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Iraqi Kurdistan region's referendum on the independence under international law

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Abstract
The Iraqi Kurdistan region held a referendum on 25 September2017. The goal of the referendum was separation from Iraq. However, the referendum was totally rejected by Iraqi federal government, while the international community did not recognize it. The criteria of international law prescribe that players within the international system and the State wherein the secession occurs are the primary examiners in assessing the legitimacy of the independence referendum. This is because, without the approval of all the main actors involved, the vote has no legal weight. Therefore, this paper aims to examine the independence referendum of the Iraqi Kurdistan region based on the international law standards including can Kurdistan region separat from Iraq? And, dose Kurdistan region has statehood criteria? As well as, what recognition method will Kurdistan region take in the international community when it has been recognized as a new State? The methodology included in this paper is a basic library study which focuses solely on primary and secondary sources. The paper reached that the establishment of an independent State includes the legal dimension which goes through the viewpoints of international law, and the political dimension which focuses on the interests of the States as they agree to recognise a new State. Therefore, although the Iraqi Kurdistan region has full international law criteria for becoming an independent state, but it can fall into the political context rather than legal context.

Keywords: Kurdish people, Iraq Kurdistan region, Iraqi government, statehood, recognition, international law

1. Introduction
Iraq is a state entity that comprised many ethnic nationalities and the Arabs dominate the demographical plane. Beside Arabs as the major dominating ethnic group, Kurds are also the main minority group representing about 10 percent of Iraq population. Kurds inhabit a dominant position in the socio-economic landscape of Iraq. Kurds as a group can be found in Kurdistan region in the mountainous northern part of Iraq. In terms of religious affiliation, Kurds are the most diverse group in Iraq. While majority align with Sunni sect of Islam, some are also Yazidis and Christians. Historically, Kurdistan Region for the most part of recent centuries had been under the political domination of the Ottoman Empire. The region became disentangled from the political clutches of Ottoman in 1918 when the Turkish Empire was decimated by the ravaging Allied Powers of Britain, France, and Russia. Relations between the Kurdistan region and Iraq have always been politically and economically unstable in the context of Iraq's rule. Also, the Kurdistan region has been in conflict with the Iraqi successive governments, to gain its rights. In the latest developments of Kurdistan region struggle in this century, was the Kurdistan region's independence referendum, which took place on September 25, 2017, due to the violations of Kurdish people' rights by the Iraqi governments. The conduct of referendum by the Kurdistan regional government (KRG) was the ultimate goal of the Kurds to attain statehood by seceding from Iraq. The referendum was later rejected by the Iraqi federal government and such represents an affront on the part of the Iraqi government. As the international law requirements dictate, the actors within the global system and the state within which secession is taking place are principal assessors in determining the legitimacy of the referendum for independence. This is because, without recognition from all concerned principal actors, the referendum does not have any weight in legal terms. It is thus the intent of this paper to first, the historical overview of the Kurds emancipation process is necessary in order evaluate and assess the position of international law with regard to Iraq Kurdistan region. It is crux of this paper to evaluate the Kurdistan region statehood. Therefore, the paper examines the political and social foundation of the Iraqi Kurdistan region and put every issue in perspectives. Significantly, the paper will evaluate the positions of all international law subjects such as statehood criteria, recognition, and doctrine of remedial secession in the determination of the legality of the Kurdistan region referendum of 2017 for exercise of right to self-determination including independence. In another words, does IKR have an international lawful option to withdraw from Iraq based on the independence referendum held on 25 September 2017; if so, does it content the relevant criteria's of statehood; finally, what recognition method Kurdistan region will take in the international community when it has been recognized as a new State?

2. Kurds Political and Social Antecedents in Iraq
As stated earlier, Kurds are one of the autochthonous people of the Middle East and the region is the birthplace of most Kurds. The origin of the political travail of the Kurds can be drawn back to the end of First World War (WWI). Kurds are one of the ethnic nationalities in the Middle East region. Middle East is a principal location of majority of the Kurds' ethnic nationality and they form important minority group in Iraq, Syria, Iran and Turkey (McDowall, 2003) [41].
The region has been their natural abode from the earliest time; and the disintegration of the Ottoman Empire after the First World War (WWI) had a lasting impact on the political emancipation of the Kurds in the Middle East, most notably

in Iraq. Kurds in terms of ethno-linguistic classification belong to Indo-European people and form the fourth major ethnic composition in the Middle East, with no state of theirs. (Katzman, 2010) [34].

