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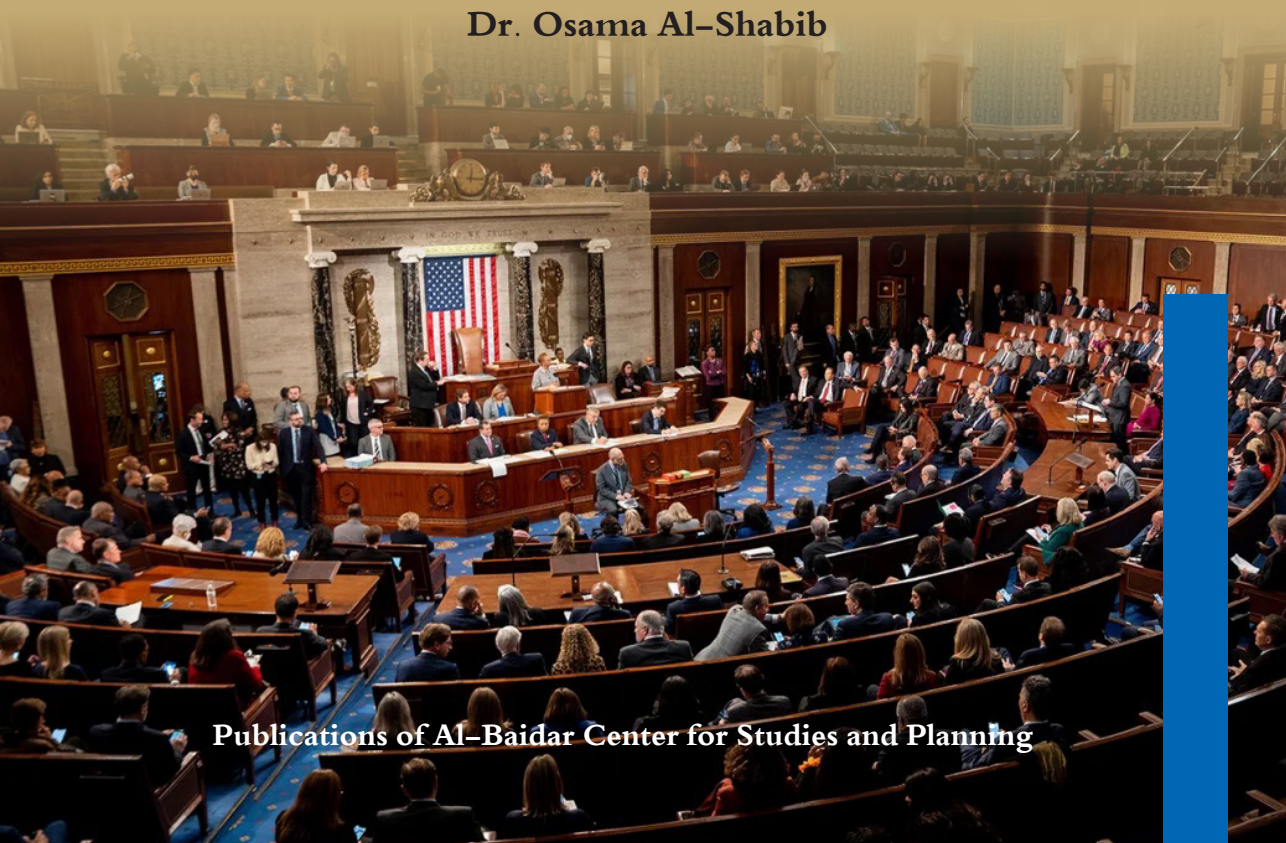
Al-Baidar Center For Studies And Planning



## Report Summary

# Guarantee of the Federal Council in Maintaining the Balance between the Federal Government and the Regions

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## **Introduction**

Perhaps one of the most important features that distinguishes the federal system from other political systems is the participation of the regions or states in the general policy of the state, whether directly or indirectly. This is manifested through their representation in the federal legislative authority, especially in the second council (the Federal Council), as political units that play their role in shaping the general legislative policy of the state. There is no doubt that this participation plays a role in preserving and guaranteeing the balance of the relationship between the two levels of government in federal systems.

