

The Kurdish Referendum in Iraq: An Assessment

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Abstract

The Kurdish issue in Iraq is one of the most complex issues in a multi-national state of Iraq. The Iraqi state that was built on the concept of Arab nationalism has reinforced the concepts of chauvinism toward non-Arab ethnic groups. This policy led to historical struggle of the Kurdish people to gain their rights, which eventually led to a referendum for independence in the Iraqi Kurdistan region. In my paper, I am discussing the current situation in northern Iraq, going back to the creation of modern state of Iraq and its policies toward the Kurds. I am specifically writing about the post-2003 regime in Iraq and its 2005 constitution. I am assessing the current relationship between the federal government in Baghdad and the regional government in Iraqi Kurdistan. Then, I am discussing the reasons behind the referendum, the world's reaction, and evaluating if it is legitimate and practical to have such move for recession.

Keywords: Kurds; Iraq; Ethnicity; Nationalities Issue; the Middle East.

Introduction: The Kurdish Issue

The nationalist issue in Iraq is one of the most complex issues in a multi-national state like Iraq. Since the beginning of its founding at the conclusion of the First World War and after the dissolution of the Ottoman Empire, Iraq was built on the basis of national and religious bases. The Iraqi state was built on the concept of Arab nationalism and therefore has reinforced the concepts of chauvinism toward non-Arab ethnic groups and religious minorities. This unfair policy led to the prominent role of parties of national minorities in Iraq, especially the Kurdish political parties (Aqrawi, 2017).

Although the Kurdish population in the Middle East reaches about 30 million people, they have not been able to establish their own state and they remain scattered in four Middle Eastern countries, Turkey, Iraq, Iran, and Syria (Reuters, 2017). This Kurdish issue has emerged in the region since the beginning of the 1920s, after the Treaty of Sevres in 1920 was overlooked and the Treaty of Lausanne was accepted in 1923, which has forgotten the Kurds and their rights (Shaaban, 2006).

The Sykes-Picot agreement between Britain and France divided the former Ottoman lands in the Levant between the two European powers. Iraq was put under the British mandate. The Kurds of Iraq were subjected to British occupation after the defeat of the Ottoman Empire in 1918, and with a sense of injustice for not having gained independence as Arabs, the Kurds led a series of insurgencies and rebellions against the British who were controlling Iraq and its allied Iraqi governments. Later, the Kurds were subjected to cruelty, and the harshest campaigns against them were the ones that occurred in the late 1980s when the former regime launched a campaign known as the "Anfal" campaign. This included the destruction of thousands of villages and the targeting of civilians with various weapons, including chemical weapons. The campaign peaked when the town of Halabja was bombed in 1988. Although the Iraqi rulers vowed to grant the Kurds autonomy in 1970, this was not done until a no-fly zone was imposed in northern Iraq after the First Gulf War in 1991 (BBC, 2017a). At the time, the Iraqi Kurds had some gain. The invasion of Kuwait by Saddam Hussein and his subsequent defeat left political vacuum, but the regime recovered and brutally repressed the rebellion.

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Afterwards, the United States and its allies in the Gulf War rescued the Kurds and created a safe haven for them. The Kurds ruled on their semi-autonomous rule for a period of 12 years. After the invasion of 2003, they were incorporated into a new federal system in Iraq (Hiltermann, 2016).

After the popular uprising in Iraq in 1991 following the Gulf War, the two main Kurdish parties, the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK), dominated most of the reins of power and influence in the Iraqi Kurdistan region. The main dividing line in northern Iraq lies between the Kurds loyal to the Barzani's KDP near the Turkish border who speak the Kurmanji dialect and Kurds loyal to Talabani's PUK who speak Surani dialect in the vicinity of Iran (Hiltermann, 2016). The Kurdish issue was frequently used by international and regional powers to serve their interests when they were not in a good term with Baghdad (Hiltermann, 2016).

The Kurdish Dream

An old Kurdish dream of independent wants to come true again now. A dream fought for: to an own statehood in the midst of big states that want to strip the Kurds of their own identity and to bring them into the larger entity by force. In Iraq, the Kurds' despair of the policies of the "central" state in Iraq was the main reason for making the decision to hold a referendum. The vote is not binding, but it could be a basis for the creation of an independent Kurdish state as a century long dream to be pursued by the Kurds since their self-governing in 1991 (Aqrabi, 2017). A dream that is hard to achieve when almost every state in the world is opposing it including the United States.

The Kurdistan region survived the chaos in Iraq following the fall of Saddam Hussein's regime in 2003, where the Kurds created a kind of parliamentary rule and an economy that was not without problems and defects. However, the main problems facing the Kurdistan region remain, as it is a closed area surrounded by countries that are not sympathetic to the aspirations of Kurds such as Syria, Turkey and Iran. There are disputed areas between the regional Kurdish government and the Iraqi government, including oil-rich Kirkuk, inhabited by a mixture of nationalities, mainly Kurds, Turkomans and Arabs (BBC, 2017a), in addition to the Chaldo-Assyrians and Shabaks in some areas.

Very few Iraqis sympathize with the Kurdish dream of building their own independent state, as opposed to a majority Iraqis that see it as weakening Iraq and fragmenting it. Iraqis seek to preserve Kurds attachment to a country that the Kurds no longer feel belong to.

