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Conflict Irresolution: Elucidating the Yemeni Crisis 2011-2015

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Abstract: An insight in the MENA region after 7 years from the eruption of the "Arab Spring", shows that very few countries were able to stabilize while the rest are still struggling. Yemen is the poorest one, it have suffered from deteriorating political, economic and social conditions. A popular revolution hit Yemen in 2011; at its outset, it was thought to be a successful revolution, as it toppled down the regime – even with a pact- yet shortly after, in 2014, the rebel group, Huthis, emerged on the political scene and the civil conflict broke out, threatening with the state failure scenario. The Yemeni case shows that the core of the problem – even before the transition – was related to the lack of properly structured functioning institutions which resulted in increased corruption that deepened the sectarian problems in the country. Due to the galvanized situation in the region, survival- not democratization- became the ultimate goal.
In this context this paper aims at analyzing the actual role of the constitutional drafting as one of the most important formal political institutions. The main hypothesis is testing the impact of constitutional drafting on achieving conflict resolution in conflicting societies. The paper concludes by exploring this impact and its reasons.

Keywords: Constitution – Conflict Resolution – Peace Building – Yemen – Revolution.

1 Introduction

The repercussion of Second World War created fear from relapsing in war scenarios again, nevertheless it couldn't prevent the eruption of civil wars that spread in different parts of the world in 1980s and 1990s and reemerged again as a result to the failure of democratic transition in some countries that witnessed popular revolutions. This led to the emergence of several literature on conflict resolution and state rebuilding.
The early scholars proposed several rebuilding models like The Marshall plan, which was the initiative developed by the United States to assist the countries in their post war reconstruction. The next generation proposed different models focusing on the rebuilding of the formal and/or informal institutions in the newly independent states who suffered from colonization.(1)
Both groups agreed on the importance of four main factors in rebuilding process, these are; the role of elites, the legitimacy problems, The state capacity and institutional performance and finally the role of international actors.(2)
Among these countries striving for peace and rebuilding is Yemen. The country enjoyed a very rich history, it experienced Ottoman and British colonization. Prior to 1990 there were two different states, the northern part , Kingdom of Yemen, and later named Yemen Arab Republic with the capital Sana'a and the Southern Yemen with its capital Aden , it wasn't until 1990 when they were unified**.**

(1) Many Argued That Colonization Experience Had Its Impact On Fragmenting The Administrative System, Deeply Rooting Ethnic And Sectarian Divisions In These Countries

(2) René Grotenhuis, Nation-Building As Necessary Effort In Fragile States, Chapter Title "Nation-Building And State-Building And The Challenge Of Fragility", Amsterdam University Press. (2016)
https://www.Jstor.Org/Stable/J.Ctt1gr7d8r.8

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Although the roots of the civil war is deepened in the country that suffered from civil war in 1994 between the Northerners supporting president Saleh and the Southern supporting the vice president Al Baid and it ended by the control of Saleh. The current conflict is a result to the failure of transition in 2011, after the Yemeni revolution of dignity that hit the country in the amidst of the – so dubbed- Arab Spring, Yemenis suffered from deteriorating political, economic and social conditions. The interim president Saleh refused to step down, then violence spread in the country and he was losing control over the governorates. The Gulf Cooperation Council mediated to facilitate the power transfer through the Gulf Cooperation Council Initiative that drew the road map to the power transfer and transition process [(1)]. Following the GCC initiative, in 2012 elections were held and the former Vice president, Abd Rabbou Mansour Al Hadi received 99.8% of the votes. As per the power transfer agreement Al Hadi was entitled to draft a new constitution and to hold office for two years till the next parliamentary and presidential elections. However, after bringing hope to the country it relapsed in a severe civil war.

2 Research Questions

Consequently, the main question this paper tries to answer is what are the reasons behind the failure of drafting a constitution in Yemen? and several subsequent questions arise as; what are the reasons behind the controversy on the constitution ? is it related to the legal framework of drafting the constitution? or the exclusion of some actors ? or due to the interference of international actors ? and how far this failure will influence the peace process?

This paper aspires to contribute to academic knowledge by exploring the most important factors behind the failure of attaining peace and reaching common agreement in Yemen.

3 Literature Review

In surveying the literature on constitution and its impact on conflict resolution several prominent themes stand out. Much has been written on the role of constitution in conflict resolution; Elikns and James argued [(2)]the role of constitutions in creating stability in the political systems. They provided different cross national models of countries were the social and political problems jeopardized constitutions and in turn the countries stability, they concluded by stating the factors that should be considered in the constitution drafting so as to reduce such risk. Along with this argument, Grossman [(3)] contributed that post conflict constitutions could be a viable tool in creating peace and stability in the country by limiting the privileges of the winners which will eventually lead be peace sustainability. While Hallie Ludsin [(4)] provided counter argument on the compatibility between peace building and constitution writing pointing down contradictory nature of the peace building process and the constitutional drafting. The take away from her argument is the need of time, security, unity and popular participation in the constitutional drafting while the peace building is timely and pragmatic in its nature.