The participation of the regions in the work of the legislative authority comes through their presence in the federal legislative authority. Most countries that have adopted the federal system have tended to adopt a bicameral system or two chambers <sup>1</sup>: the first chamber, usually called the House of Representatives, which represents the citizens in the federal legislative chambers collectively. The number of members representing each region varies according to the population ratio in each region, and the difference in the number of individuals who meet the electoral conditions and other details organized by electoral laws.

As for the second council (the Federal Council), which is called the Council of States or the Senate or the Council of the Union (as in the Iraqi constitution) or other names, it represents the regions or states as political and constitutional units, and representation in it is usually based on equality regardless of the population

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1. Some federal systems do not adopt the bicameral system in forming the federal legislative authority, including Serbia, Montenegro, and federal unions of small islands such as the Comoros. There is an opinion that supports the non-necessity of having a second chamber in the formation of the federal legislative authority to represent the regions. However, it is difficult to accept this opinion because the representation of regions in the federal legislative authority through the federal council provides a guarantee and consideration for the interests of the regions and safeguards their relative independence if the federal authorities misuse their powers.

of each region <sup>2</sup>. The Federal Council is considered one of the most prominent manifestations of the participation of the regions in the federal government's powers. The mechanism of work of this council, its functions, competencies, and the role it plays in the legislative and political process, is not uniform in all federal systems, and it differs from one federal system to another; but its main role revolves around preserving the interests of the regions and safeguarding their political, financial, constitutional, and legal rights.

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### **Representation of the Regions in the Federal Council**

From the experiences of different federal systems, a general rule can be derived in this field: the representation of members in the federal system in the Federal Council of the federal legislative authority should be based on equality among the regions or states, regardless of the population of each state, its area, or its economic and political importance.

The principle of equal representation of states or regions in the Federal Council historically goes back to the results of discussions and negotiations that took place during the establishment of the federal union in the United States of America,

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2. Mohamed Kamel Layla, *Political Systems: The State and Government*, Nahdat Misr Press, Cairo, 1967, p. 134.

between representatives of the large states and representatives of the small states. The representatives of the large states insisted that representation in the federal parliament be based on population, while the representatives of the small states insisted that representation be based on equality among the large and small states. Through a compromise proposal, a settlement of the dispute was reached at the Philadelphia Convention in 1787, which established a federal legislative authority consisting of two chambers: the House of Representatives, where representation is based on population, and the other council (the Senate, where representation is based on equality <sup>3</sup>. The Senate has consisted, since the issuance of the American Constitution in 1789, of members representing the states based on equality, with two senators for each state, chosen for a term of six years. Federal countries that adopt equal representation of states include Mexico and Argentina <sup>4</sup>. While most federal countries that adopt the federal system follow this rule, several federal countries do not follow this rule, such as the Federal Republic of Germany, Canada, and India. In the Federal Republic of Germany, each province (Land) is represented in the Federal Council (Bundesrat) by at least three delegates, increasing to four delegates in states with a population of up to six million, and reaching five delegates in states with a population exceeding six million <sup>5</sup>. In Canada, there is a different method from the federal systems in establishing representation. The four main regions (Ontario, Quebec, the four western provinces, and three provinces on the Atlantic coast) are each represented by one seat, Newfoundland holds six seats, and three seats are allocated for regions with indigenous populations <sup>6</sup>.

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3. Ronald L. Watts, *Dialogues on the Distribution of Powers and Responsibilities in Federal States*, translated by Nour Al-Assaad, Forum of Federations, Canada, p. 39.

4. Bruce Wister Findlay, *The American Constitution*, translated by: General Encyclopedia Department, Dar Al-Karnak, Cairo, p. 39.

5. Article (51) of the Basic Law for the Federal Republic of Germany of 1949.

6. The four main regions in Canada are: Ontario, Quebec, the four western provinces, and the three provinces on the eastern coast. For more, see: Ronald L. Watts, *Dialogues on the Distribution of Powers and Responsibilities in Federal States*, op. cit., Table No. (17), p. 117.

### **Methods of Representation in the Federal Council**

The differences between federal systems are not limited to the differences in the proportions in which regions or states are represented in the Federal Council, but there is a significant variation in the methods by which members representing the regions in this council are chosen. Federal systems have adopted different methods for selecting members who represent the regions in the Federal Council.

