

“We are trying to establish an Independent Iraqi Constitutional Committee”

Interview with Dr. Ghassan Atiyyah — Al-Sabah, 16 June 2005

DR. GHASSAN ATIYYAH: "WE ARE TRYING TO ESTABLISH AN 'INDEPENDENT IRAQI CONSTITUTIONAL COMMITTEE' THE WORK OF WHICH COMPLEMENTS AND ASSISTS THE CONSTITUTION WRITING COMMITTEE" (p. 23)

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Dr. Ghassan Atiyyah, Professor of Political Sciences and President of the Iraqi Institute for Development and Democracy, has said he and a group of academic personalities and specialists are trying to establish an "Independent Iraqi Constitutional Committee" whose work complements and assists the Constitution Writing Committee. He explains that the forming of such a committee was not a new innovation, that many countries have witnessed similar committees. He goes on to say that a meeting was held on May 9th which was attended by 150 academic personalities and specialists to submit a project for the establishment of this committee. He says it aims primarily to explain the subject of the constitution and getting it to reach the public through civil society establishments, unions, guilds, universities and parties, and it wants to create a state of interaction with the constitution writing operation. More importantly, "We hope this dialogues, discussions and exchanges of views will be a realistic opportunity to create conditions suitable for holding a national Iraqi dialogue," according to him.

Dr. Atiyyah draws attention to Article 60 of the Transitional Administrative Law which obligates the National Assembly to encourage the discussions about the constitution through general open and regular meetings throughout Iraq and via the news media, that the establishment of this committee and its work is educational, stimulating, resulting in the end in an educated voter citizen, informed and knowledgeable of what he is voting on, not an ignorant voter who is led by the view of this party or that movement.

WRITING THE CONSTITUTION

Q. What is the context of objections which you express about the constitution writing operation?

A. In connection with previous talks with your [Al-Sabah] newspaper, there was concern about the basic question which deals with the structure of the National Assembly to which the mission of writing the constitution and submitting it for public referendum was assigned. The essential point here is summarized in this constitution being written by the Iraqi society spectrums, that they all are represented in its

writing, but what actually happened is that the January 30th elections could not be a tool representative of all the Iraqi people because they were boycotted by a basic component [the Sunnis], and they were completed in the shade of deteriorating and very dangerous security conditions. A parliament resulted from them which is very polarized, represented by a large Shi'ite bloc, a Kurdish bloc the size of which is greater than what was expected, and a government bloc which obtained a measure of votes but remained weak. The question which forces itself and is in need for a convincing answer is: Can this composition which I have described undertake or confront the subject of writing the constitution? The citizen ought to familiarize himself and to understand the meaning of the constitution. This meaning must be clear and simple. It is like a written covenant which reflects the will of the various components of the people in organizing their lives with the method of joint living, and the groups of the society and their representatives (because it cannot practically be possible to bring the whole nation to write the constitution for us) must have the sufficient legitimacy for representation. This legitimacy comes through the path of free and honest elections. These representatives sit and say, first of all, that they want to live together, then they discuss the subject of how to organize the relationship among them. The constitution must reflect how to organize this relationship between the components. The constitutional process includes dialogues, discussions, the listening to every vision and demand and the understanding of all rights and obligations. From this lengthy political process comes out, in the end, a common political vision which is commissioned to a technical committee to coin in the shape of a constitution. As I mentioned before, many times, some political leaderships, not all the components of the Iraqi people, as was the case in the July 1958 revolution, have agreed on the principles of the constitution. They commissioned the late Hussain Jameel to write it in a few days. It became a constitution! We now are in the process of building a new State, and the Parliament, which takes the lead in such a mission, has to be representative of all the sectors of the Iraqi people. Unfortunately, the parliament failed to be so. Many mistakes have been committed by the [Iraqi] government and the American Administration and also by the group that boycotted the elections and thus did a disservice to its own self and to the political operation (as a whole). When we came to the subject of writing the constitution, they said we were in need of the winning party. Was it not more appropriate and better to postpone the elections for a few months so we could then involve the absent party [as well]? What is odd is that the Sunni names and personalities with whom they negotiate, or who joined the cabinet were worthy of participating in the elections but were only demanding to postpone them for a couple of months so they would be able to prepare themselves and their areas? The insistence on holding the elections on time regardless of everything was a mistake, a serious error. We nowadays witness many attempts focusing on how to represent the Sunni side in the writing of the