The second set of literature on Yemeni Constitution, the major complexities that faced the National Democratic Conference 2013-2014 was transitioning from Unitary to Federal system, scholars like William, Sommadossi and Mujais[(5)], explained the obstacles of such transition stating that the main problem lies in the inability of the conflicting sects to reach a common understanding prior to the national conference, which undermines the ability of regime change during the transition. Adopting Federal system requires at least the minimum level of coherence or understanding among the actors to enable creating federal units and agree on the power distribution among them, Yemen lacked this basic understanding which eventually failed the system.

(1) Full Translated Text Available on;
https://Peacemaker.Un.Org/Sites/Peacemaker.Un.Org/Files/Ye_111205_Agreement%20on%20the%20implementation%20mechanism%20for%20the%20transition.Pdf

(2) “What Makes Constitutions Endure?” Chapter 4 Of Zachary Elkins, Tom Ginsburg, And James Melton. 2009. The Endurance Of National Constitutions. New York: Cambridge University Press. Pp. 65-92.

(3) Herschel I. Grossman, 2004. "Constitution Or Conflict?," Conflict Management And Peace Science, Peace Science Society (International), Vol. 21(1), Pages 29-42

(4)Hallie Ludsin , Peacemaking And Constitution-Drafting: A Dysfunctional Marriage, Available At: https://www.Law.Upenn.Edu/Journals/Jil/Articles/Volume33/Issue1/Ludsin33u.Pa.J.Int'll.239(2011).Pdf

(5)Paul Williams, Tiffny Sommadossi, And Ayat Mujais,(2017), A Legal Perspective On Yemen’s Attempted Transition From A Unitary To A Federal System Of Government, Utrecht Journal Of International And European Law Pp. 4-22.Https://Doi.Org/10.5334/Ujiel.366

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While Johnson[1] warned from the risk emerging from drafting constitution in the post conflict phase through the misuse of power by the winning actors and the negative impact of this on peace and stability in the country. Finally the author emphasized on the importance of state existence – or at least unified leadership- to draft that constitution.

4 Hypotheses

After reviewing the different literature we can hypothesize that constitution drafting is a viable tool to achieve conflict resolution and peace endurance, however there are some prerequisites for the success constitutional drafting such as time, inclusion and leadership. From this perspective the paper's main hypothesis is; The constitutional drafting impacts conflict resolution and peace building. The impact will be examined by employing the following three key variables; the time to draft the constitution, leadership and political and social inclusion/exclusion.

5 Methodologies and Data Gathering

Having established the background literature framing this paper and identifying its hypothesis, it is important to consider the methodology employed to collect the necessary data for analysis. The paper is studying an ongoing phenomenon so it adopts Qualitative research methods to enable explaining the relationship and describe the variations among the variables without any control to the variables. Also the paper adopts case study methodology to extrapolate the main themes in the Yemeni case also it enables predicting its future trends and understanding the different aspects of the political phenomenon.

As for the approach, the employs the institutional approach to provide deeper analysis and more robust aspects of political structure. It considers the processes by which structures, including schemes, rules, norms, and routines, become established as authoritative guidelines for the political behavior.[2] Finally it utilize content analysis to examine the different aspects of the phenomena from the primary and secondary dataranging from the Yemeni constitution and its amendments in 1991, 1994 and 2001, The GCC initiative 2011 and the draft constitution 2015.

6 Analyses

As mentioned previously, Yemen experienced civil wars and regimes changes in its history. The inability of the state to reach complete reconciliation will always be a threat to its failure in civil wars again which is the case right now in Yemen. The historical political experience in the country along with the uncertainty of the prolonged transitional phase spurred the problem of reaching the political agreement**.**

7 Conflict Resolution Efforts

After toppling down the regime Yemen was on the right path to democratization, they held a national dialogue conference from March 2013- January 2014.[3] According to the UN's special envoy for Yemen, at then, Jamal Benomar, holding such conference was a "historic moment"[4] it brought high hopes to the country that it would be the first in the region to achieve positive peace. The adversaries were able to negotiate together a peace agreement to start a new era in the country's history; to build their system based on the rule of law, equality and respect to human rights. It was thought to be the new social contract that would bring reconciliation to the country. Even though the conference was well structured and included different workshops that could have brought the country to real peace[5], the inability to bring the agreement to implementation – while having a distinct workshop to assure the implementation of the conference- increased the problem. At its outset the conference was thought to be the milestone for rebuilding Yemen. Nevertheless, the rebel group,