- Some have adopted the appointment method to select representatives of the regions or states in the federal council. Federal constitutions that adopt this method differ in determining the authority responsible for the appointment; some constitutions grant the governments in the regions the authority to appoint their representatives in the Federal Council, as in the Federal Republic of Germany, and sometimes the federal government has the authority to appoint representatives of the regions or states without consulting the regions, as in Canada under its 1867 constitution <sup>7</sup>.
- Other federal systems have adopted the election method, where the governments of the regions choose their representatives in the Federal Council by election, as in India and some states in Switzerland and the former Soviet Union. This election may be direct, by the citizens residing in them, and their election is for a specific term.
- There is also a mixed method that combines appointment and election, adopted by Malaysia (38% of the Senate seats are appointed and 62% are elected indirectly by the legislative councils in the states), Belgium, and Spain. For example, in Malaysia, the remaining 62% of the Senate seats are filled by indirect election by the legislative councils in the states, while 21%

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7. Dr. Issam Suleiman, *Federalism, Plural Societies, and Lebanon*, Dar Al-Ilm Lilmalayin, Beirut, 1st edition, 1991, p. 122.

of the Senate members are directly elected and 40% are centrally appointed. In Belgium, members are chosen by indirect election by the councils of the Flemish, French, and German communities, and they are approved jointly (appointed by members of the directly elected Senate) <sup>8</sup>.

### **Role of the Federal Council in Maintaining the Balance Between the Federal Government and the Regions**

There is no doubt that the main purpose of establishing a second council within the federal legislative authority in federal systems is to defend the interests of the regions and preserve their relative independence <sup>9</sup>. Some jurists see it as a tool that expresses the will of those political units from another perspective. Adopting the bicameral system in forming the federal legislative authority and the necessity of having a Council of States are among the indispensable requirements of federalism in building the federal state <sup>10</sup>.

The role of the Federal Council is highlighted in achieving federal balance through its relationship with the First Council (the House of Representatives), which is elected by the people, that is, through its role in the legislative and oversight process. Most federal constitutions in federal systems have made the two wings of the federal legislative authority (the House of Representatives and the Council of States) equal in terms of legislative jurisdiction, requiring the approval of both chambers for federal legislative proposals. For example, in the United States of America, Mexico, and Argentina, the American Constitution, for instance, grants each of the two chambers in Congress the right to propose

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8. Ronald L. Watts, *Federal Systems*, op. cit., p. 118.

9. Robert Bowie and Carl Friedrich, *Studies in the Federal State*, translated by Walid Al-Khali and Burhan Djani, Al-Sharqiya Publishing and Printing House, Beirut, 1967, p. 13.

10. Jean-Jacques Rousseau holds that the existence of a council of states is necessary in federal systems. See: Latif Mustafa Amin, *Federalism and Prospects for Its Success in Iraq*, 1st edition, Sardam Press, Sulaymaniyah, 2007.

bills, except tax legislation, for which the Constitution requires that the initiative to submit proposals must come exclusively from the House of Representatives. No law can be enacted without the approval of both chambers, and if one of the chambers rejects the proposal, it is considered null and void <sup>11</sup>.

On the other hand, we find that some federal constitutions do not equalize the roles of the two chambers in the exercise of the legislative process; thus, they place the House of Representatives in a constitutionally stronger position than the Federal Council. Examples of this include the Basic Law of the Federal Republic of Germany of 1949, as well as the constitutions of both Australia and Canada <sup>12</sup>.

The role and importance of the Federal Council also vary from one federal system to another. In Canada, the Senate did not play a significant role in representing the provinces, which may be attributed to how it was constituted. The constitution did not adopt the principle of equality in representing the provinces in this council, bearing in mind that its members were appointed for life. The same applies to Australia, where this council did not have a major role, and this may be because party loyalties among the members of this council in both countries are stronger than loyalties to the provinces and territories, which is contrary to what exists in both Canada and Australia <sup>13</sup>.

As for Iraq, the permanent constitution of 2005 stipulated the establishment of a bicameral federal legislative authority in its first chapter, which the constitutional court divided into two branches: the first branch, the House of Representatives, and the second branch, the Council of the Union. Article 48 of the constitution

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11. Hafiz Alwan Hamadi Al-Dulaimi, *The Political System in Western Europe and the United States of America*, Wael Publishing and Distribution, Amman, no publication year, p. 263.

