Council).²⁰ This potentially leads to a system in which the subnational units and their people are not properly represented in the federal parliament and its decision-making process. In these circumstances there is a need for another mechanism to compensate for that defect in representation. Adopting collaborative federalism may be an alternative to stronger participation and better representation in federal decision-making process by their executive actors, such as the prime ministers, ministers or the governors.

Third, Iraqi constitutional provisions can be fairly regarded rigid with respect to amendments. Article (142/ Fourth) states, “the referendum on the amended Articles shall be successful if approved by the majority of the voters, and if not rejected by two-thirds of the voters in three or more governorates.”²¹ Moreover, Article (126/ Fourth) states, “articles of the Constitution may not be amended if such amendment takes away from the powers of the regions that are not within the exclusive powers of the federal authorities, except by the approval of the legislative authority of the concerned region and the approval of the majority of its citizens in a general referendum.”²² A comparison between the above constitutional provisions and the reality of the Iraqi socio-political system reveals the impossibility of making any constitutional amendments regarding the powers of the regions. The required approval by the majority is not realistically achievable in the regions and nationwide. Hence, such rigidity requires more collaboration among Iraqi political players as equal partners, by adopting a flexible, informal and non-constitutional mechanism for dealing with the problems and issues related to the division and distribution of powers.²³

Fourth, the structure of the distribution of power in Iraq is another reason for adopting a collaborative approach. Alongside the federal exclusive powers and the reserved, residual powers for the subnational governments, the essential character of the division of powers in the Iraqi constitution is concurrence or shared powers. There are many jurisdictions shared between the federal and the subnational governments, rather than being exclusive to a specific level. Article 114²⁴, 112²⁵ and 113 are clear examples,²⁶ in practice, these powers unavoidably overlap across all levels of government.

However, there are no clear mechanisms in the Iraqi constitution for determining potential aspects of exercising the shared powers among different levels of governments within the federation. Neverthe-

¹⁹ Burgess, M. (2006) *Comparative federalism: Theory and practice*. London: Routledge.

²⁰ Also, Article (48) states “the federal legislative power shall consist of the Council of Representatives and the Federation Council.” However, the later has not been created because of the political disagreement in the Council of Representatives. It is worth noting that the fate of the Federation Council has been left to the House of Representatives; this is unusual in the constitutional structure of federal countries.

²¹ Iraqi Constitution (2005), Article 142.

²² Ibid. Article 126.

²³ Trench, A. (2003). *Intergovernmental relations in Canada: lessons for the UK?* Constitution Unit, School of Public Policy, University College London.

²⁴ Article (114) emphasizes on seven shared competencies that must be exercised based on coordination and cooperation between the federal and the subnational authorities, the region and the governorates. These issues are managing customs, regulating the main sources of electric energy and its distribution, formulating environmental policy, formulating development and general planning policies, formulating public health policy, formulating the public educational and instructional policy, and formulating and regulating the internal water resources policy.

²⁵ More details in the next section.

²⁶ See: Article 113.

less, as Painter argues “the practical exigencies in fulfilling constitutionally sanctioned functions should bring all governments from different levels together as equal partners based on negotiated cooperation for achieving the common aims and resolving the outstanding problems.”²⁷

Fifth, the economic consideration of the distribution of the revenues of oil and gas raises a fundamental economic concern that needs to be addressed by collaboration. The economic considerations might also be among the effective reasons behind collaborative federalism within any federation. This is particularly relevant for Iraq as its oil and gas are located in specific regions. Clearly, whenever the regional economic disparities become a problem for the whole federation, the federal government and regions must make an effort to resolve it based on cooperation and collaboration between rich and poor provinces.²⁸

Sixth, the consensual democracy, instead of the majoritarian democracy, has been adopted and practiced in Iraq since 2003. This is another reason and motivation that makes collaborative federalism an inevitable model. Undoubtedly, federalism cannot function, nor can it survive in the absence of a real democratic system. More fundamentally, in a federation based on the diversity and heterogeneity, the concept of participation in the decision-making process puts all the constituent units of the federation at the same level. There is no senior and junior. The social structure of the Iraqi society, which is geographically divided among different sects and ethnicities, especially the deep division among the main three factions, the Kurds, the Arab Sunni and the Arab Shiite, has created conflicting regional interests.²⁹ This in turn produced regional political parties rather than national political parties. Thus, the classical democracy can no longer be effective, but the consensual democracy would be more practical. Despite the drawbacks arising with respect to this model, this consensual model of democracy is dominant in Iraq since 2003.³⁰

In such a model, collaboration among different levels of governments becomes necessary given the fact that the majority-based decision making process cannot be efficient and effective. It has been argued that due to the constitutional design in these kinds of societies, political agreements among leaders of different communities or factions and intergovernmental institutions usually prevail.³¹ Thus, without a form of collaboration established through the agreements of leaders of different ethnic and sect groups, federalism remains unrealistic and it is, therefore, doomed to failure.³² In sum, the coexistence among these different cultural communities in Iraq requires collaborative federalism.