The 2005 Constitution of Iraq approved a federalist system and recognized Iraqi northern Kurdistan as a region that enjoys autonomy and regional government. This was the result of decades of political and military action by the Kurds, estimated at about 6-8 million people, representing between 17 and 20 percent of the Iraqi population. It is predominantly mountainous area. The territory is inhabited by minority Turkomans, Arabs, the Chaldeans-the Syriacs-the Assyrians and the Armenians. Most of the territory population is Muslim and there are religious minorities such as the Yazidis, the Christians, and the Kaka'is. The city of Erbil is the capital of the region. Kurdish and Arabic are the two main languages. Turkish, Aramaic, and Armenians are spoken by some of these minorities.

With the return of sectarian violence to Iraq in 2013, which culminated in the control of the so-called Islamic State (IS) organization of vast areas of the western part of the country in 2014, the unity of Iraq became at stake. Kurdish peshmerga (freedom fighters), along with various Iraqi forces, have taken part in the fight against IS. In July 2014, the Kurdish regional President MassoudBarzani announced his intention to hold a referendum on independence later that year, which has aroused the concern of Iraq's neighbors. But as the hated Iraqi Prime Minister Nuri al-Maliki came out of power and a new Iraqi government led by Haidar al-Abadi took over in Baghdad, relations between Baghdad and Erbil where the two sides agreed to work together to defeat the common enemy, the referendum on independence was postponed (BBC, 2017a).

On 7 June 2017, at a meeting of the Kurdistan regional President MassoudBarzani with representatives of 16 Kurdish political parties, they decided to hold a referendum for the independence of the region on September 25th, 2017, in the midst of the boycott by two Kurdish parties, the Movement for Change (Goran) and the Islamic Group. The vote was to take place also in the disputed area of Kirkuk and some other areas that the central government says it is also affiliated with, like Makhmor in the north, Singar in the north-west, Khanaqin in the east, and some others.

Iraqi Kurdish Peshmerga troops have taken control of part of Kirkuk province since the withdrawal of the federal forces after being attacked by Islamic State in the summer of 2014, while the jihadists remained in southwestern province, mainly in Hawija. This move to take and keep Kirkuk under Kurdish control and raising the Kurdish flag over its buildings angered the Iraqi government and Arab and Turkomans parties.

The Kurdish forces are a major ally of the United States-led international coalition and have played a key role in fighting jihadists, taking part in the large-scale military operation to restore Mosul city from the Islamic State, which was launched on October 2016. They have taken control of areas adjacent to the city and stopped as planned where the federal troops completed the full libertarian of it. This referendum has only one question: Do you agree to the independence of the Kurdistan region and the Kurdish areas outside the administration of the region and to the establishment of an independent state. It requires, “yes” or “no” answer.

The Case for Independence

With regard to the referendum on the right to self-determination and its causes and obligations, the establishment of the present state of Iraq was under the terms of the Sykes-Picot Agreement. Under the Ottomans, Mosul vilayet was an Ottoman state that today includes current governorates of Nineveh, Erbil, Dohuk, Kirkuk, Sulaymaniyah and a section of Salah al-Din. In the 1924 referendum of the future of Mosul, whether to be part of newly Iraq or to become part of Turkey, the Kurdish people voted to be part of the new Iraq consisting of Baghdad and Basra previous Ottoman states in addition to Mosul. This decision was built on supposedly the basis of the genuine partnership between the Kurdish and Arab groups in the administration and the welfare of Iraq, while respecting the rights of other nationalities. But the Iraqi Arabs dominated state gave the Kurds the toughest time, from Saddam Hussein’s chemical bombing in Halabja to his notorious al-Anfal operations that have produced the displacement and destruction of 4500 villages out of 5000 villages and the disappearance and the extermination of 182,000 citizens of Kurdistan. The second phase of discrimination according to the Kurds began after the fall of Saddam's regime in April 2003. The Kurds went to Baghdad hoping that the downfall of the dictatorship will build a new democratic country where real partnership and true citizenship will prevail. The Kurds participated in the writing of the current Constitution and the successful approval of it in 2005 referendum. The Kurds contributed to Iraqi governments successively afterwards and participated in the establishment of the first nucleus of the Iraqi new army. But the outcomes later were violations by Baghdad to the provisions of the Constitution concerning the Kurdistan region and the failure to implement important articles of the constitution. The following are the most important violations according to the Kurdish leadership (KDP, 2017).

