

# Kurdistan as a de facto state in Iraq

To what extent can the KRG be considered a de facto state?

Global Politics

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## **Introduction to Kurdistan**

The Republic of Iraq is the de jure government of the territory of Iraq, and the de facto authority of most of Iraq, excluding the Kurdish Autonomous Region. De jure is defined as “in accordance with the law”, and de facto is the exercise of power, though not formally recognised (Merriam-Webster). The Kurdistan Regional Government (KRG) is the de facto administrative government of the Kurdish population in northern Iraq, as stated in the Iraqi constitution (Constitution of Iraq). In contrast to other Kurdish populations in the Middle East, the KRG derives legal authority from the Iraqi federal constitution to exercise authority over the Kurdish population in Iraq within its region (Constitution of Iraq). The KRG is the ruling body of the autonomous Kurdistan region, which was established in 2005 in the aftermath of the 2003 invasion of Iraq. The KRG is a democratic parliamentary republic within Iraq’s federal system with a presidential system of government. The capital of the Kurdish region is Erbil. However the two main political parties within the KRG control different parts of the region. The KRG has two primary parties: the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK), and each party controls an element of the government policing and military organisation: the Peshmerga Armed Forces. The KDP primarily exercises power within the Erbil region, while the PUK controls Sulaimania, in the south of the KRG controlled region. For the purposes of this essay, I will use the terms KRG controlled region, as well as the Kurdish Autonomous Zone interchangeably. The president of the KRG is elected by the Parliament for a five year term. The current president of the KRG is Nechirvan Barzani, who is a member of the KDP. The president of the KRG is the commander in chief of the Peshmerga Armed Forces, which police the region and act as the standing army for the KRG in lieu of the federal military and the police of the Iraqi

Security Forces (ISF). This information provides an excellent point to develop a judgement as to whether the KRG can be considered a de facto state.

The KRG is not to be confused with the Kurdish Workers Party (PKK) found in Turkey. The PKK is a collection of Kurdish subgroups found throughout the Middle Eastern region, primarily in Turkey, Syria and Iran. The PKK, unlike the KRG, has been designated as a terrorist group by Turkey and the USA (US Dept. of State). The PKK seeks to establish de facto control in the Kurdish majority regions of Syria and Turkey, leading to violent conflict with the du jure government of the aforementioned states as a result.

The success of the KRG in achieving an autonomous region within Iraq is shown in stark contrast when compared to other Kurdish groups (Mapping the Kurds). In 2017, the KRG held an official referendum in an attempt to declare independence from the Republic of Iraq. The referendum polled at 92% affirmation of secession from Iraq. The referendum was declared illegal by the Iraqi government, and the spokesman for the Iraqi Prime Minister said “Any decision concerning the future of Iraq must take into account the constitutional provisions, it is an Iraqi decision and not one party alone. All Iraqis must have a say in defining the future of their homeland. No single party can determine the future of Iraq in isolation from the others.” (Xinhua). The referendum resulted in a conflict between the KRG and Baghdad, and the loss of KRG control over the Kirkuk oil fields.

The Peshmerga (meaning “Those who face death”) are the military forces of the KRG. They are constitutionally under the control of the KRG Ministry of Peshmerga Affairs (ISSAT). The Peshmerga are responsible for the security of the Kurdish Autonomous Region. The Peshmerga predate the founding of the KRG, dating back to the Ottoman era, when they acted as

a tribal border guard. The Peshmerga are divided into two official groups: the Asayish, which act as the intelligence agency for the KRG, and the Zeravani, which acts as both military force and law enforcement in the region. In addition to this, there are two smaller intelligence agencies that operate within the two main parties, the KDP and the PUK. The Parastin operate alongside the Asayish for the KDP and the Zanyari works along the Asayish while reporting to the PUK (KRSC). The Peshmerga have acted as the northern front for much of American military operations in Iraq, having been responsible for eradicating much of the Islamic State of Iraq and the Levant's (ISIL) strength and control in the region by 2018, assisting in US operations in the 2003 Iraq War. They aided in the capture of Saddam Hussein in 2003, and captured Hassan Ghul, who provided the vital intelligence for Operation Neptune Spear, resulting in the death of Al-Qaeda founder and leader Osama bin-Laden (Hassan Ghul).

