

## **What the Peculiar Case of the Kurdistan Region Can Teach Us about Sovereignty**

Written by Hannes Artens

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HANNES ARTENS, AUG 13 2013

With sectarian tensions on the rise again, and Iraq experiencing its deadliest months since 2008, an appreciation of the political structure the U.S. occupation has bequeathed to the country is of paramount importance. Here, the peculiar case of the Kurdistan Region of Iraq as an autonomous region within but at the same apart from the Federal Republic of Iraq poses analysts and policy makers in international relations with an incomparable anomaly. Its unique current political status defies easy categorization; it can best be described as a stalemate, a frozen conflict between Kurdish separatism and Arab assimilationism backed by powerful regional and international supporters. The scope of its autonomous status exceeds even the widest reaching cases for comparison in the international system, such as the Basque Region in Spain, Quebec in Canada, or Flanders and Wallonia in Belgium. How this attempt at Kurdish self-rule progresses via the central government in Baghdad as well as via regional and Western powers is then not only of great importance to understanding present and future conditions in Iraq, but it also leads to more theoretical questions as to whether the rigid understanding of sovereignty within mainstream IR can adequately capture its ambiguous status.

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## Disputed territories and Kurdish controlled areas in Iraq

What is the Kurdistan Region of Iraq? What is the political nature of this peculiar polity? Is it a bird? Is it a plane? Is it a de facto state, an unrecognized state, a state in waiting? Or is it merely a federal region at perpetual odds with and facing off against its 'parent state', the Republic of Iraq, in a frozen conflict that could easily escalate into renewed civil war? While most political scientists would argue for the Kurdistan Region between 1991 and 2005 to be categorized in the somewhat ambiguous group of de facto or unrecognized states, together with Abkhazia, Nagorno Karabakh, Northern Cyprus, Somaliland, and Taiwan among others (Caspersen & Stansfield, 2011), for most of them today the question of its status is easily answered: since the passing of the Iraqi Constitution in 2005 it is an autonomous region within the Federal Republic of Iraq. Yet on closer inspection matters appear not so straightforward.

First, the Iraqi Constitution of 2005 is the result of what has been called an 'imposed constitutionalism' (Feldman, 2004) an externally imposed 'constitutional revolution' by the U.S. occupying force, similar to occupied post-World War II Japan, that mirrored the demands of the Coalition Provisional Authority (CPA) under U.S. Viceroy in Iraq Paul Bremer rather than emanating from a genuine inner-Iraqi consensus-building process, and thus determining the future political order of Iraq along lines of ethnic division heavily favoring Kurdish and Shiite Arab interests at the expense of the Sunni Arab minority that was equated with Ba'athists and 'Saddam loyalists'. Second, the resulting state structure constitutes a perplexing singularity in international law with a federal state that consists of only one single autonomous region vis-a-vis the remainder of the state. Like Republika Srpska in Bosnia, the only international case remotely comparable to the Kurdistan Region and the political structure of Iraq, the CPA has created a state structure that sought to compromise centripetal forces while at the same time preserving the unity of the Iraqi state, yet in fact imposed an ethnic solution on an ethno-sectarian conflict and reified ethno-sectarian divisions, thus rendering the Iraqi state's survivability questionable from inception.

For the Iraqi Kurds, on the other hand, their ambiguous autonomous status comprises the best of both worlds. The President of Iraq, Jalal Talabani, is the leader of one of the two main Iraqi Kurdish NLMs, the Patriotic Union of Kurdistan (PUK), the foreign minister, Hoshiyar Zebari, is a Kurd, as is one of the Deputy Prime Ministers, the Minister of Trade and several other lesser portfolios; 57 of 325 Iraqi MPs are members of Kurdish lists who played the role of kingmakers after the 2005 and 2010 elections. At the same time Iraqi Kurds are conducting their own affairs largely independent from the central government. The Kurdistan Region has its own parliament, and its President Masoud Barzani, leader of the other main Iraqi Kurdish party, the Kurdistan Democratic Party (KDP) is the commander in chief of the Iraqi Kurdish armed forces, the *peshmerga*, estimated 127,000 deployable men that, despite this being stipulated in the constitution, have not yet been integrated into the Iraqi Army and likely never will. With a population of 4.7 million and an annual GDP of \$20 billion, the Kurdistan Region, in sheer economic figures, plays in the same league as independent states like Albania, Cambodia, and North Korea.

International investors continue to flock there, major European carriers like Lufthansa operate direct flights to its capital Erbil, where five star hotels run by the Kempinski and Hyatt group are mushrooming, and all major EU countries as well as the U.S., Korea, Japan, and Russia have consulates or interest sections there. The Kurdistan Region itself entertains representations that are de facto embassies in three dozen countries. Also, despite clauses to the contrary in the constitution and bypassing the central Iraqi government, the Kurdistan Region exploits, manages, and awards contracts to foreign bidders for its own natural resources, among them some of the richest oil and gas fields in the country. The by now eight year long stalemate over a national hydrocarbon law supposed to clearly designate jurisdictions and ranges of authority in the oil sector between the federal and the national level has allowed the Kurdistan Region to not only negotiate independently with international oil companies, it also effectively allows the Kurdistan Region exclusive control over the share in revenue from national natural resources it pays to the central government. Brendan O'Leary sums it up aptly when stating, 'on paper Kurdistan [is] freer within Iraq than any member state within the European Union' (2009: X).