Most Kurds belong to Sunni sect without common language. It needs to be stated here that Kurds are distinct group in the Middle East whose culture are different from their neighbours. There is no reliable estimation of demographical concentration of Kurds in Iraq, but it is generally believed that 8.5 million Kurds are presently dwelling in Iraq and form the single prime minority group in Iraq. (O'Leary, 2002, p.17 & Bird, 2004, p.10 – 15) [3, 5].

The history of Kurds in the Middle East, most importantly in Iraq is replete of continuous struggle for political independence in order to maintain their identity. Kurds in Iraq have enjoyed some degree of autonomous and local governance under various Iraqi constitutions and President Woodrow Wilson's 14th Point Programme was an important impetus to Kurdish national aspirations. One such point clearly pointed out the need for Kurds' sovereignty and promised security and development for contemporary Kurds in Turkey. (Kashi, 1994, p.32-61) [33].

The disintegration of the Ottoman Empire no doubt was a blessing in disguise for Kurds as they realised for the first the need for political emancipation. In 1930, after the colonial domination of Iraq by the British ended with no possibility of Kurdish independence as the agreement reached did not specify such. The Kurds realised that their fate in the state of Iraq was dangling staged a rebellion against the state of Iraq under the guidance of Sheikh Mahmoud. The failure of both Britain and Iraq to uphold the League's 1925 recommendations was an impetus that impelled the Kurds to stage such a rebellious act against the government of Iraq. (Gennell, 2014) [22].

From 1946 to1979, Mustafa Barzani as a Kurdish leadership struggled for achieving Kurdish people rights in Iraq. Therefore, he created the Kurdish Democratic Party (KDP). The cardinal principle behind the formation of such organisation was basically for nationalistic feelings and Kurdish independence. With the formation of the organisation, a political battle ensued between the KDP and the national government of Iraq until 1970 when a peace agreement was reached. Under these circumstances, a census was conducted in 1974 to determine the boundary of Kurdish national entity and such move was seen as the first attempt on the part of national government to recognise the rights of Kurds to their distinct identity in the state of Iraq. (Tripp, 2002, p.117 & 200) [60].

The Iraqi national government subsequently reneged on its promises to implement the manifestos as promised and also denied the Kurds control over the oil- rich areas. This subsequently led to a very serious revolt by the Kurds against the national government; however, within a short period of time, the revolt was crushed by the Iraqi government. The subsequent reaction of the Baghdad government indicated that the government was not willing to allow the Kurds to control their finance, security and oil-rich Kirkuk, and such unwillingness led to total collapse of the talks. (Tripp, 2002, p.212 & 244) [60].

With the ascension of Saddam Hussain to power in 1979 the intractable conflicts between the Iraqi government and Kurds could not be adequately managed, and the relationship completely faltered. With the coming of Saddam to power, a war broke out in 1980 between Iraq and Iran, during which Kurds were sent to fight. It was estimated that over two million Kurds died in the process. (McDowall, 2004, p.263 & Hiltermann, 2013) [41, 29]. It has been argued that Saddam deliberately employed the war to exterminate and persecute the Iraqi Kurds. The Kurds later resisted vigorously, and Saddam received from the Kurds a stiff resistance he did not bargain for. The Anfal confrontation was a major episode in the history of Kurdish resistance against the Iraqi government as the campaign was regarded as genocide against the Kurds. (Middle East Watch Report, 1993 & Bengio, 2012, p. 180-181) [4].

