

Madhat al-Mahmood, chief justice of Iraq: Portrait of the judge as hero

By Chibli Mallat

Thursday, September 02, 2010



Amid a distinguished group of Federal Supreme Court (FSC) justices, including a Kurd, a Turkoman, and a Christian, at the Heidelberg Max Planck Institute colloquium last week, the figure of Iraqi Chief Justice Madhat al-Mahmood was dominant. He was proud of the court he presided over, and of the very fact of its diversity.

Vis-a-vis the Iraqi judges sat Otto Bryde, a prominent justice on the Federal Constitutional Court of Germany. Despite real efforts, he explained, the German court had not succeeded since the reunion of the two Germanys in recruiting among its 18

members a single jurist from the former East Germany.

Iraq appeared, under Mahmood, well ahead in the national representativeness of its top court, – although lagging behind, as in many sectors, in terms of female representation. But the chief justice is well aware of this gap, and is trying hard to encourage female judges at entry level.

Always eager to hear from similar experiences elsewhere, Iraqi judges were listening attentively to the participants: the director of the prestigious institute, Ruediger Wolfrum, co-chairing the discussion, and deftly drawing on his experience in sundry countries with deep crises, like Somalia and Sudan; Zaid al-Ali, a promising Iraqi legal scholar on the shortcomings of Iraqi criminal procedure; Tilmann Roeder and Rainer Grote, foremost world experts on Middle Eastern constitutionalism; Thomas Fleiner, a Swiss world expert on federalism.

Amid continuing security concerns and an uphill battle to get the Iraqi Humpty-Dumpty together, the top Iraqi judges have already made their mark in world constitutionalism.

Mahmood mentioned some of the cases and opinions that the FSC delivered: A decision against an Iraqi MP by both the executive and the legislative leaders for his visit to Israel was quashed by the FSC to protect the constitutional right held by an Iraqi citizen to travel wherever he pleases; a clarification of the mechanisms needed to elect the premier, which would solve the constitutional crisis if the MPs set to do their job properly; the constitutional breach for allowing the president of the republic remaining in power beyond his mandate; holding unconstitutional the decision by

MPs to “cancel” the Municipalities Ministry for ignoring the proper legislative procedure; rejecting so-called “compensatory seats” because of their undermining the citizen’s equality in the casting of his vote in the polls; accepting minority seats in Parliament, but holding them to strict conditions to prevent entrenchment detrimental to constitutional equality.

What the chief justice and his colleagues did not dwell on was stunning to whoever follows the judicial branch through the trying times of building the rule of law in Iraq after 40 years of dictatorship. He did tell the audience about the 37 judges (37!) who had been killed since 2003. What he did not mention was the determined targeting of the judiciary, and the bomb planted at the door of the Higher Judicial Council’s building earlier this year that shook the whole of Baghdad. Nor did he mention how he lost his own son in one of these attacks. The dedication in his latest book, on the Iraqi judiciary, to his orphaned grandson, is particularly moving.

Iraqi judges have offered to their country in the past five years a dedication unmatched elsewhere on the planet. Nothing short of heroism. At the heart of all the work, and the dedication, is the leadership of Mahmood. Iraqis know, by and large, about this dedication, and call upon the court for redress whenever they can. In due course, Iraqi politicians will follow suit.

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