1. The central authority did not apply Article 140 of the Constitution and did not solve the problems of the disputed areas between the central government and the Kurdish regional government, although it was constitutionally stated that the problem will be solved by 2007.
2. The reduction of the role of the Kurds in military institutions (army, security, and civilian institutions) to a very low degree.
3. Violation of political agreements with the Kurdistan region. The Kurdish share of the government of Iraq had been reduced to one minister in the current government without senior positions, while during the reign of Jalal Talabani, the former President of Iraq, they had eight ministers and a deputy prime minister (Shafaq News, 2017b).
4. The Federal Council that was supposed to be established has not been created and this is a constitutional breach, in addition to other constitutional articles.
5. The preamble to the Constitution stated that adherence to the Constitution and the optional union between Iraqis guarantees its sovereignty and the contrary will lead to further violations and abuses (Abdulrazzak, 2017). This is closely what is happening now.
6. Discrimination against the Kurdish Peshmerga forces by not training them, neglecting them, and depriving them of military equipment and arming, although they are considered part of the Iraqi military system (KDP, 2017).
7. Cutting the region’s 17% share of the Iraqi budget since 2014 without constitutional base. Differences between the regional government and the central government are not justified to cut the fund to an entire people and deprive them of their necessities. In the war with IS terrorist organization, the Kurds have not received any special Iraqi military or economic assistance and the region has more than one and half million Iraqis displaced from the provinces that have fallen to IS (Mosul, Anbar, and Salah al-Din), although the Kurds fought IS terrorist organization and supported the Iraqi army in liberating Mosul.

It seems that the rule in Iraq with all of its various legal and constitutional systems of decentralization, self-government, and federalism have failed to build a democratic state and genuine partnership. The Kurds support the path of dialogue with Baghdad as their only option for peaceful coexistence to create their future (KDP, 2017; Charbel, 2017). They do not have a better option currently.

The regional government continued the process of holding the referendum on schedule, despite internal, regional, and international pressure to postpone it. It complains that the regime in Baghdad has been transformed into a sectarian religious regime, marginalization and exclude many others, a regime well known by its massive corruption (Kakaei, 2017).

The Kurdish leadership argued that Kurdish people cannot wait another 100 years until the approval to the Kurdish demand comes from Baghdad or other regional states. The Kurds no longer believe in Iraq; they have no hope of a government that will only recognize their rights in a fictitious way (BBC, 2017b), but is it up to them to decide their will and future?

The Kurdistan Regional Government was planning to use the vote as a legitimate mandate to press for negotiations with Baghdad to gain independence (Reuters, 2017). The Constitution was the sole guarantor of Iraq's unity, and with its violation, the Kurds believe they lost the opportunity to maintain a united Iraq, a policy that had led to the emergence of IS, encouraged by the sectarian discrimination (Qasebati, 2017). The Kurds argue, the Arabs have more than 20 independent countries, why Arabs should reject a Kurdish state.

The Kurds argue that they have taken into account the public interest, based on the principles of the right to self-determination, a legitimate people's right that is endorsement by the General Assembly of the United Nations. They rely on the characteristics and specificities of the Kurdistan region, which consists of people, land, language, history, culture, identity, as any people in the world (Abdulrazzak, 2017).

Kurdish Internal Opposition and Its Arguments

The Kurdish local opposition considered the referendum, based on the Kurdistan region constitution, as essentially unconstitutional; as it is the right of the disabled region's parliament, not of the political parties. In addition, the opposition sees the timing of it as unappropriated and that it lacks unanimity on the referendum process on the part of the Kurdistan people.

The opposition sees it as a hasty step by the Kurdish leadership to escape and cover up the large and aggravated economic and political problems and the mounting public discontent in the region. It views the use of national sentiment and fanaticism as a way to distract the masses and for political bids to restore the prestige and legitimacy of the nationalist ruling parties, especially the largest Kurdistan Democratic Party (KDP) (Middle East Online, 2017a). They see that the initial Kurdistan economic growth came with widespread corruption. When oil prices fell a year ago, the Kurds faced significant cuts in public sector salaries (Hiltermann, 2016).

The Movement of Change in Kurdish (Goran) views Barzani with no legitimacy to stay in the position of the president of the region. He is for them only the chairman of the KDP and not entitled to present himself as an alternative to the legitimate institutions, especially the parliament. Goran believes that the legal institutions are the ones that have the right to discuss the problems in the region. This stance comes as a reaction to the Kurdish Prime Minister Neirvan Barzani displacement of four of his cabinet ministers belonging to the Goran movement in October 2015 and barred the speakers of the Kurdish parliament affiliated with same movement from entering the regional capital Erbil amidst an escalating political crisis (Shafaq News, 2017a).

Many believe that the call for the independence is inseparable from internal political circumstances. The idea of independence tickles nationalist sentiments of the Kurds and receives broad popular acclaim, presenting an opportunity for the Regional President Barzani to confront his critics who say that his duration of the presidency has ended since 2015. At the same time, Barzani settled for power as the head of the region, despite the expiry of his term of office (twice) and despite his failure to carry out the reforms according to them (Hiltermann, 2016).

Many argue rightly that the timing of the referendum will make the message of the Kurds to the world weak (BBC, 2017b). The problem with the referendum is also on who is calling for it. Barzani's political opponents have been charging that the referendum is a pressure card through which he wants political gains and popularity to be enhanced ahead of the upcoming elections. The Kurdistan Parliament has held no meeting since October 2015 following a controversy over the presidential mandate of Barzani, which ended in the same year.

There was a controversy over the extension or the post and of the holding of elections (Mansouri, 2017). They believe that recent renewed Barzani's call for a referendum on independence is more of a gambling to enhance his regressive popularity than a concrete step towards the realization of the Kurdish dream (Hiltermann, 2016).