Many Kurds and international observers observed that dangerous substances (chemical weapons) were exploited on Kurdish municipalities and communities, as well as terrorizing the populace to attain heinous martial objectives. (Abdulla, 2012, p.171-172) [1]. Such process of gradually exterminating the Kurds was informed by the need to dehumanize the Kurds within the Iraq political space, and it was a deliberate policy on the part of Saddam Hussein to eradicate all vestiges of Kurdish aspirations in Iraq. For a decade and a half; the Iraqi army bombed Kurdish villages, and poisoned the Kurds with cyanide and mustard gas; it is estimated that during the 1980's, Iraqis destroyed some 5000 Kurdish villages, and nearly 500,000 civilians were taken away and placed in detention camps in the desert areas of south and west Iraq. In March 1988, attacks by Iraqi forces resulted in the massacre of more than 5000 Kurdish civilians of the Kurdish town of Halabja, by gassing them with chemical weapons, which is considered under Article (II) and (III) of the 1948 Convention on the prevention and punishment a genocide as one of the most severe crimes against humanity. ("The Iraqi State's Genocide against the Kurds," 2007).

In this process, where nobody was available to rescue and protect the Kurds against the Iraqi regime, a rebellion broke out on a large scale in 1991 against Saddam. In the process of rebellion against the regime, Saddam launched another assault on the Kurds. In this uprising, over 2 million Kurds eventually became homeless, and thousands died of hunger and starvation. (Zunes, 2007 & McDowall, 2004, p.373) [72, 41]. Therefore, such response became necessary in order to restrain the regime from committing further atrocious acts against the Kurds. In this manner, the multilateral strategy of the United Nations was employed to restrain the regime. In April 1991, the multilateral body under the auspices of UNSC passed Resolution 688 to restrain Baghdad from committing further attacks against the Kurds. The United Nations Security Council Resolution (UNSC) reads as thus:

condemned the repression of the Iraqi civilian population in many parts of Iraq, including most recently in a Kurdish populated area and demanded that Iraq, as a contribution to removing the threat to international peace and security in the region immediately end this repression, and that Iraq allow immediate access to international humanitarian organisations to all those in need of assistance in all parts of Iraq. (UN security Consul Resolution 688, 1991).

From the above therefore it can be sufficiently established that the multilateral body responded by using the UN conflict resolution mechanism to deter any further aggression against the Kurds in Iraq. Aftermath, in 1992, with relative peace prevailing in Kurdistan, the Kurds evolved governmental apparatuses to govern their own region, independent of the Iraqi national government. In this scenario, parliament and local authorities were established

to govern over the Kurdistan region by the Kurdistan Regional Government (KRG), which ultimately eliminated Iraqi control from the region. (Gunes, 2016, p.620-65) [26].

This semi-autonomous status elevated the region to a "de facto" Kurdish State between 1991 and 2003. In 2003, there was a dramatic political change in Iraq as the Gulf War eventually forced Saddam's regime out of power. In this seemingly unending political climate, the Kurds received the politically warm arm of the U.S. The Kurds became an important element in the crusade against Saddam's regime by the US. The eventual capture of Mosul and Kirkuk by the US and Kurdistan forces greatly enhanced Kurdish autonomy. (Karon, 2003) [32]. The capturing of Saddam in 2003 led to a general election in 2005, in which the Kurds became one of the principal participants. (Katzman, 2010) [34]. This altered the political status quo as Kurds were already, at least officially, gaining some measure of political autonomy from the national government in Baghdad according to the Iraqi Constitution. ("Iraq Constitution has been approved,"2005). However, the Kurdistan regional government (KRG) had carried out various protests against the federal government because the acute marginalization and non-inclusiveness of Nouri al-Maliki's government. As a result of this unpleasant development, on 25 September, 2017 under the decision of President Masoud Barzani the referendum conducted without taking into consideration the Iraqi federation. Thus, the referendum was conducted and recorded a positive response in favor of Kurdistan independence with an overwhelming majority vote of roughly 93.25 percent. However, the international community did not recognize the Kurdistan region's referendum for independence. (Muir, 2014 & Pichon, 2017) [46, 49].

3. Subjects of International Law at Value

Three theories of international law are relevant to the matter of the Kurdistan region independence from Iraq; statehood, recognition, and secession. To put it another way, does IKR have an international lawful option to withdraw from Iraq based on the independence referendum held on 25 September 2017; if so, does it content the pertinent criteria's of statehood; finally, what recognition method Kurdistan region will take in the international community when it has been recognized as a new State?