(1) Darin E.W. Johnson, Conflict Constitution-Making In Libya And Yemen, Published by Penn Law: Legal Scholarship Repository, 2018 Available on; https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1956&context=jil

(2) Scott, W. Richard 2004. "Institutional theory." in *Encyclopedia of Social Theory,* George Ritzer, ed. Thousand Oaks, CA: Sage. Pp. 408-14

(3) Erica Gaston , 2014, Process Lessons Learned In Yemen's National Dialogue. The United States Institute Of Peace. https://www.Usip.Org/Sites/Default/Files/Sr342_Process-Lessons-Learned-In-Yemens-National-Dialogue.Pdf

(4)https://www.Bbc.Com/News/World-Middle-East-25835721

(5)For More Information On The Different Workshops And Its Composition Check: http://www.Ndc.Ye/Page.Aspx?Show=67

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AnsarAllah, Houthis [1] based on their dissatisfaction with the transition outcomes, and their relative exclusion, they seized the opportunity of Hadi's struggling government and claimed control over the capital signaling the outbreak of the civil war.

The dilemma with the Houthi's conflict not only their adoption to religious military ideology but being a separatists and sectarian conflict that threatens the whole region. The conflict between the Houthis and the government started since 2004 and evolved in 7 successive wars till 2010.[2] The tension grew again in 2014 and in 2015 they allied with the former president Saleh which enabled them to control some areas from the north moving to the south.[3] In response Saudi Arabia led a collation of nine states from the Middle East and Africa supported Hadi's government.[4] Starting with air strikes to naval blockade. The collation was supported by the United States and its allies either logistically or intelligently.

Several entities tried to mediate between the conflicting forces; Starting with the Gulf Cooperation Council Initiative to the efforts of The United Nations in appointing three successive United Nations Special Envoy for Yemen [5] and the United Nations Security Council Resolutions in 2015 -UNSCR 2216[6]that attempted to create peace by requiring the withdrawal of the Houthi's from the areas they control and to accept the legitimate government control, also to opt for the political peaceful solution stipulating drafting new constitution, reforming the electoral law and determining a timeframe to run a referendum on the constitution draft. Despite the efforts of the UNSCR and the initial approval of the Houthis on adopting this resolution, as a result, Oman mediated to arrange a peace talks between the Houthi representatives and the Saudi officials as a respond to the calls of Saudi Arabia[7]. Nevertheless, none of these trails succeeded which indicate the complexity of the situation and the difficulty of reaching peace agreement.

8 Constitution Drafting Pitfalls

Yemeni people along with some international actors tried to push for constitution drafting, yet the following were the reasons behind the inability to reach political consensus;

- The National Dialogue Conference that gathered the conflicting sects on the negotiation table to set the milestones of the new constitution. The conference concluded by issuing a decree with the road map to draft the country's constitution. Besides, Hadi issued a presidential decree naming the committee to draft the constitution.
- The major impediment in the dialogue was the exclusion of some social forces; such as the youth groups, socialists and the southern sect Al-hirak along with the marginalization of Houthis contribution. Such exclusion led to the eruption of civil war.
- The participants in drafting the constitution were trying to adopt federalism which increased the probabilities of factions in a distorted society, mainly as it was deepening the geographic and sectarian divisions. This was shown in the constitutional draft, Chapter three were they called for "The Cities of Sana'a that shall be the capital of the Federal Republic of Yemen, with independent authority, and Aden, that shall have special status, with independent authority."[8] Nonetheless, the adversaries were unable to reach political consensus on the formation of federal regions, its structure, power distribution or State administration.

(1) The Zaydi – Whom The Houthis Are Affiliated To- Were Leading The Country Till The Overthrow Of Its President In 1962, They Were Excluded And Repressed. Such Repression Was Due To The Belief That The Zaydis Are The Iranian Proxies In The Region. Rephrase It Is Also Worth Mentioning That This Wasn't The First Houthi-Government Clash, There Were Six Clashes Between 2004 And 2010 The Last Of Them Witnessed Saudi Intervention.

(2) Part Of The Conflict That They Are Belived To Be Iranian Proxies In The Region, They Are Getting The Military And Logistical Support From Iran.

(3) The Houthi's Assisnated Former President Saleh In December 2017 After His Decision On Allying With Saudi Arabia. They Considered It Betrayal.

(4) The Collation Included Saudi Arabia, Egypt, Morocco, Jordan, Sudan, The United Arab Emirates, Kuwait, Qatar, Bahrain. They Started With The Operation Deceive Storm Followed By Operation Restoring Hope.

(5)Jamal Benomar – Resigned After Four Years- And Ismail Ould Cheikh Ahmed- Served For Three Years And The Interim Envoy Martin Griffiths. The Former Two Envoys Made Real Efforts To Achieve Peace Agreement Yet They Failed.