A member of the Kurdish parliament belonging to the Movement of Change called on the Kurds to vote "No" in the Kurdistan regional referendum stating that "Voting by yes means renewing the legitimacy of the failed political faces responsible for the tragedies at home," adding that "The vote no is the best way to stop those failed gangs and mafia who are using independence as an excuse" (NRT TV, 2017).

The Iraqi Opposition and Its Arguments

The Iraqi government totally rejected the Kurdistan region's decision to hold a referendum on independence. It stated that the Iraqi government opposes any attempt by the Kurdish authorities to declare independence, and that any step taken by any party in Iraq must be based on the Constitution. Additionally, it indicated that the future of Iraq is not belonging to a single party, but all Iraqis are concerned with it (Abdulrazzak, 2017). The Iraqi parliament also rejected the referendum and considered it illegal and in contradiction with the Iraqi Constitution (AlqudsAlarabi, 2017).

The Chairman of the large "State of Law" coalition, Nuri al-Maliki, the former prime minister, said that the referendum to be held in the Kurdistan region was treason to divide Iraq, "All of these projects are aimed at the unity of Iraq, and today we are witnessing the division (of Iraq)" (Alabaa TV, 2017). A parliamentary group within the "State of Law" coalition warned the Kurdish leaders against this "conspiracy, which has been simulated by the corridors of Zionist policy to secure the Zionist entity from all powerful nations." Adding that the Kurds will "only gain destruction, end their future and stability, and transform the region's components into an unforeseeable conflict." Most other parliamentary blocs are also opposing the Kurdish move.

When the referendum took place, Baghdad was angry. The Iraqi parliament voted on measures against the Kurdistan region, while neighboring countries threatened to take punitive steps. The atmosphere of tension prevailed in Iraq, which has not yet ended a comprehensive war against IS, which in 2014 dominated large areas of Iraq. With the closure of the border and the blocking of the Kurds export of oil, Kurds will face tough times. The central government in Baghdad is taking further steps to punish the region. The region's average oil production was 600,000 barrels a day, of which 550,000 were exported to Turkey through the Turkish Mediterranean port of Ceyhan. These actions will have a significant impact on the economy of the region, on financial revenues of oil, on trade, and will raise cost of living. It will hurt the domestic and foreign investment in the region. Further, the Iraqi Parliament voted to re-control the oil fields in Kirkuk, which produces between 300,000 and 350,000 barrels of oil a day (Alhurra, 2017a). The Iraqi government took administrative and military actions to strengthen its federal authorities, particularly in Kirkuk, some other disputed areas, and border crossings.

The Iraqi Prime Minister, Hayde al-Abadi, refusing the Kurdish separation stated that most of that region's problems are internal and not with Baghdad, and therefore they will be aggravated by the calls for secession. Adding that the economic and financial difficulties of the region are the result of its corruption and mismanagement. He posed a question, "Where oil money goes, they have seized nearly 900,000 barrels of oil per day, equivalent to a quarter of the oil produced in the rest of Iraq. Why they [the Kurdish government] do not pay the salaries of employees in the region?" He added, "Why the region's oil imports are not clearly stated as the central government does, and why they do not allow finance quality control over such public funds." He asked why public funds are becoming the property of persons and parties, while leaving other citizens suffering" (Sputnik News, 2017b).

Subsequently, the High Federal Court of Iraq ruled that the country's Constitution does not allow the secession of any territory, province or local administration from the country, in response to a request by the Council of Ministers to interpret Article 1 of the Constitution. The Court concluded that this article and other relevant constitutional articles confirm the unity of Iraq, adding that article 109 of the Constitution also obliges the federal authorities to preserve this unity (Alhurra, 2017c).

Because of isolation and failure to get any world support and because of Iraqi government tough measures, in addition to neighboring countries of Turkey and Iran's tough policies to isolate the region, the Kurdistan regional government confirmed its respect of the federal court interpretation of article 1 of the constitution, indicating its willingness to solve disagreements with Baghdad in constitutional and legal manners.

External Opposition and Its Reasoning

The U.S. State Department has expressed concern over the "non-binding" independence referendum stating that this referendum will be a detraction from the "most important priorities," such as the defeat of IS militants. It added, "We encourage the regional authorities to discuss with the government of Iraq a whole range of important issues, including the future of relations between Baghdad and Erbil on the basis of the Iraqi Constitution." While expressing appreciation for the "legitimate aspirations" of the people of Iraqi Kurdistan," the ministry said in the statement that it supports "a stable and democratic federal Iraq." Adding, "Not the United States alone, every member of the Coalition believes that this is not the right time to hold this referendum" (Sky Press, 2017a).

The Secretary of Defense, James Mattis, said that the talks with Baghdad and Erbil would be centered on the future course, including how to keep Iraq against a new political divide or indulge more with Iranian influence, after years of union in fighting the organization of the Islamic State. He added that the United States strongly opposes any event that can undermine the current Iraqi Prime Minister Haider al-Abadi. Further, the U.S. Secretary of State Rex Tillerson described the referendum as illegal (Middle East Online, 2017a; Sky Press, 2017b). The U.S. envoy to the international coalition against IS Brett McGurk added that there is no international legitimacy for this referendum (Reuters, 2017).