3.1. Statehood Eligibility Criterions

In these post-modern times, statehood has been viewed as the pinnacle of global identity. Obviously, the conventional view is that states have up to this point been seen as the only global lawful individual entity. In every legitimate framework, the subject of law is a unit or body, which has enforceable rights and obligations according to the law. It very well may be an individual or an organization, and both are characterized as 'lawful individual' by the law. Having a legal personality is the principle proviso for the elements to work or, in another way to put it, to authorize and charge a case. (Crawford, 2006, p. 4-5 & Shaw, 2003, p.195).

The idea of statehood has developed into one of the essential mainstays of international law. The term, "State", has a particular significance and when it is utilized with regards to public international law, it alludes to the "nation-State". This means that for an entity to be acknowledged as a State and for it to have its position in the international arena, it must meet the set prerequisites dictated by international law. Likewise, The Montevideo Convention on the Rights and Duties of States, Article 1 gives the requirements for statehood. These arrangements have obtained the status of customary international law. As per the Convention, a State ought to have; a) a permanent population b) a defined territory c) government and d) capacity to enter into relations with other States. (Montevideo Convention, 1933).

Regardless, the issue stands as to the sufficiency of the aforementioned criteria for statehood, in addition to their necessity as prerequisites for it. To resolve this issue therefore requires a detailed explanation.

Regarding the defined territory, states are regional elements. The control of an area is the embodiment of a State. This is the premise of the focal idea of regional power, setting up the specific capability to take legitimate and verifiable measures inside that region and disallowing remote governments from practicing expert in a similar zone without consent. (Malanczuk, 1997, p.75) [39]. Judge Huber stated that, 'The express right to demonstrate the actions of a State is an element of territorial sovereignty. Territorial sovereignty is not ownership of, but the administrative power over a given area. Conversely, the privilege to be a State relies on the activity of full administrative forces concerning specific regions. (Netherlands v USA, 1928 & Crawford, 2006, p. 46 & 56).

The requirement for a centres upon the prerequisite for a specific area dependent on which to operate. Be that as it may, there is no need in international law for determined and settled borders. A State might be perceived as a lawful individual despite the fact that it disagrees with its neighbours with regards to the exact boundary of its territory, inasmuch as there is a specific area, which is unquestionably governed by the administration of the supposed State. For instance, before the First World War, Albania was acknowledged by numerous nations despite the fact that its borders were in question. (Shaw, 2003,p. 133 &199). Another example is that of Israel, which is acknowledged by most States and the UN as a valid State, regardless of the dispute surrounding its boundaries in the Arab-Israel conflict and demarcation of its area Another example of acknowledgment is that of Palestine, which was recently accepted as a State. (Brownlie, 1998, p.71).

Therefore, the delimitation of States limits is significant, but with regards to the parameters of an area, international law does not necessitate that all boundaries of a State should be undisputed yet rather requests "adequate consistency" of the region. Here, it is enough for the territory of the State to be divided into distinguishable sections, for example, Pakistan preceding the Bangladesh secession of 1971 or modern-day Azerbaijan. (Shaw, 2003, p.200).

From the above, it can be seen that the requirements a permanent population, is interrelated with that of region, and makes up the physical grounds for the existence of a nation. In fact, a population is required to establish the realisation of a state; however, there is no defined minimum number, and there is no law stating that the population must consist entirely of nationals. Regardless, it would be difficult to verify the existence of a State without a physical area to be populated by a people. (Malanczuk, 1997, p. 76) [39]. Interestingly, this very matter of what constitutes an acceptable minimum in relation to autonomy was brought up in the Falkland Islands case, and that the issue should be further expounded given the existence of several small

islands pending decolonisation. (Giorgetti, 2010) [23].