(6) https://www.Securitycouncilreport.Org/Atf/Cf/%7b65bfcf9b-6d27-4e9c-8cd3-Cf6e4ff96ff9%7d/S_Res_2216.Pdf

(7) http://www.Alaraby.Co.Uk/English/News/2015/4/24/Oman-Offers-Seven-Point-Peace-Plan-For-Yemen

(8)Yemen National Dialogue and Constitutional Reform Trust, project1 quarterly progress update, 30 June 2014, YNDCRTF Quarterly April-June report CPP.pdf

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- The one year timeframe for drafting the constitution put pressure on the participants, and eventually all the efforts were in vain as the society was still recovering from the aftermath of the revolution with its social and political divisions.
- The country lacked the historical experience of drafting and changing their own constitution, hence these attempts in conjunction with the transition uncertainties, lack of experience and expertise hindered reaching common agreement.

9 Prospects on Conflict Resolution

As mentioned previously, the National Dialougue Conference was believed to be the milestone for conflict cesation and rebuilding. This conference resulted a constitutional draft that was about to bring peace to the country. Nevertheless due to the previously stated reasons the country slipped into civil war.

Despite the current uncertainty on conflict cessation, it is clear that any negotiated settlement will outline a post-conflict transitional political process, which will include elections – as stated in UNSCR 2016. Especially that Yemen inherit positive elections histrory, they enjoyed strong Electoral Management bodies, the turnout was relatively high, which will increase the succes probabilities in introducing elections as a recovery step.

To facilitate the peace making process, given its severe conditions, the challenges that will face the recovery elections should be identifyed and elucidated in the peace settlement agreement, among these problems are, Starting with the prerequisites; war cessation will occur when both parties reach the peak of the conflict or when they are actually loosing, if we are considering the local adversaries, then the deteriorating conditions, extreme war scourges and havocs increase the causalities of each side. But due to the interference of regional and external actors achieving negative peace became increasingly difficult. Thus, negative peace will take place when the external actors are not involved in the conflict. In the Yemeni case, the role of the regional and international actors should be neutralized as peace supporters, donors, mediators or observers but not active participants in the conflict.

Establishing an independent constitutional authority to ensure the inclusion of the different sects especially if the state is ruled by old combatants, any trials to marginalize the others should be prevented. Also the interim government should work on maintaining security and creating political trust this requires working on the demobilization and disarmament of the former opponents. Maintaing a stable and secured environement will be reflected on the voting outcomes and later on the institutional rebuilding. Due to the separatist calls and existence of AQAP and ISIS the former opponents might maintain their control over some regions this will require more time and effort to claim the state's control over the whole territory before deafting the constitution.
The inclusion of all the political contenders, even the former combatants, is essential to minimize the scenarios of boycotting or withdrawing from the constitutional drafting process so as to reduce the risk of relapsing in a civil war again. The relative exclusion of the Houthi's in the National conference, and their lack of consensus to 2015 draft constitution were reasons behind the outbreak of the war(1).
And eventually the internal actors should try to rely as much as they can on the domestic resources to enhance the rebuilding process, in the same time, the donors contributions should be allocated to the difficult task of achieving and sustaining peace and security, rebuilding the Human and Social capital -including the voter education and flow of information- also emphasizing on including the role of the civil society -internal and external ones.

10 Conclusions

The previous confirms that Yemeni will take more time to recover. The transition uncertainty, mistrust, fact developing sequence of events, high degree violence and increased causalities on both sides increases the complexity of reaching a peace settlement agreement that should tackle the previously stated challenges. The adversaries have the GCC initiative, 2015 constitutional draft and UNSCR 2016 to start with. The opponents can start negotiating from the agreement point, although it will be difficult for the Houthis to accept the old terms after their increased strength and after the increasing

(1)Mohammad Al-Bakhti Rejected The Outcomes Document "Because It Divides Yemen Into Poor And Wealthy Regions.For More See "Yemen Al Houthi Rebels Slam Federation Plan As Unfair". *Gulf News*. 11 Feb 2014. Retrieved 20 August 2018

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causalities on both sides, however, according to Michael Lund curve of conflict the violent conflict declines by time, the key players and mediators should seize this by being ready with the transition plan and its accomplishment timeframe.

Ultimately, for effective constitution-making to occur, there must be a state to constitute. Where civil war has destroyed the fabric of the state and created warring de facto states, defined by region and ethnicity, a peace must be achieved committing the parties to the creation of one state. That collective commitment to re-constituting the state is made effective through a consensual constitution making process that involves the public and incentivizes continuing peace and broad public commitment to the newly constituted state through constitutional design features specifically tailored to mitigate societal divisions.To recap, studying an ongoing phenomenon is difficult, the war is still escalating. All the comprised parties are longing for settlement agreement; however, they are driven by the will to control power.

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