²⁷ Painter, M. (2009). *Collaborative federalism: Economic reform in Australia in the 1990s*. Cambridge University Press.

²⁸ Smith, J. (1998) *The Meaning of Provincial Equality in Canadian Federalism*. Institute of Intergovernmental Relations, Queen's University. P 7.

²⁹ The north of Iraq, Kurdistan region, is dominated by the majority of the Kurds, the middle regions are dominated by the Sunni Arabs and the south dominated by the Shiite Arabs.

³⁰ It does not mean that this model has been practiced properly by the stakeholders in Iraq. In the absence of the rule of law and an effective judicial system, this model brought to Iraq many drawbacks, such as corruption, unaccountability, creating a cartel of elite putting their interest over any national interests and so on. Nevertheless, still there is no way to avoid this model at least for a short term.

³¹ Benz, A., & Broschek, J. (Eds.). (2013). *Federal dynamics: continuity, change, and the varieties of federalism*. OUP Oxford. P 58.

³² Benz, A., & Broschek, J. (Eds.). (2013). *Ibid*. P 58.

Seventh, the Constitution grants enormous powers to the subnational governments.³³ This ultimately weakens the power of the federal government.³⁴ Reflecting on this aspect, Morrow argues, “There is now little or no inherent power in the centre at all, in part because there is no real centre. Any new Iraqi government will hold only such power as regional interests permit it to assume. The new constitution of Iraq reflects this reality.”³⁵ He also indicates, “Regional interests are so powerful that Iraq must be thought of as a confederation- a collection of loosely affiliated states in a political union- not the federation that Iraq’s constitution declares the country to be.”³⁶ Hence, the role of the FG will not be more than coordination among different levels of subnational governments. This may lead to a number of disputes over the distribution of powers unless a system of collaboration is established. This is especially the case for considering the equal status of both the federal and subnational governorates, especially KRG, as a pillar of collaborative federalism in Iraq. This equality principle can serve as a foundation of federalism in Iraq especially for building an effective collaborative approach between the FG and KRG because it would not accept less than equal legal, political and economic status with the central government.

Eighth, despite the constitutional emphasis on the independence of the judicial authority and its supremacy, especially the Federal Supreme Court, there is no significant role for this court in terms of resolving disputes and conflicts, exclusively between the KRG and the FG regarding disputed matters such as oil and gas.³⁷ Therefore, the judicial system may not be the most effective and best option within the federal intergovernmental relations on disputed issues which have a political nature. Given the fact that the court is based on the all-or-nothing type of decision, it is eschewed by all players who see that as contradicting the cooperation and negotiation characterising intergovernmental relations.³⁸ Consequently, other non-judicial institutions should be developed based on collaboration and mutual agreement between all the levels of the federal government.³⁹

Those eight points present compelling rationales for the necessity of collaborative approach in Iraqi federalism, in particular with respect to the management of oil and gas.

³³ Article 115 states “All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region...” Also, article (121/second) states: “In case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region.”

³⁴ Despite the constitutional confirmation on the non-centralized model and many laws enacted to give effect to this model, the real and formal non-centralization model has never fully operated since 2005 until now. The center still tries to control the essential powers, political, legal and even administrative, with exceptional status regarding the relation with the KRG. This tendency of centralization has caused the escalation of the conflicts and problems between some subnational governments and the central government.

³⁵ Morrow, J. (2006). *Weak Viability. United States, institute of peace*. P4. Available online at: <http://www.usip.org/>.

³⁶ *Ibid.* p4.

³⁷ Since the beginning of the conflict over oil issues between these two levels in 2007, none of them have presented any demand to the court for resolving these disputed issues.

³⁸ Papillon, M., & Simeon, R. (2002). *The Weakest Link? First Minister Conferences in Canadian Intergovernmental Relations. Canada: The State of the Federation*, 113-140.

³⁹ *Ibid.*

3. Collaborative Federalism and the Management of Oil and Gas in Iraqi Federalism

Federalism in Iraq has faced many challenges. One of the major challenges has been the management of oil and gas between the federal government and the KRG. The federal government tries to maximize the efficiency of the economy as a whole while KRG and other governorates aim to gain more political and economic independence. Therefore, despite the socio-political and economic factors, the conflicts over oil and gas management has roots in the Constitution. Article (111) states, 'oil and gas are owned by all the people of Iraq in all the regions and governorates.'⁴⁰ By contrast, article 112 states,

“First: The federal government, *with* the producing governorates and regional governments, shall undertake the management of oil and gas extracted from *present fields*, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country..... and this shall be regulated by *a law*.