constitution, and we hear about suggestions such as forming a parliamentary committee according to the electoral right (the 55-member committee) in which only two members are Sunnis! This is a fault caused by insistence on holding the elections without paying attention to the circumstances of the other parties. And they now suggest adding about 15 names from among the Sunnis to the committee for the writing of the constitution. The questions which come after they have wasted several days are: Who are the candidates? Who nominated them? Will the negotiating stand of these members, who are not elected, be sound because they will always be looked upon as not elected? All these operations will undoubtedly produce negative result.

THE SOLUTIONS

Q. How can there be, then, a solution to the problem of the representation of Sunni Arabs and of the writing of the constitution?

A. The available suggestions are as follows:

1. We have to give ourselves more time, let the deliberations take the time they need without putting a deadline for them. Thus were the world constitutions written. The United States took 8 years to write their constitution, Germany took two, South Africa took five. But East Timor "boiled" its constitution in two months then quickly discovered it made a mistake and was forced to reconsider it. So, the process of writing the constitution must take the time it needs. But it seems there is (specifically) American insistence to adhere to the deadline defined in the Transitional Administrative Law which is the middle of this coming August because the said law grants the National Assembly the right to extend the process of writing the constitution for six more months. Many senior officials have told us that they need such an extension because they needed three months just to put the government together; so, how can the constitution be written in two months and a half? They started their work by forming an incomplete committee, and now they want to add Sunni personalities to it. Is there a way to convince the citizen that such a committee can write a permanent constitution for Iraq in only 75 days and to discuss all its issues? What I am truly concerned about, and many share my concern, is that this haste will create an impression among the public that the writing of the constitution is a formality, that the constitution was placed and will be forced on people without any discussion. I strongly warn against this mistake because writing the constitution without a completely due constitutional process means placing the constitution before the public to vote on it as a stiff thing with which people did not interact, nor did they understand. Here many problems arise. Among them is that some people see the only way to respond to it and to the government is to reject it. This may be a practical solution; that is, the Governates with a Sunni majority (Mosul, Salah ad-Deen and Anbar) will vote against it with their two-thirds and fail it. According to the Transitional

Administrative Law, the government and the Assembly will be dissolved and there will be new elections. If this happens [God forbid!], it will be an exit for our dilemma, if we truly are trying to establish a sound parliamentary democratic system.

BACK TO SQUARE ONE

Q. How can we call the political operation returning to square one be useful to establish a sound parliamentary system?

A. This matter will give us the opportunity to start by putting together a new parliament based on elections in which all components of the Iraqi people participate and without any boycott. Nobody will feel after that that he is marginalized, and everyone will have restored their trust in the political process. This seems to be on the surface, but there are fears accompanying the trend of the three Governates which I mentioned towards a referendum to reject the constitution. The great pitfall in this is that the referendum operation will be like the past elections: without United Nations' supervision and international observers. Violations can take place through very simple means because the issue will then be not relevant to a boycott but to the necessity to reach the polling boxes. For example, I expect Mosul will not be able to score the wanted 66% as required, perhaps something around 50%. The same applies to the Governate of Salah ad-Deen. But it is possible al-Anbar will achieve an 80% vote against the constitution. At that time, the residents of these three Governates will say there was cheating in the elections, so they were not accurate. This will perhaps be the catalyst for some people to use violence to get what they want, and this will weaken the moderate Sunni forces and be in favor of the extremists.

WHERE DOES AMERICA'S INTEREST LIE?