The U.S. current and immediate policy declared by its president Donald Trump is to weaken, undermine, and isolate Iran. The need to keep good and strong relationship with the current Iraqi prime minister and Iraq is a key to such policy. Taking the Kurdish side in the current dispute would have jeopardized American position in Iraq and would have turned the Iraqi official and public opinion against the U.S. and its policy in the region. It would have strengthened Iran's influence even more over Iraq and would have defused American policy toward Iran. The U.S., Saudi Arabia, Israel, along with many other states are trying to contain Iran and its influence in the region.

The Turkish government considered the decision of the Kurdistan region President Massoud Barzani in this regard to be a "serious mistake" and an "irresponsible step." The Turkish prime minister said that "The position of Turkey is the unity of Iraqi territory. He added that it is not right to create a new problem in the region that has enough problems on its own. In addition, Turkish foreign minister warned that the referendum on the independence of Iraq's Kurdistan region could lead to a civil war.

The Turkish warning coincided with a sudden move by the Iranian chief of staff, who arrived in Ankara to discuss several files, mainly the Kurdish referendum according to the Turkish media reports. Turkish-Iranian coordination is to unite efforts against the referendum, especially amid fears that the move would encourage Turkish and Iranian Kurds to secede (Abdulrazzak, 2017). Turkey and Iran, despite the fact that they have been busy about who should govern Syria, are seeking to prevent the emergence of an independent Kurdish state (Hiltermann, 2016). Turkey, Iran and Syria, all inhabited by large numbers of Kurds, strongly oppose Kurdistan's independence from Iraq (Abdulrazzak, 2017).

The Iranian foreign ministry spokesman said that the Iraqi Kurdistan is part of the federal republic of Iraq, while unilateral decisions would exacerbate problems in the country (Alabaa TV, 2017). The secretary of the Expediency Council of Iran reiterated his country's opposition to the referendum on self-determination, asserting that it would have serious repercussions on the area that might divide both Syria and Turkey and put the region into a probably 20-year war. He added that the Kurds will be the biggest victims in this situation and that such referendums stem from the individual desire of some Kurdish leaders, not a popular demand. He saw the referendum as a failure because of the refusal of the United Nations and European countries to oversee it (Aljazeera, 2017).

Iran is the main opponent of secession, believing that the establishment of an independent Kurdish state on its borders could weaken Iraq under the Shiite leadership, fueling Kurdish opposition in Iran, and becoming a hotbed for American and Israeli activities against the Islamic Republic (Wahab & Mahmoud 2017). Iran's way is to influence through division by supporting one Kurdish party against another, and putting Baghdad against the Kurds (Hiltermann, 2016).

Germany expressed concern that the Kurdistan region's plans to hold a secession referendum could inflame tension in the region, warning the region of such a move. The German foreign minister stated, "We can only warn against taking unilateral steps on this issue... Iraq's unity is in great danger." Adding, "The redrawing of state borders is not the right path and may exacerbate the already difficult and troubled situation between Erbil and Baghdad as well" (Sky Press, 2017a).

In the same tone, the European Union (EU) called on the northern Iraqi region of Kurdistan to engage in constructive dialogue with the government of Iraq and to work on an agreed solution, stressing that the interest of the Kurds requires adherence to national unity (Alabaa TV, 2017).

The British Ambassador to Iraq unveiled Britain's stance on the proposed Kurdistan referendum, stressing that the time was not right to do it, adding "We are aware and understand the aspirations of the Kurdish people, but now it is not the right time, and any referendum must enjoy the support of the government in Baghdad." The ambassador stressed "the need for a comprehensive political solution to address the root causes of instability"(Baker, 2017).

The message from the UN Security Council and the Secretariat to both the "central" government of Iraq and the Kurdistan regional government was for dialogue and negotiation and to find a solution that would address all the issues they have on the agenda through negotiations, including how to deal with the question of referendum, and in accordance with a set timetable (Sumerian news, 2017, August 17). The UN spokesman Stefan Dujarric stressed that the unity of Iraq is of great importance to the stability of the region. He added that "The United Nations is not involved in the planned referendum on the independence of the Kurdistan region," adding that "we have made this very clear, and the UN mission in Baghdad has made this absolutely clear." "We believe that the national unity of Iraq is very important for the stability of the region," he said (Sputnik News, 2017a). After the conclusion of the referendum, the UNSC voiced opposition to the referendum independence by the Iraqi Kurdistan region warning that this unilateral step would destabilize the region and called for respect of the sovereignty and territorial integrity of Iraq. The UN statement was taken unanimously by its 15 state members (Sputnik News, 2017a).

Apparently, Israel seems to be the only state that has supported the referendum on the independence of Kurdistan for its own reason (Sumerian news, 2017, August 17).

The Right to Self-determination

The concept of right to self-determination as a recognized international right did not emerge until after the Second World War, during the period of the wars of independence waged by territories under colonial rule against colonial states (Abboud, 2017). The text of the second paragraph of article 1 of the Charter of the UN embodies one of the most important purposes of the United Nations aimed at "the development of friendly relations among nations based on respect for the principle which provides for the settlement of rights between peoples, each of which has the right to self-determination." Article 55 of the Charter emphasizes "the creation of grounds for the necessary and well-being of a healthy and friendly relationship between nations is founded on respect for the principle of the settlement of the rights of peoples including the right to self-determination" (Mahmoud, 2017).