People or a populace or have been characterized as a number of people who live respectively as a network; however, they may be of various races or faiths or cultures. Therefore, with the end goal of statehood, an entity's populace should initially live as a people, and furthermore should create a national community. The requirement for perpetual population necessity proposes that there must be individuals who distinguish themselves with the region regardless of how little or big the populace may be. (Jennings & Watts, 2008, p.121) [31]. In other words, a State cannot be formed by a population on its own and no territory; likewise, a territory by itself is not deemed to be a State if there is absence of a permanent population to reside therein. However, a group of people that qualifies can comprise multiple nationalities, races, faiths, or creeds. (Vidmar, 2013, p.39-43 & Crawford, 2006 p. 52-53) [64].

Therefore, the qualifier for the rule currently being discussed is not one of nationality of the populace, but of its permanent nature. International law does not concern itself with the nationality of the population of a State except in very rare situations. (Crawford, 2006 p. 114). With respect to numbers, there is no recommended minimum. This means that States with comparatively small populations are commonly acknowledged, in spite of the fact that the minute size of a populace may raise questions on a State's capacity to conform to specific necessities of participation in global associations. This, be that as it may, does not act as a bar against membership to the UN, as microstates such as the Marshall Islands, San Marino, Monaco, Andorra, and Palau are all members of the United Nations. (Duursma, 1996, p.135 – 136) [20].

Statehood requires the existence of a government, given that all other criteria are based on this. Regular international relations are conducted from government to government; how a State acts is primarily defined by the actions of its executive, legislative and judicial arms of the government. (Devine & J. E. S. F, 1971) [17]. The requirements of a State government are that it has control over the State area, is authoritative in its existence, and is independent from the influence of other State governments in its operations. In other words, the criteria for statehood include a central political body that has authority over a determined area with a permanent populace, is the executive arm for international relations, and is independent of the control of other sovereign states. (Zadeh, 2011) [71].

Hence, the point about government is that it has two viewpoints: the real exercise of power, and the privilege or title to wield it. An administration's adequacy or its real exercise of power alludes to its general ability to keep the peace inside a region it controls or is indicated to control. Nonetheless, there are some particular circumstances in regards to the norms and level of adequacy. In addition, authenticity, or legitimate title, alludes to the government's elite sovereign and lawful right to administer over a domain under international law. It is also conceivable that the territory was acquired by method for progression, solution, or secession by the previous sovereignty of the region. (Crawford, 2006, p. 44- 83). A territory may also be acquired through the principle of autonomy. As such, the requirements for a government have both legal and factual facets. (Shen, 2000) [56].

It is worth it to note that statehood in some cases has not been supported by the requirement for an effective government; in those cases, the government was either inadequate or unnecessary. For example, Poland in 1919, Burundi and Rwanda have all been given membership to the UN despite not having an organised government at the time. (Brownlie, 1998, p.71). These situations were balanced through international acknowledgment to make up for the deficiency in central governance, thus resulting in UN membership. This does not however take away from the requirement for effective control in statehood. (Shaw, 2003, p.200).

Finally, the ability to forge relationships with other nations is said to be an effect of a sovereign and independent government, which has jurisdiction over a State's territory. It is not however a necessity, but merely a consequence of statehood. States do not possess this criterion alone; independent national authorities, liberation movements, and even revolutionaries all have the capacity to enter into relations with States and other international law subjects. (Vidmar, 2013, p.39-43 & Crawford, 2006, p.61) [65] In other words, this capacity is not limited to sovereign nations, as international organisations, non-independent States and other entities can form legal relations with other subjects under the rules of international law. A sovereign State should thus essentially be able to create legal relations with other entities as it sees fit, as non-State entities are not on par with sovereign States in terms of entering foreign relations. Only when they have achieved statehood will this capacity be obtained. Subunits of States and international organisations will also find this power of great importance.(Harris,2004,p.99).

It is contended that the standard consequently alludes to the legitimacy or lawful competence of an entity to take part in foreign relations, including the legal capacity to discharge its worldwide commitment. This legal capacity is also connected to financial power or military or political influence. Several developing States come up short on the monetary ability to take part in dynamic relations with different countries; they are nonetheless perceived as States. For example, California has more than bounteous financial capacity to completely take an interest in the worldwide framework, yet it is not and cannot be perceived as a State in the eyes of international law, feeling of universal law, since it doesn't have the legitimate capability to be a State in the global arena. (Shen, 2000 & Crawford, 2006, p.48-49) [56].