Q. What interest does America have in all what happens?

A. I can talk about the inability of many senior observers concerned about the Iraqi affairs, from among the Europeans and the Americans, to comprehend a great deal of what happens in Iraq. Through my meeting with them, none of them could find an explanation to the numerous American mistakes committed in Iraq, perhaps except that the United States tries quickly to wash its hands off the Iraqi affair after having completed the formalities of the establishment of a democratic State through elections, a parliament and a constitution. In the end, our calamity will be to protect the interests of America in certain areas, and the rest of Iraq is left in a semi-chaotic situation, and the burden is thrown on our backs. It [U.S.] will say to us, "You manage your own affairs, since the country is yours," after having withdrawn many of its forces. America will not hesitate to praise the status quo in Afghanistan which many officials in the U.S. Administration label as a "model condition". But the reality of the matters in Afghanistan is a state of chaos because the [Afghani] government does not

control all parts of the country. Its economy depends on the drugs trade. In the midst of these conditions of backwardness in all aspects of life, do we want the conditions in Iraq to be similar to those in Afghanistan? And there is praise among the official American circles for what is happening in Iraq. Some go in describing the condition in Iraq as "excellent". But let us learn from what actually happens in it. Many Arabs talk about the necessity of the departure of the American forces, and we ask them for the alternative which we have to control the country, whether we are able to solve our problems with each other as Iraqis, and whether we can fill the vacuum with an Iraqi peace or with Iraqi wars. This is the source of my worry because I do not know for sure the source of the "sanctity" of the time-table according to which the political operation is making its strides.

WHAT IS NEEDED: POLITICAL AWARENESS

Q. What can we do as Iraqis to help our country?

A. Yes, from such an attitude have justifications come for the necessity to repeat the elections operation [Again, God forbid! Another wishful thought! These people, I believe, are full of steam], that is, the citizen must be aware of what is going on, not to go to vote on a constitution because the party leader so-and-so advocated the necessity to vote for it, or that so-and-so sheikh [or Ayatollah!] said the opposite. If this matter takes place, we will repeat the same previous tragic picture. What is needed here is a constitutional awareness operation, a continuous work to involve the citizen in understanding the subject of the constitution. I will provide you with a practical example from what nowadays is happening specifically in France regarding the French people voting about the European Constitution. A European official told me the French may vote against the constitution in order to get back at the present French government and not out of their knowledge and comprehension of the constitution. In Iraq, we do not want people voting for the constitution in order to get back at the government as may happen in Governates where the majority are Sunnis, or that one may vote for it out of fanaticism and in support of the government. From this logic, about 150 academic personalities and specialists met on May 9th in order to present a proposal to establish an "Independent Iraqi Constitutional Committee". This idea started not as a new invention because many governments have witnessed such a committee. The Iraqi parliament, in its present condition, is in need for independent committees to assist it, that is, their work must not contradict the work of the parliament but complements it. The circles and areas reached by this committee cannot be reached by the National Assembly especially since some Assembly members (for security reasons) have restricted their activity to only the Green Zone and to specifically the Conventions Center. It is feasible and likely that members in the National Assembly may enlist in the membership of this committee so they may finish

their work. This committee aims primarily to explain the subject of the constitution and get it to reach the public through civil society establishments, guilds, unions, universities and parties. We want to create a state of interaction with the operation to write the constitution. More important than this and that, we hope these dialogues, discussions and exchanges of views will be a realistic opportunity to create conditions suitable for a national Iraqi dialogue. U.N. Security Resolution 1546 stated the necessity to hold such a dialogue, but it has not been implemented. The U.N. representative of Bahrain (thankfully) submitted the idea of holding this dialogue and presented it before the Sharm al-Sheikh Meeting which was held last October. Moreover, Article 60 of the Transitional Administrative Law obligates the National Assembly "to encourage discussions about the constitution through general public and open meetings all over Iraq and through the news media, and the suggestions from the citizens of Iraq must be submitted during the writing of the constitution." We have to say that this Committee never took prior stands with regard to any issue. Rather, its goal is to explain constitutional issues. For example, take the subject of federalism. It sees the meaning of federalism must be explained to the citizen. There must be an explanation of what is positive and what is negative in implementing the federal system in Iraq, how it can be learned, and how it can be dealt with. So, its work is educational, incentive, so that it results in the end in a citizen who votes out of knowledge of what he is voting for, not an ignorant one running after this view of this party or of that movement.