The principle of the right of peoples to self-determination has been consistently upheld in the numerous resolutions adopted by the United Nations General Assembly (UNGA). One clear example is the UNGA December 14, 1960 resolution No.1514 (XV), paragraph 2, of the Declaration on the Granting of Independence to Colonial Countries and People, known as decolonization. This came as a result of the world believe in the fundamental human rights and the need for stability and peaceful relations based on respect for the principles of equality between peoples and their rights to self-determination (Abboud, 2017).

Many normative conventions have been incorporated into binding legal texts, including the text of first of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, adopted in 1966, which granted the right of all peoples to self-determination and, by virtue of that right, to determine their political status and to pursue freely their economic, social and cultural development. Also, in accordance with the Charter of the United Nations, the UNGA resolution 2615 of 1970, which, in turn, affirmed that "all peoples under the principle of the equal rights of peoples and their right to self-determination enshrined in the Charter of the United Nations the right freely to determine without external interference their political status and to pursue freely their economic, social and cultural rights, and each state has duty to respect this right in accordance with the provisions of this Charter. "Another UNGA resolution on November 30, 1973 is resolution No. 3070, calling on all member states to recognize the right of peoples to self-determination and independence and to provide material support for them (Hirmiz, 2011).

The 1984 twenty-first session of the UNGA, Comment No. 12: Article 1 states, "Pursuant to the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right to self-determination."

In the opinion of the Committee, paragraph 3 is of particular importance, as it imposes specific obligations on states parties, not only in relation to their peoples but also towards all peoples who have not been able to exercise their right to self-determination or have been denied the possibility to exercise this right (United Nations, 1984).

Also, the eighth item of the Helsinki Convention of the Conference on Security and Cooperation in Europe on August 1975 and the Declaration of the 1993 Conference on Human Rights, held under the auspices of the United Nations, affirmed that "all peoples have the right to self-determination and freely determine their political status. In addition, there are the views of the International Court of Justice on the obligation of the right to self-determination in the course of its numerous resolutions and practical precedents in the field of international law supporting such rights to self-determination (Mahmoud, 2017).

The right to self-determination does not necessarily have to be secession or independence. There are peoples who opt for full independence, while others have opted for autonomy, federalism, or to remain under the sovereignty of the central state. The Kurds in the Middle East, including Iraq where they are the second largest ethnicity, could not enjoy those rights because of the chauvinist policies of refusing to give them their legitimate rights. They are people who have dreams, ambition, and rights that are oppressed by other people or governments forcing them to remain under their control in the name of unity, sovereignty, and territorial integrity.

The international law supports Iraqi Kurdistan's endeavors for independence. The referendum, which resulted in the approval of 92 per cent of voters for independence from Iraq, is supported by the perspective of international law by the idea of the right of peoples to self-determination (Alhurra, 2017b). The right of peoples to self-determination is enshrined in Chapter I of the Charter of the United Nations as well as the International Covenant on Civil and Political Rights. The same is followed by the fact that the International Court of Justice, in its advisory opinion, upheld similar cases. It is clear that "the right of peoples to self-determination is prohibited only if there is a Security Council resolution prohibiting that, which did not occur in the case of Kurdistan.

Discussing the Aftermath of the Kurdish referendum

Before the referendum day, there was not yet a specific or clear vision of the post-referendum phase, so many scenarios and options were put forward. First, the post-referendum moment should be inspired by the experience of South Sudan with the approval of the center and without bloodshed. This was a less probable case. Second, the option of going to the United Nations, like the Palestinians, to gain recognition of the Kurdish state. This is also difficult option because many Arab and Islamic states oppose it because they might face similar demand in their states by minorities, particularly in Turkey and Iran. Third, the option of reordering the relationship with Baghdad, because the referendum did not necessarily mean that Kurdistan's independence will be declared. The goal of Erbil probably was at worse to obtain a better relationship with Baghdad, especially in the shadow of Kurdish talk of several violation of government in Baghdad to the Iraqi constitution (Deli, 2017).

If it was the Kurdish leadership's decision to announce the Kurdish state, this would be a failed action because virtually no one will recognize the Kurdish state. A state cannot be built when it is landlocked by enemies from all its borders. Its territory will be besieged by Iraq, Iran, Turkey and Syria. A state to be admitted to the United Nation, no one of the five veto members of the Security Council should veto its admission. So far, all the five veto power members are rejecting such move (Charbel, 2017). Kosovo was unable to get a UN member ship because of the Russian veto power despite over 100 states' recognition of it.

In my opinion, the only scenario for recognition is if there will be a bloody war between the Kurds and the federal government and atrocities or crimes against humanities were committed against the Kurds, then the world public opinion, especially the Western nations and specifically the U.S. would turn against the Iraqi government to support and protect Kurdish people strive for independence (Galbrecht, 2017). The situation might change where a new reality will emerge for Baghdad and some neighboring countries, as well as for the United States and the world. America was against the partition of Yugoslavia, and nine months later, the United States accepted the reality and recognized the independence of Croatia, Slovenia, and Bosnia and Herzegovina but under different circumstances. American national interests are usually the motive behind American foreign policies.