The Peshmerga are divided similarly to the KRG, controlled separately by the PUK and KDP. Unification of the Peshmerga forces has been attempted since 1992. However, factionalism and differences in PUK and KDP goals have prevented this. Peshmerga forces rely on older weapons captured from earlier military campaigns, or are forced to purchase weapons through the Iraqi government, due to the constitution (Constitution of Iraq). During times of conflict, Peshmerga forces rely on incorporation of volunteers and irregulars to bolster their numbers. In recent times, with the growing influence of the KRG in the Iraqi region, the Peshmerga began preparations to downsize their army in favor of fewer, better trained soldiers. Other plans were proposed. For example; in 2009 there were plans to incorporate elements of the Peshmerga into the Iraqi Army. However, with the rise of ISIL and growing tensions between the Iraqi Security Forces (ISF) and the KRG, these plans were put on hold. There is no

centralised command unit for the Peshmerga forces. As a result, they are less coordinated than conventional militaries, instead relying on independent closed hierarchies that are based on political allegiances. The numbers of the Peshmerga forces are currently unknown, due to lack of centralised communication and documentation. This issue is also a result of different governing institutions under the control of different parties in each region of the KRG. In the aftermath of the Iraqi Civil War, under pressure from the US and NATO, several Peshmerga brigades were united under the Regional Guard Brigades (SOFREP). However, political and independent military hierarchies continue to exist, even under the unified brigades. Divided political loyalties remain a problem in the Peshmerga, and as a result affect relations and possible unification between the KDP and PUK, making them less effective vis-a-vis the federal Iraqi government. Issues such as nepotism, the act of using your power or influence to get good jobs or unfair advantages for members of your own family, (Cambridge) run rampant in the Peshmerga forces. In both the unified brigades or in Iraqi Army units with Peshmerga troops, allegations of disobedience to centralized authority continue, with Peshmerga forces preferring loyalty to the KDP, PUK or KRG to loyalty to the country as a whole. The Peshmerga forces recently received official communications, intelligence and warfare training in 2015 by US forces as part of the Combined Joint Task Force - Operation Inherent Resolve as part of the offensive against ISIL. As of 2014, the Peshmerga has been able to begin upgrading its arsenal, as well as developing a proper medical corps and C.C.C. (command, control, communications) system (CJTF-OIR Press Release). The division between Peshmerga corps has been detrimental to these efforts.

## **Max Weber and the State**

In order to answer the question of whether the KRG can be considered a de facto state, we must define what a state is. There are several valid definitions of a state that differ in their criteria. For the purpose of this essay, we will use three definitions of a state, based on different approaches to global politics. In the first part of the essay, we will use Max Weber's definition of a state to determine whether the KRG fits into its specifications. Max Weber defines a state as “[A] human community that claims a monopoly on the legitimate use of violence.”(Weber) At first glance, the KRG fits this definition of statehood. Max Weber's definition of statehood revolves around the idea of internal sovereignty: the ability of the state to control the population. Legitimacy is defined by Max Weber as the “inner justification” upon which obedience to authority rests (Gale). For the use of violence, or exertion of an authority on the population, the population must accept it as lawful and right. Sovereignty is defined as the exclusive authority that a state has over a territory. Sovereignty has impacts on both domestic and international affairs, allowing that a sovereign state has a monopoly on the legitimate use of force within its territory, and the exclusive right to make and enforce laws within its geographic boundaries, without outside influence (Key Concepts in Governance).

The KRG can be considered a state, according to Max Weber's definition, as it is the sole possessor of the use of legitimate violence on its population through the Peshmerga. The Peshmerga, through the Iraqi constitution, have a monopoly on the use of violence within the KRG. Other military and security forces in Iraq are forbidden by the constitution from exercising legitimate violence within the KRG controlled region. The Iraqi Security Forces (ISF) is

composed of the official Iraqi military and the police, both federal and local. However, the ISF cannot legally enter the KRG controlled region, thus the ISF cannot exercise legitimate authority over the population. Instead, the Peshmerga Armed Forces (PAF), more specifically the Zervani, are responsible for policing within the region. The Zeravani are an extension of the KRG government. While they may be divided by partisan political ties, they still represent the KRG's police and military force. The government is considered legitimate by the majority of the Kurdish population, and are recognized by the Iraqi government as an autonomous region within Iraq's federal structure (Constitution of Iraq) So, any actions taken by the Zervani are legitimate exertions of the KRG's authority over their population.

