

THE MERITS OF KURDISTAN TO BE AN INDEPENDENT STATE IN TERMS OF INTERNATIONAL LAW AND CONSTITUTIONAL LAW

ADNAN ABDULLAH RASHEED, MUSTAFA RASHID ISSA

Ishik University

Abstract- All of the nations on the surface of earth is dreaming to an independent state. Majority of Kurds in Iraqi Kurdistan (with all of the minorities) are aiming to spend their life within an independent democratic state with its sovereignty. Kurds have a great responsibility to work hard to get independent state, since the majority of the Kurdistan shaped form the Kurds. This is not mean that when an independent state declared on the soil of Kurds, other minorities will be marginalized. Kurds need to earn the trust of the minorities as it has been clear since 1991 up to now, Kurds were protected minorities right in Kurdistan region. they are no different between a Kurd and a minority in terms of rights and law, but all of them have coexisted peacefully with having the same right and responsibility. This environment would leads to get the trust by the minorities if we would have a democratic system in the future Kurdistan state.

Keywords- independent, kurdistan, constitution law, iraqi law, rights.

I. INTRODUCTION

We are trying to focus on the worth of Kurds whether to decide an independent state or not. We are not talking about our politicians on how to get international support to recognize a Kurdish state, Or when and what time is proper to declare it, but we are trying to focus on the legal principles because for any similar political decision, it needs a legal and lawful background and without it, the decision will be so weak, especially such a decision that determine on the future of a nation. This is why we have to prepare whatever is required such as, law and legal, political, economy, cultural, social requirementsetc. all this requirements are needed we cannot work on some of them and ignore some others. Declaring the independence needs a concert strategy and planning with a very well preparation of working group in the law, political, economy, cultural fields...etc. All these groups need to work to put a clear agenda, as well as, studying on all of the available scenarios might be taken to abort the efforts of independent state. This could be achieved by having plan-B and C, in advance. Based on this plan, Kurds leadership can determine the time of declaring independency successfully.

To achieve the purposes, we classify the research as below;

Section one: being state in terms of international public laws:

International public laws are the law that defines the rights and duties of individuals. The oldest and main figure of the international law was a state because the reason why the international law existed was for managing the relations among the states in different fields.

Government formed from a group of people who are ongoing inhabited in a region that will run it by the governing group.

Based on the definition, we can list the elements of state:

1. Group of people (nation)
2. Certain area or a region
3. Governing group of people

Let us see what each elements mean:

First element: nation

As of yet, there is no measure for the certain number of the population for being state, but only there should be a group of people to live in the region. In nowadays world, we have states that their population would not reach 100,000 people, as we see below.

- Vatican – 768 people
- Tivalio – 9743 people
- Nawro – 11218 people
- Polaw – 21092 people
- San marino – 30472 people
- Monaco – 33084 People
- Lechtain – 34927 people
- Sant Gite Nivous – 39601 people
- Marshal Islawduos- 54313 people

This denotes that the population is not a matter, what is matter here is the common sense among the population of the region. The population that forms a nation are those people who are living in the region for a long time and continuously in order to be separated from the foreigners.

Second Element: Region:

Region is a place where the state will practice its sovereignty and authority as well as, the nation that live there.

The region will include three parts; land (soil), air and water approximately 100 km at the level of sea. As we already mentioned that the population is not a matter, it is also true for the land because there are a

state created on the land of several kilometer like Monaco.

Third Element: Power:

With having a nation and region, it is necessary to have governing group of people to run political affairs and organizing the nation's affairs in order to make the region a state.

Let us see whether Kurdistan have the three abovementioned elements or not.

o Regarding the geographic locations:

Kurdistan region includes all three provinces, Erbil, Sulaimania and Dohuk province. Hamrin heights is the border line between Kurdistan and Iraq. This border will start from the middle of Iraq in southern east of Badra town in Wasit province towards north until Nawt Bridge in west of Mandali town. This border goes from Hamrin heights to Fatiha along with Tigris River in north of Mosul city and circulates the south west of the city towards Hazar town and west. In Syria, starts from the north of Baach town and total area of Kurdistan region is 78736 km square that includes the following areas;

1. Erbil, Dohuk, Sulaimania and Kirkuk
2. All of the town of Nineveh except the town of Mosul, Baach and Hazar
3. Towns in Khanaqin, Mandli and Kfry, except the town of Baladroz in Diyala
4. The center of Badra town in Wasit and Kwit province

The population of the Kurdistan region will reach 6 million people. Since 1991 until now, there are a group of people running the region's administration. This tells us that Kurdistan region has all of the elements of state based on the international public law.

Section Two: State in terms of constitutional law:

Constitutional law has been defined in various perspective such as in the perspective of linguistic, history, appearance, academic, subjectivity, but legislatures relatively are agree to define the constitutional law based on the subjective measures.