Following the referendum and retreat of Kurdish forces from several key points, the regional president Massoud Barzani stepped down of his region's presidency either because of the venture of the referendum or because his post expired, or both. It is a setback to Kurdish independence endeavor. The Kurds overwhelmingly agreed to independence, but the referendum received little support outside the Kurdish region.

Although Barzani proceeded with the referendum, the consequences proved once again the betrayal of regional and Western powers, including the United States. His father Mullah Mustafa Barzani who died in exile in 1976 displayed a feeling of grief that he one day trusted the United States (Middle East Online, 2017b). Before the referendum, Barzani was saying that those who are asking for a postponement of the referendum to give us an alternative. It seems that he was confident of his power to negotiate with Baghdad and to implement Article 140 of the Constitution but apparently the aftermath proved that he was not in such position of power and strength to do. The contrary was true.

There were mistaken calculations of the Kurds and misestimating of the American position when they insisted on holding the referendum. American warnings were evident during the preparations for the referendum, that the Kurds would not receive Washington's support, as the White House, the State Department, and Defense Department separately statements urged the Kurds not to rush, to postpone or to cancel the referendum. Despite all these warnings, officials in the region have told some people and Kurdish journalists that the statements opposing the referendum are formal, and that they got behind the scenes American guarantees. This was only a pretext for wishful thinking, and at worst it was a "lie." The reasons that led to the poor reading of the Kurdistan regional government of the political mood in Washington is that those Americans who advise them lack professionalism, most of them either receive direct salaries from them or trade with them. Those advisors usually tell the Kurds what they like to hear from them. The experts who visit Erbil and not Baghdad and vice versa, usually don't get a balanced perspective or check what one party says about the other (Sky Press, 2017b).

The relationship between the two sides has also contributed to the lack of serious political will to implement article 140 of the Constitution and to resolve the issues of the disputed areas. The Iraqi federal formula has not yet exhausted all its potential, and the construction of the federal democratic state has not been completed. Despite the right of the region to hold a referendum to solicit and identify the views of its citizens, the referendum did not come in proper situations and was not preceded by necessary deliberation before taking such step.

It is unjustifiable to escalate the spirit of hostility between the Arab and Kurdish peoples, the use of violence and military action to resolve the issues, and the encouragement of various external parties to interfering in the internal affairs of Iraq and to provide opportunities for terrorists as well as uncontrolled groups to carry out their destabilizing acts. There should be agreed deadlines to solve the issues between the two parties to rebuild confidence and to improve relationship between the region and the federal government (Iraqi Communist Party, 2017a). The international coalition led by the U.S. should play a mediation, a pressure, and a guarantor role because of its leverage or and influence on both parties.

Although the Kurds argue that they have the right to independence because the Iraqi Constitution is violated in its essence, the opponents assert that the Article 1 of the Iraqi Constitution guarantees Iraq's unity. The preamble to the Iraqi Constitution states, "We the people of Iraq, who, in all its components and spectra, have to decide freely and choose the Union itself, that the commitment to this Constitution preserves Iraq's free union, its people, land and sovereignty." Article 1 of the Constitution reads, "The Republic of Iraq is a single, independent and fully sovereign federal state, with a democratic republican (parliamentary) government. This Constitution is a guarantor of the unity of Iraq" (The Iraqi Cabinet, 2005; Kakaei, 2017). The last sentence of the preamble to the Constitution states, "The commitment to this Constitution preserves Iraq's free association with its people, land and sovereignty." This sentence is clear, as it requires that the Iraqi constitution be adhered to in order to preserve the Union of the components of Iraq. The phrase "This Constitution is a guarantor of the unity of Iraq" means that the commitment to the Constitution by the Iraqi Government guarantees the unity of Iraq, which also could mean that any breach of the articles of the Constitution by the Iraqi government negates the unity of Iraq.

The referendum created a climate of escalation, speech of hate, and nationalist agitation prevails on both sides. Nationalist fanaticism meets with extreme chauvinism. If the sectarian conflict has left all the devastation, the racial nationalist conflict will do much more harm on Iraq and its people. The issue can be resolved by the implementation of article 140 in its three phases: normalization, statistics and referendum, and the enactment of the important body of laws, such as the Federal Court Act, the Federal Council Act, the Service Council Act and the Oil and Gas Act if the parties are sincere to solve the problems (Al-Helfi, 2017).

There are serious fears of a new and dangerous hotbed of tension, not only for the security and stability of the Iraqis but also the entire region, which is already full of numerous political and military hotbeds of tension.

No one can predict the future of this issue if the mutual escalation between the Kurdistan region government and the Iraqi and other regional governments occurs. It is likely that the Kurds would be in such circumstances that they would lose their current benefits and rights that they have gained throughout their historical struggle (Al-Arab Newspaper, 2017b).