PROBLEM IS FUNDING THE COMMITTEE

Q. But is it practically possible to establish a committee such as this during the short remaining period for the writing of the constitution?

A. Yes, the establishment of this committee can be done due to the existence of the determination, the desire and the understanding by competent personalities. But the important problem is summarized in who will support the committee financially. For this reason, it held a series of meetings with the Representative of the U.N. Secretary General for Elections Affairs (Mr. Haysom), with representatives of the European donor countries, with British and American sides. Till now, I have not heard anyone telling me that it is a bad idea. A meeting was held on May 31st with representatives of the donor countries about providing the necessary financial requirements. This is a test for donor sides and for the United Nations which calls for the success of the Iraqi constitutional experiment and not a test of the Iraqi will. We have done what we think must be done. The ball, as they say, is now in the court of the donor countries. In this case, if they do not cooperate with us, our project will definitely fail because it needs a great moving around and benefiting from the experiments of the countries with similar circumstances. For this reason, I made some visits to some countries such as Turkey and Jordan where I met with non-governmental organizations interested in the

issue of the constitution. In Turkey specifically, I visited civil society establishment that were fully mature and expressed readiness to cooperate with us and hold specialized seminars in which Iraqis and Turks participate in order to exchange experiences.

A SECULAR "BELIEVING" STATE

Q. The issue of the relationship between religion and politics, or State, is one of the subjects which stir contentious sensitivity. What are other subjects which can likewise stir such sensitivity?

A. The point which I mentioned about the subject of religion and State is very important. I benefited from my visit to Turkey. This subject is presented in Turkey in a way which differs from what exists in Europe because secularism in Europe, especially in France, was based on hostility to the Church. As for Turkey, there is no hostility towards the Islamic establishment. I think the secularism demanded by ethnic groups is not directed against religion at all. Secularism means separating religion NOT from the State, because it [religion] is part of it [State], part of its education, of its civilization. Rather, it means separating religion from the government and stopping its politicizing in a society that is divided by sects because it will be turned into a dangerous sectarian weapon, and it can lead to a civil war. We unfortunately see the beginnings of it already. And we will find ourselves in a state of separating religion from the government and politics in an environment and conditions more fit for Iraqis to deal with each other on the basis of citizenship and as citizens among whom the law does not discriminate instead of dealing with them on the basis of sects and ethnic groups. This State, where religion is separated from politics, can be labeled as the "believing secular State". I think this option suits all Iraqis. It is necessary to bring to memory that important [Shi'ite] religious groups have stated that "There is no desire to establish an Islamic State" such as statements by Sayyid Abd al-Aziz al-Hakim, Dr. al-Jaafari, and even His Holiness Sayyid al-Sistani. As for the points which can stir contention, we can say there are many countries that have gotten out of circumstances similar to ours waited a little while before talking about differences. They did not put themselves under the pressure of the current moment and its repercussions, nor did they want to chain themselves by them because the problem which they think is the greatest may not remain so a year or two later. Examples for that are numerous. So, it may be better for the constitutional operation to start looking into the points of agreement and fixing them, then moving on to the partially contentious points such as the personal status law, the form of ruling system: presidential or parliamentary, then deal with major contentious issues such as federalism and the status of the city of Kirkuk. This may better be postponed till a final stand is taken in their regard. It is useful to cite what happened in southern Sudan, for example. The civil war ended, and they waited for six years to write the constitution.

During those years, the economic, social and political conditions changed, and the angry feelings were tempered. So is the case with the Quebec region in Canada which is inhabited by a majority that descended from French origins. The settling of the issue of cessation was postponed. This and many examples can benefit us in the writing of our constitution, in narrowing the gap between parties writing the constitution because the Iraqi parliament will witness a state of polarization, and I am of the view that it is better to undertake an Iraqi initiative before America interferes to twist the arm of this or of that. I hope the Iraqi citizen understands the motives behind the establishment of the Independent Constitutional Committee and not think that America will remain looking after us or rules us or take care of us. Iraq is our country, and we are more worthy of administering its affairs and agree on the principles of its future.