## Emerging Regional Power Constellations

In this latitude of sovereignty lies the reason why it would be a failure to recognize the realities on the ground when

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ticking off the post-2005 Kurdistan Region as just a federal state of Iraq, and when applying to it the rather stringent categorizations of mainstream IR. Not only does the Kurdistan Region enjoy the widest possible scope of autonomy, unmatched by any other autonomous region or federal state, the Kurdistan Region, since 2005, has also managed to unilaterally expand on these freedoms in defiance of the federal government. Such brinkmanship was possible largely due to the backing of the U.S. who saw the Kurdistan Region for many years as a haven of stability, the only success story of the war, and a reliable partner in the quagmire of conflict-torn Iraq. Repeatedly U.S. forces had to intercede and keep apart Iraqi regular forces and Kurdish *peshmerga* facing off against each other; how critical relations are and how easily tensions can escalate, now that U.S. forces have left, is evidenced by several clashes between Iraqi forces and *peshmerga* in Diyala Governorate in November 2012.

After the December 2011 withdrawal of U.S. combat troops, it could be argued that, to a certain extent, Turkey has replaced the United States as the main backer of Iraqi Kurdish autonomy. Until 2007 Ankara opposed even limited Kurdish autonomy, yet since then has not only come to terms with its reality in Iraq but has also become its biggest economic profiteer, turning the Kurdistan Region into something akin to a Turkish special economic zone (Artens forthcoming). At the price of economic dependency, though, the Kurdistan Region has gained Turkey as a supporter against too aggressive Iraqi centralist forays, and Turkey not only keeps tabs on the Iraqi Kurds – preventing their drive for ever wider autonomy from going too far – but at the same time, through them, can even influence events in Baghdad.

## Situating the Kurdistan Region in IR Theory

Mainstream IR theory fails to adequately explain these complex relations, ambiguities and fluctuations in the political status of the Kurdistan Region of Iraq. With its autonomous status, exceeding all comparable cases in the international system, imposed by an occupying force, its relations with the central government permanently on the verge of violent conflict, and the limits of its authority in a state of flux, to simply categorise the Kurdistan Region of Iraq as a federal state would not do the political realities on the ground justice. Neither can it continue to be described as a *de facto* state like Northern Cyprus, Somaliland or Nagorno Karabakh. Those are 'transient anomalies in the international system' (Caspersen 2012) for whom the fact that their claim on exclusive jurisdiction over their territory is not recognized by the vast majority of states, is a temporary condition; yet, their 'demonstrated clear aspiration for independence' (*ibid.*), that is the desire to be recognized by other states, is seen as a defining criterion. However, it can be argued that the Kurdistan Region is faring well with its current ambiguous political status, within but at the same time apart from Iraq, and that its leaders do not harbour any aspiration to alter it. On the contrary, one could say they seek to perpetuate this state of transience for as long as practicable, that in a post-modern understanding of sovereignty it matters more that the Kurdistan Regional Government (KRG) can negotiate oil deals directly with Exxon Mobil and that McDonald's opens a branch in Erbil than that it is recognized by Nicaragua and the like as an independent state.

Rather than the rigid and static concepts of statehood held by mainstream IR, that normatively predetermine a linear, perennial and universally applicable development from ethnic group to nation to nation state and then simply determine whether sovereignty exists or not, such a post-modern view of sovereignty is better captured by understanding sovereignty as a form of discourse of identity. In a nutshell, it concentrates on the identity of a certain polity rather than its status according to what at the end are quite arbitrary labels and categories. From this post-structuralist perspective then, sovereignty is a socio-political construct that, in a Butlerian understanding of identity (2006), is enacted by the sum of performances that constitute it, and that by its very nature will always be incomplete, contingent, and transient – a quality inherent to all political communities, be they 'established states', federal states or *de facto* states. This perception of sovereignty allows us to move away from the tiresome and often misleading study of whether sovereignty is, to the more productive interrogations into *how* sovereignty is, primarily how it is performed. This constitutes a radical departure from a focus on the outcome and status towards an analysis of the *process* of performativity. In the words of Richard Devetak,

'this leads to an interpretation of the state (...) as always in the process of being constituted, but never quite achieving that final moment of completion. The state thus should not be understood as if it were a prior presence, but instead should be seen as the simulated presence produced by the processes of statecraft. It is never fully complete but is in

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a constant process of “becoming state” (2009: 204).

Applied to the Kurdistan Region this post-structuralist approach means studying how its statecraft, the sum of its performances and how they are received, enacts Kurdish sovereignty in Iraq. These performances are situational and contingent, depending on the audience, whether it is the KRG's own constituency, Kurds in the diaspora, the central government in Iraq, the Turkish or U.S. government, or multinational oil corporations; the list of audiences is limitless. Shifting focus from a mere question of status to how this matrix of performances enacts sovereignty at large, how the never fully complete but constant process of ‘becoming a state’ works in this particular case, allows analysts not only to better capture the complex dynamics in today's Iraq, but, at a wider level, better captures the nature of sovereignty and statehood as a discourse.

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