Based on the subjective measures, there are several rules and regulations that defines the statehood, manages the powers of the state in terms of component, peculiarity, clarifying the inter-relations, as well as, the rights and duties of the people.

Defining a framework of those subjects of this law is controversial among the legislatures, while there are mutual consent about the constitutional law subjective political system and how to organize the political power, but there are disputes on the subject of state. This is why there are two different ideas among the legislature. Some of them believe that state theory is on the subjects of the constitutional

law, but some others are against it by saying constitution is not a tool for creating a state, in contrary, state is the creator of the constitution.

Therefore, they are differences between the international law and constitutional law regarding the subject of state. International law will focus of the state theories on how to create a state in order to be a member from international community, constitutional law will focus on the state theory regarding to the type of the state such as federal or confederal state...etc.

Constitutional law will focus on the state like Iraqi state is a federal state based on the permanent constitution that has endorsed in 2005. Now, we can substantiate that Kurdistan can be a state and to be separated according to the constitutional law and international relations.

Section three: The merits of Kurdistan region to separate from Iraq

According to the international law and constitutional law, we are focusing on how much Kurdistan region is prepare to be an independent state

First: the merit of Kurdistan region to be state according to the international law:

a. Self-determination: it emerged with the emerging of France revolution back in 1789 after that former USA president (Woodrow Wilson) in 1918 at the time of WWI reiterated on his 14 articles. This right was not determined as an international law principle until WWII, but after that in item (2) in article first in universal declaration of the United Nations approved as an international law principal. On 14th December 1960 based upon the decision number 1514, the League of Nations wildly and clearly talked about the self-determination as a right for the nations. These decision and some other similar decision who were related to the determination of nations have been endorsed by overwhelming majority members of the united nations. This is telling us that self-determination is one of the main principles of the contemporary international laws. Self-determination has two faces; internal face which is the nation has the right to determine the type of governing system and external face is that nations have right of independency, managing its resources and defining its legal status in the international ground.

b. The ability of Kurdistan region to run the region in a good manner when independence decided because powerful states will not allow a state will be created that would not be able to run the states affairs. Kurdistan region has proved that it doesn't have a problem to manage and run the state politically and economically. Kurds state will not be a headache for other states like Somali because Kurdistan state will

be different than other states known as (failure states) due to the natural resources and minerals that was led to a welfare of the citizens in the region

First: the merit of Kurdistan region to be state according to the constitutional law:

- a. In the preamble of the constitution in 2005 stipulated that "We, the people of Iraq, who in all our forms and groupings undertake to decide freely to choose to unite federal state, and learn a lesson for tomorrow, and enacted the system of values and ideals of the heavenly messages and the findings of science and man's civilization in this permanent constitution. The adherence to this constitution preserves for Iraq its free union people, land and sovereignty." it also says that "The Republic of Iraq is a single federal, independent and fully sovereign system of government is republican, representative parliamentary democracy, and this is the guarantor of the unity of Iraq's constitution." In this two text of the Iraqi constitutions, we will find it out that Kurds will have the right to separate from Iraq, for instance;
1. All of the nation of Iraq has decided willingly to create a federal Iraq
 2. Abiding to this constitutions will maintain the Iraqi federal regarding nation, land and sovereignty
 3. This constitution is a guarantee of united of Iraq

In those points, we figure that out the equation is as below;

Abiding to constitution= maintaining united Iraq, violation of constitution = separating the united Iraq = separating Kurdistan region. There is no need to give further examples of violation of the constitution. This tells us that Kurdistan can be separate from Iraqi based on the Iraqi constitution.

b. As it has stated in the Iraqi constitution in 2005 "Republican of Iraq a federal state." Nowadays, there are 24 states that implement the federal system which includes 40% of the world population. There are two ways to create a federal state that could happen through the unity of some countries or dissembling a federal state, but some legislatures will mention that there are the third way which is combine both previous ways in one way. Iraq was a centralized state, but later on, people decided to have a federal state as it has been stated in the Iraqi constitution "We, the people of Iraq, who in all our components and groupings undertake to decide freely to choose federal system." It means, all of the Iraqi components has decided to create a federal Iraq, but this is not mean that due to having a defector status since 2003, Kurdistan region will quit from independency. Kurd

alongside with the other components decided to live in a state with the federal system. This is not be fair to say Kurdistan has abundant from the question of independency, whether it would be considered as a violation of constitution or not. Kurdistan region has the right to declare independency because they have joint Iraqi federal on their own interest and can separate by their own interest. This is a wrong perception to say that federal system in Iraq aborted or restricted the dream of independency to Kurdistan region.

CONCLUSION, CONSEQUENCES AND RECOMMENDATIONS

At the end of the research, we have reached a consequence that based on the international laws, Kurdistan region has the right to be separated from Iraq because it has all of the conditions that an entity needs to have in order to be an independent state.

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