12. Dr. Abdel Ghani Basyuni, *Political Systems, Foundations of Political Organization, the State, Government, Rights, and Public Liberties*, Al-Dar Al-Jam'iyya for Printing and Publishing, Beirut, 1984, p. 115.

13. Dr. Omar Mouloud, *Federalism and Its Applicability in Iraq*, Part 2, Mokriani Foundation, Erbil, 2003, p. 284.

states that the federal legislative authority consists of the House of Representatives and the Council of the Union. The constitution also regulates the organization of the House of Representatives in terms of composition, competencies, termination, and other detailed matters (Articles 48-63).

However, the constitutional court did not address the organization of the Federal Council, which is the Council of the Union, and its establishment is left to a law passed by a two-thirds majority of the House of Representatives, as stated in Article 65 of the constitution: A legislative council called the “Council of the Federation” shall be established, comprising representatives of the regions and the governorates not organized into a region. Its formation, the conditions of membership therein, its competencies, and all matters related to it shall be regulated by a law enacted by a two-thirds majority of the members of the Council of Representatives.

Here, the constitutional court left the establishment, organization, competencies, and method of representation in the Council of the Union for the regions and governorates not organized in a region in the hands of the House of Representatives. This is perhaps one of the constitutional gaps or points of weakness indicated in the constitution regarding the handling of the Council of the Union and what it represents as a fundamental pillar in the legislative authority, and the tasks it performs in representing the regions and governorates not organized in a region, as well as protecting the principle of federal balance and the stability of the relationship between them. In addition to being the council where federal legislation is reviewed calmly and quietly after being voted on by the House of Representatives, and discovers the elements of weakness and gaps that were not noticed, and corrects them according to the state’s legislative policy. Unfortunately, the Council of the Union has not yet seen the light, and its law has

not been legislated, despite the existence of a constitutional text establishing it and obliging the House of Representatives to enact a law organizing its composition, work, and competencies. Perhaps the reasons and factors that prevented the legislation of the Council of the Union law are political and non-political, and the two-thirds voting percentage required for its legislation is one of the most important obstacles facing the legislation of this law, as the percentage required by the constitution necessitates broad political consensus. Despite the variation in the role and importance of the Federal Council in federal systems, its primary role is to review legislation to consider the interests of the regions and member states in the union. The Federal Council is considered a means to protect the interests of the regions from federal procedures if they involve harm to their interests, where such procedures are subject to the objection of this council, as well as when the federal authorities take them exceeding the powers granted to them in the constitution or when such procedures are harmful to the political entities of one or more members. Therefore, the necessity calls for the existence of a Federal Council representing the regions within the federal legislative authority in any federal system. Its existence is important to protect the interests of the federal authority on the one hand and to preserve the interests of the regions on the other hand, and to maintain balance and stability in the relationship between them. The constitutional organization of this council constitutes an important part of the federal constitution, and thus, the work of this council represents a guarantee for the balance of the relationship between the federal government and the governments of the regions or governorates.

## **Research Identity**

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**Note:** The opinions expressed in this research do not necessarily reflect the views of the center, but only the opinions of its author.

## **About center**

Al-Baydar Center for Studies and Planning is a non-governmental and non-profit organization established in 2015 and registered with the NGO directorate in the general secretariat of the council of ministers in Baghdad.

The center seeks to contribute to developing the state and its institutions, by proposing ideas and practical solutions to the main problems and challenges facing the state, including improving public sector management, policies, and strategic planning, using reliable data and best practices. The center engages the relevant authorities in the state with regular meetings to support this objective and utilizes the support of international organizations dedicated to assisting Iraq's development. The center also seeks to support economic reforms, and sustainable development and provide technical assistance to the public and private sectors. The center also seeks to support the development of the private sector to provide job opportunities for citizens through training and upskilling, in a way that reduces dependence on government institutions and contributes to supporting and diversifying the country's economy.

The center aims to utilize the vast amount of potential in Iraq's human resources by organizing programs to prepare and develop promising young people, including leaders capable of proposing, adopting and implementing visions and future plans that advance society and preserve its value-system based on the commitment to a high moral standard and rejection of all types of corruption.

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