While the Zervani are the legitimate enforcers of the state's monopoly on legitimate violence, they do not entirely satisfy Max Weber's definition of a state due to the divisions within the PAF. The Peshmerga manage the coercive institutions of government within each region in the KRG. However, there is no centralised command, and the region's governing institutions do not communicate with each other due to partisan military hierarchies and political allegiances taking priority over loyalty to either the KRG or the Iraqi state. Due to partisan divisions and political parties having different goals and aims in the KRG, different Peshmerga forces have different goals and different methods of dispatching justice. Peshmerga units in politically opposed regions also face the issue of bias against the people within that region, based on their political values. The population in PUK allied regions may not accept the authority of KDP allied Peshmerga forces as legitimate. This undermines the KRG's claim to de facto statehood, as they are unable to fully exercise legitimate violence universally across the KRG controlled region.

Therefore, in law, the KRG is the only power within the region that can exercise legitimate violence within its territory. However, due to the factional nature of the Peshmerga, its power may not be considered legitimate in some regions of the Kurdish Autonomous Zone. Because of this, the KRG cannot exercise complete control over its territory. Because the Peshmerga is not seen as fully legitimate within its own jurisdiction, the KRG does not have a monopoly on the use of legitimate force within its territory.

### **Theta Skocpol and the State**

A second proposed, and widely accepted definition of statehood comes from the sociologist Theta Skocpol. Theta Skocpol states that the state is “a set of administrative, policing, and military organizations headed, and more or less well coordinated by, an executive authority.” (States and Social Revolutions) This definition of a state also relies on the internal sovereignty of a state, and its ability to control its affairs, without interference from outside powers. This definition of a state relies on a state’s organisational structure within the system. In this section, I will discuss the ability of the KRG to manage all of its administrative structures, and how the division that divides the KRG affects its ability to be considered a de facto state.

The KRG relies on the Peshmerga factions to manage different regions within the KRI. Each region is controlled by a Peshmerga administrative institution. These institutions manage the day to day domestic affairs of the region, as well as coordinate military movements and police functions. These institutions derive their power from the KRG. On the surface, it appears that the KRG does in fact satisfy the qualifications of a state according to Theda Skocpol’s definition.

However, there are several weaknesses in the KRG's ability to fulfill the specifications of Skocpol's state. The Peshmerga rely on volunteers and irregulars to bolster their numbers during times of crisis. This indicates a lack of organisation, and also creates many problems. These problems include breakdown of the organisational structure due to the issues with political loyalties. The population of the KRG all owe their allegiance to one of the two political parties, and this creates a large division between groups of people. This is felt more strongly in the organisational structure, as true coordination between the population, the region, and even the government becomes impossible. Volunteers and irregulars further exacerbate the problem.

Another issue that cripples the ability of the Kurdish region to be coordinated by the executive authority, the government, is the lack of communication between regions. This is yet another problem that is caused by the overarching issue of political division within the KRG. The Peshmerga managed regional institutions do not communicate with each other, out of mistrust of other regions, or differing political views. Other structural problems such as misuse of power, nepotism, and ghost employees contribute to the weakness of the organisational structure of the KRG.

Expanding on the issue of a lack of universal executive coordination in the Kurdistan Autonomous Region is the rampant infighting between the two major political families, the Barzani's and the Talabani's, who lead the KDP and the PKK respectively. Lack of trust and large ideological differences have led to decades of conflict between the two families, most recently resulting in the loss of the Kirkuk oil fields, which produced nearly half of the energy revenue of the KRG (Aydoğan). The infighting extends to the decisions made by the KRG, and often results in political deadlock (Wu) The feud between these two families dominates the

political scene of the KRG, and is one of the primary obstacles preventing cooperation in Kurdistan, and ultimately impeding major progress.

Due to the issues of political division, and its resulting effects, the KRG can only be considered a state by Theda Skocpol's definition in the loosest of terms, as it only appears so on the surface. The KRG, as the executive authority of the Kurdish Autonomous Zone, does, to some extent, coordinate and manage administrative, military and policing affairs on a large scale. However, the KRG fails to qualify on the local scale, where issues among the Peshmerga and the ruling political dynasties weaken the organisational structure, and make effective coordination very difficult.