The insistence of the Kurdish political leadership on holding the referendum on that time, without delay, “even a minute,” in the words of the President of the Kurdistan region Massoud Barzani, and his defy of the central government as well as most Iraqi political groups, not to mention the reserve of some Kurdish political forces over the timing of the referendum, together with his defiance of the world in rejecting or postponing the referendum is hard to explain. It could be a way to divert the attention of the Kurdish people from the economic crisis they face, as well as manifestations of corruption, power and the marginalization of other Kurdish political forces. This insistence provides the federal government and some forces in Iraq a cover to escalate the situations. Prime Minister Al-Abadi’s victory over IS had given him momentum to be tough with the Kurds and to have a better opportunities in the upcoming 2018 parliamentary election where he is hoping to renew his premiership.

Conclusion

The right of self-determination in the past has been linked to the right of peoples to claim freedom from the colonized states, while today it is linked to ethnic, religious or national groups with their specificities. They would like to separate from the motherland and want to create their states due to internal conflicts and the lack of respect for the will of their people. They want to guarantee their rights and freedoms in their own political and administrative system.

The long years for the Iraqi Kurds have been a failed experience, bloodshed, and wars. Why not learning from other states that have accepted to be peacefully separated. In addition, the new Kurdish generation that was born under the de facto Kurdish rule since 1991 has not lived under Iraqi rule and has nothing common with Iraqi culture and Arabic language. The right to self-determination of any people is a humanitarian principle overriding any national constitution. If the aspiring people were to adhere to national constitutions, many current independent states would have been deprived of their independence.

The referendum, the independence, and the political future of the Kurds in Iraq are in great risk because the referendum decision did not take into account the pressing regional situation and the world opposition to it or its timing. The current consequences and reaction of Iraq and its neighboring countries put the great Kurd’s dream in the wind and Kurds will be frustrated.

If the Kurdistan Parliament was not disabled, the situation would have been better off, and the Kurds would have avoided having different or opposing positions on the timing of the referendum.

The consequences of the referendum depend, in large part, on the position of the federal government in Iraq and on the way, it interacts with the results of the referendum. The positions of international and regional powers have a great impact on the various aspects of the referendum issue.

With the existence of some Iraqi organizations and militias willing to implement all the scenarios to serve Iran’s agenda and protect its interests, the scenario of armed clash with the Kurds remains an option (Al-Arab Newspaper, 2017a).

There was a need to approach the United Nations to intervene to resolve the disputes between the Kurdistan region and the federal government of Iraq. Not all means have been exhausted to have referendum or call for independence. There were still room for discussion and debate between the two parties. It seems that there was no prudent calculation before the call for the referendum. The failure of the Kurdish leadership to deal with its consequences proves such miscalculation. There were Iraqi, regional, and world unhappiness for the decision to escalate the situation by having the referendum. The Non-Kurd Iraqis were almost all united against the Kurdish move. The Iraqi government had a strong reaction and was able to take over many disputed territories including the strategic Kirkuk province that the Kurds consider part of Kurdistan (Charbel, 2017). It is the one who once Barzani said that “any force that wants to take Kirkuk forcibly will be faced by all the people of Kurdistan. The areas that returned by blood will not return to anyone, it is our Kurdish areas” (Ibid). The Regional President Barzani was insisting on referendum apparently did not think of its consequences.

The “siege” of the Kurdish region by Baghdad’s government because of the “Yes” vote for independence in the referendum is improper. The whole people should not be punished because of the Kurdish leadership’s decision. The drums of war should be avoided for peaceful negotiations and deals. The neighborhood cannot be imposed by force. The language of the dialog must be present. When fanaticism is prevailing in both sides, the danger of civil conflict arises. In fact, nothing should have been wrong with having referendum, if it is taken like having a survey or questionnaire.

If we were living in a sound world, the Arab, the Americans, and the Europeans should have respected the Kurdish decision for referendum on the time they see it fit. In fact, the right to self-determination reflects the preference of the Kurdish people.

On the other hand, an independent Kurdish region would have left the civic, secular and democratic Iraqi forces in a weak position because Iraqi politics would be dominated more by current religious and sectarian parties. The Kurdish parties in the current Iraqi parliament at least balance or counterbalance the influence and domination of the Shiite religious parties. The Kurdish parties are mostly secular parties.

For the referendum itself, it is clear that the majority of the Kurds have expressed a desire for independence, but it has not entailed any practical legislative or executive action to have such strong Iraqi and regional reaction. The Iraqi government demand for its repeal intends to make it clear to the Kurds that they must abandon their desire to dream about independence. In this context, the Constitution provides that the unity of the federal Iraq is based on optional basis and on the voluntary will of its components. This implies that any component has the right to reconsider its choice, on the basis of the Constitution (Iraqi Communist Party, 2017b).

In such atmosphere and condition, the best option would be for the concerned parties to sit together and negotiate an agreement that preserve people’s rights and the spirit of the Iraqi constitution, till a better time comes that people will be free to decide without fear of persecution. The United Nation and the United States should play a constructive and pressing role to help the two parties reach a comprehensive and sound agreement that keep peace and security in the region.

In short, the referendum and the call for Kurdish region independence in northern Iraq is a right for the Kurdish people to decide their destiny. The problem is that the internal and regional balance of power, the world public opinion, the UN and great nations opposition, make it unrealistic at this time in history. Declaring independence currently would bring war, destruction, and suffering to the Kurdish region and people and will threaten peace and security, and stability in the region and may be the whole world. The hope is for the Kurdish people to have a better time to enjoy their freedom and right to self-determination.

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