Second, the federal government, *with* the producing regional and governorate governments, shall *together* formulate the necessary strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people...’

Accordingly, oil and gas and their revenue belong to the whole Iraqis; the constitution confirms that the people of Iraq are the owners of these resources. Nevertheless, the above articles have not addressed all issues regarding oil management, which includes enacting laws (legislations and regulations), exploration, development, concluding contracts and so on. There are still many technical and legal issues that need to be addressed by all levels, specifically the federal and the subnational government such as KRG. Problems, conflicts and concerns can always arise in interpreting those constitutional articles, especially in determining the rights, authorities, responsibilities and powers of the centre and regions with respect to management of oil and its revenue-sharing.⁴¹

Hence, solving these problems and conflicts requires effective mechanisms for collaboration and coordination. Such required collaboration has a constitutional foundation in Article 112 in the context of its two phrases *with* and *together*. The collaborative model can play a decisive role in tackling the issues in this core area. Only collaboration seems to be able to achieve the required balance of power between the federal and subnational governments regarding oil management, its trade, taxation and revenue-raising powers.⁴²

Both levels of governments, the federal and KRG, have already realized that cooperation rather than confrontation is a major key that can open the solutions arise from practical political conflicts and

⁴⁰ Article 111 in the Constitution (2005).

⁴¹ Due to the socio-political disagreements and disputes among Iraqi groups on the management of oil and gas, the implementing legal provisions have not been enacted yet. For instance, until this moment, the federal parliament has not been able to legislate the Federal Oil and Gas Law, while the Kurdistan Parliament in 2007 enacted its own oil law. Accordingly, the KRG unilaterally signed tens of oil contracts with International Oil Companies, which raised sharp conflicts between the KRG and federal government. Consequently, the latter cut off the KRG's share of the federal public budget, on the other hand, the KRG has started to export its own oil. These conflicts have not been addressed till this moment.

⁴² Cairns, R. D., Chandler, M. A., & Moull, W. D. The Resource Amendment (Section 92A) and the Political Economy of Canadian Federalism” (1985) *Osgoode Hall LJ*, 23, 253.

constitutional interpretations regarding the authority over various aspects of oil and gas management. Senior officials from both levels of government have repeatedly expressed their support for more cooperation and collaboration to address these issues.⁴³

However, despite these commitments, the current dysfunction of oil management is not only a matter of constitutional inevitability; it is the result of the lack of real positive collaboration between the KRG and Baghdad. Many attempts at a collaborative approach in the field of oil and revenue sharing between these two levels have failed, notably the agreement of December 2014. Under that agreement, the KRG must export a certain amount of oil through the SOMO⁴⁴, in return for which the FG must grant KRG 17% of its share from the public budget. Now that both sides have expressed the importance of collaboration, they still struggle with the structure, nature and methods of taking the collaborative approach. This indicates the potential challenges of collaborative approach.

4. Challenges of Collaborative Federalism in Iraq and Recommendations

There are institutional and socio-political difficulties that make the process of implementing federalism in general and a collaborative approach specifically in Iraq challenging. The first major challenge is the lack of trust amongst the major political players in Iraq, especially with KRG. This is a major problem in Iraq because in the absence of the rule of law, if there is no trust and no real spirit of cooperation, it is very challenging to establish effective federal institutions and develop intergovernmental institutions. For overcoming this challenge, there must be initiating a broad covenant on basic national interests and principles among the Iraqis can contribute significantly for restoring the trust among them and to create a general and minimum framework of nationhood necessary for federalism in general, and collaborative federalism specifically.⁴⁵

Moreover, there is a lack of federalism culture among Iraqis. This makes them vulnerable to political exploitation by anti-federalist groups. It also makes them wary of the issue of federalism because they see it as a means to the division of Iraq as propagated by opponents of the federalism. Such propaganda is generated to show that the idea of federalism is a means to the partition of Iraq and means based on sectarian and ethnic criteria. What makes such claim effective is the lack of understanding federalism among the Iraqi people. The concept of federalism is not familiar to the Iraqi political culture and Iraqis' awareness. Yet, there is no national consensus for federalism in Iraq. Main political, religious and ethnic groups of Iraq do not agree on the necessity, effectiveness, nature