## **The Montevideo Convention and the State**

The Montevideo Convention of the Rights and Duties of States provides an alternative definition that is widely accepted, due to its status as an official UN treaty that dictates the considerations of states by the UN and any associated regimes. The Montevideo Convention is often used by nations to justify their statehood and maintain sovereignty, even in cases where they are not officially recognised by other states. The Montevideo Convention deals with both internal and external sovereignty, making it more useful in the terms of this essay's question. The Montevideo Convention defined a state in the treaty as "The state as an actor in international law should possess the following qualifications: (1) a permanent population, (2) a defined territory, (3) a government and (4) capacity to enter into relations with the other states." (United Nations)

Once again, the KRG fulfills the qualifications set out in the definition of a state. The KRG controls and enforces their authority over their population within a territory - the KRI, or the Kurdish Autonomous Zone. The KRG acts as the primary governing body over the KRI, deriving their authority from the Iraqi government and the Iraqi Constitution. While there are some issues with the actual governance of the KRG over the reason, which I highlighted above, in theory, the KRG qualifies as a state in the first three points. However the first three points deal with the matter of internal sovereignty, like the previous two definitions discussed. The fourth point however deals with external sovereignty, and whether a state is recognised by other actors.

The KRG does not exert an external influence, and is unable to carry on relationships with other actors, except under certain circumstances. Therefore, the KRG does not qualify the fourth element of statehood. An example of the KRG's inability to carry on relations is their issue with the procurement of arms. The KRG is forbidden to buy weapons from other countries by the Iraqi Constitution, and must rely on Baghdad. Without permission from Baghdad, the KRG cannot legally buy arms from other states. This demonstrates the KRG's inability to carry relations, as they are not recognised as the de facto government of their region.

Another reason why the KRG does not qualify as a state, according to the fourth element is that they are not recognised by any other states. To be a state, and have the ability to exercise external sovereignty, they must be recognised by the other global actors - the states. However, the KRG is recognised to some extent by the United States.

The United States recognises the KRG as the limited de facto government of the KRI, and is able to carry out relations between them independent of Iraq. One might argue that this is grounds to qualify the KRG as a state - and to some extent, it does. The KRG is able to carry out

relations with the US, and is able to trade; arms, training, and intelligence. However, all of this is only able to occur due to Iraq allowing the US to come within their territory - Iraq - and engage in military operations. US-Kurdish relations are a result of Combined Joint Task Force - Operation Inherent Resolve, the operation against ISIL militants in Iraq.

One might argue that Kurdistan has carried out relations with the US prior to the 2014 offensive against ISIL; in 2003 against Al-Qaeda the Kurdish forces were instrumental in providing intelligence and holding the front in lieu of the US. This however existed before the creation of the KRG and the Kurdish Autonomous Zone and is therefore considered to be the US enlisting the aid of an NGO within Iraq, rather than a de facto state with a defined territory and population.

Paradiplomacy is international activity by regional governments, non governmental organisations or another group that does not have diplomatic status. Diplomatic status indicates whether a group is able to engage in diplomacy, which in turn refers to the conduct of relations between sovereign states, and is the primary means of communication between states. The KRG can be considered to engage in paradiplomacy, as it does not have diplomatic status, although it can and has conducted international activity and relations, namely with the US. An example of this is the establishments of consulates by some foreign governments in the capital Erbil.

In conclusion, the KRG cannot fully be considered a state under the Montevideo Convention as it does not satisfy the fourth element of the treaty, and is therefore unable to exercise external sovereignty without the permission of the de jure government in Iraq. While it may carry on some external relations through paradiplomacy, none of these would exist without the consent of Iraq.

## **Conclusion**

To some extent, the KRG can be considered to be a de facto state. The KRG qualifies as a state under both Max Weber's and Theda Skocpol's definitions of a state, however only under the loosest conditions. There are arguments to be made that can weaken the overall consideration, however it remains that the KRG has the ability to exercise legal violence and justice over its population. In short, the KRG does have internal sovereignty. However, to be considered a state, an actor must be able to exercise both internal and external sovereignty, which the KRG is unable to do. The Iraqi government remains the sole actor in the Iraq region and territory that can carry on relations with other states. In short, the KRG can be considered to be a de facto state to some extent, however as of now, the KRG cannot wield external power and cannot be considered a state, but rather a governmental organisation that controls an area, but relies on a state for its powers.

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