⁴³ See: The Kurdistan Prime Minister Salih's statement "the KRG believes that close *cooperation* on oil and gas strategy and export policies is vital to the security and well-being of the people of Iraq." Available online at: <http://cabinet.gov.krd/a/d.aspx?a=39548&l=12&s=010000>. Accessed on: 18/03/2016. Also: the current Prime Minister Nechirvan Barzani states "We believe that oil policies should be based on cooperation and coordination, not confrontation." Available online at: <http://cabinet.gov.krd/a/d.aspx?a=46030&l=12>. Accessed on: 18/03/2016. Similar realization and appreciation of collaboration has been expressed by the senior officials of the federal government, for instance, the Ministry of oil in the federal government when he argued "to solve these critical issues especially in such circumstances that demands honesty and accuracy in all the information as well as the cooperation between everyone to achieve the public benefit." See: Clarification from Federal Ministry of Oil About Kurdistan's Statement of Natural Resources Ministry. 23 August 2015. Available online at: <https://www.oil.gov.iq/index.php?name=News&file=article&sid=513>. Accessed on: 21/03/2016.

⁴⁴ State Organization for Marketing of Oil, which is a national company in charge of marketing Iraqi oil.

⁴⁵ Abbas, M. A., & Jassam, R. S. (2015). The Problems of Rebuilding a State in Iraq 2003-2015. *Open Journal of Political Science*, 5(04), 247.

and structure of federalism and this is the major challenge. The effects of this challenge may be reduced through federalizing the political culture among the Iraqi politicians and factions.

Furthermore, despite the constitutional emphasis on the federal regions and a highly decentralized system, there is still only one region in Iraq, KRG. Aside from KRG, the intergovernmental relation between the federal government and the subnational governments is based on a weak and fragile decentralized system where the governorates heavily depend on the public budget in the central government. Therefore, it can be argued that the rest of the Iraqi governorates, which are 15 including Baghdad, are governed by the central government based on centralised system. Thus, the current federal structure does not seem to be sustainable. In this regard, Anderson argues the federation that composed of two or few units usually, tend to be unstable and difficult to be managed, while federations, which include many component units, may tend toward more centralism and weak in the Intergovernmental Relations.⁴⁶ Yugoslavia's experiment illustrates this theme. Therefore, a successful federalism in Iraq requires more than two regions form the federation; new regions need to be created for constructing an effective collaborative federalism.

In addition, the political system is mainly based on competitive party politics. This kind of system is usually operates through a competitive environment which is at odds with a system requiring genuine collaboration.⁴⁷

Finally, there are other fundamental challenges facing collaborative federalism including the absence of the effective constitutional institutions and the principle of the rule of law, the existence of powerful religious institutions in the structure of political system and the government, and the existence of deep-rooted violent sectarian, ethnic and religious conflicts.

Therefore, the governments and the political parties need to make collaboration a strategic aim; they should build networks, partnerships and coalitions based on negotiation as equal partnerships for achieving the common aims and solving common problems. Certainly, a mere realization about the necessity of collaboration does not produce much result without constant endeavours for establishing institutions of collaboration with effective structure based on realistic considerations. Flexible institutions, whether formal or informal, should be built. For instance, annual or seasonal forums for each disputed issue, at the level of prime ministers for all tiers or at the specialist ministerial levels, such as seasonal meetings of oil ministers from different tiers within the federation.

III. Conclusion

Federalism in Iraq suffers major defects which have led to major political and legal conflicts, especially with respect to the management of oil and gas between the federal government and the KRG. By both reflecting on these defects and conflicts and examining different theoretical approaches of federalism one can reasonably suggest that collaborative federalism, as developed by Elazar, is the most effective approach for solving federalism issues in Iraq. Without collaboration, conflicts between the federal government and KRG may remain unsolved and may lead to further conflicts.

⁴⁶ Anderson, G. (2010). *Fiscal federalism: A comparative introduction*. Oxford University Press, USA.

⁴⁷ Wachendorfer-Schmidt, U. (Ed.). (2005). *Federalism and political performance*. Routledge.

How collaborative approach can become the foundation of federalism is challenging because the current approach appears to be competitive. To overcome the challenges, the constitutional federalism of Iraq needs to be applied based on the real federal principle of non-centralization. The federal government in Baghdad needs to change its understanding of the Iraqi federal nature from one which is hierarchical, as it is practiced on the ground, to one which is collaborative as it is implied in many constitutional provisions, such as articles 112 and 114.

This paper has examined and initiated a mechanism that may help to develop an effective form of federalism in Iraq, especially for resolving conflicts over oil and gas management. The collaborative approach, this paper indicated, has suitable political and legal contexts and necessary economic incentives in Iraq. Therefore, if the nature and characteristics of federalism, on the ground, can be modified from competition to collaboration, the conflicts over oil and gas between the central government and the KRG may become more amenable to resolution.

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