It can be therefore alluded to that the power and authority to conduct foreign relations with other entities under international law is a valuable measure, given that such power is autonomous of its acknowledgment by other nations. Yet, a State must first be recognised by other States for it to be able to enter into relations with them. There is no duty upon States to forge relations with other states if they refuse to do so, therefore the power to enter foreign relations acts also as proof of a State's complete autonomy, and thus may be deemed as an advantageous requirement for statehood. (Raič, 2002, p.61) [50].

3.2. Recognition of States

If statehood is the pathway to international legal personality, recognition of that personality is the entrance to statehood. As such, it may be said that acknowledgment implicitly allows a political community to take on the whole spectrum of rights and duties under international law, although it is for the community in question to determine the degree to

which it will commit. (Kreijen, 2004, p.13) [36].

There are at least two ways in which the term "recognition" may be applied. The first is by way of expression of opinion on the question of the legal standing of a specific political entity, an example of which is the UK's recognition of Israel as a sovereign State. (Zadeh, 2011) [71]. The United Kingdom government pronounced in April 1950 that: 'His Majesty's Government has decided to accord de jure recognition to the State of Israel'. Secondly, recognition can be indicated by a State through entering specific relations with that entity, for instance, entering a treaty, forging diplomatic ties, or taking a conflict to the ICJ. This is known as implicit or tacit recognition. However, to say that this is tantamount to recognition of a particular political entity as a State depends on the unique surrounding circumstances. ("De Jure Law and Legal Definition," n.d.).

Recognition has been characterized as a pronouncement by an international legitimate individual with regards to the status in international law of another genuine or claimed international lawful individual or of the legitimacy of a specific factual circumstance. It has additionally characterized recognition a methodology whereby the administrations of existing States react to specific changes on the international front. (Grant, 1999, p.1) [25].

When an entity is recognised by other States, it is presumed that legal consequences will ensue. It can be posited that within the context of bilateral and domestic relations, participation in the international legal process is of considerable importance. (Yamali, 2009) [69].

However, can a political entity be deemed to be a nation according to international law if it does not receive recognition by other countries? Two theories attempt to answer this question and an explanation is needed to clarify what constitutes recognition under international law: constitutive and declaratory. The Constitutive theory considers recognition as a requirement prior to the recognised party being able to benefit from an international identity, to put it simply the establishment of a new nation requires the consent of existing nations. This concept asserts that by being recognised by other nations a new nation is able to claim legitimacy and receives by default a legitimate identity. It must not however be confused with the method in which independence is actually obtained. (Vidmar, 2012, p. 361) [65]. As a result the new nation will then receive all rights and have imposed upon it all duties when recognised. This does bring about the issue that a nation may be recognised by some of its peers but not all. Such a situation represents the greatest flaw in the constitutive theory. (Yamali, 2009) [69].

It can be debated that since there no governing body overseeing recognition that a fledgling nation would not have an international identity. Many questions arise as a result such as what happens in the case of only partial recognition? Additionally in such situation would it even be possible to provide protections against invasion or aggression from existing nations? (Crawford, 2006, p.19).

It is argued that recognition is constitutive as the mere act is a requirement to establish diplomatic relations. This is supported by Shaw as a nation's rights and duties are not automatically manifest due to recognition. He also argues to the contrary that the lack of recognition is not a determining factor in denying the existence of a new nation. This firmly establishes recognition as a legal act and is a constitutive component of nation building. (Brownlie, 1998, p.89 & Kreijen, 2004, p.16) [36].

Declaratory theory is the second option here and takes a completely opposite approach which incidentally is more in line with practical realities. It considers recognition to be a political act and does not hinge on the existence of a new nation as a subject of international law. Shaw describes this as existing nations merely not contesting the new nation's existence as a matter of fact. (Crawford, 2006, p.22 & Shaw, 2003, p. 445). This is further supported by the first line of Art 3 of the Montevideo Convention 1933; the political existence of the State is independent of recognition by other States. Kreijen was of the opinion that as a result any recognition is purely declaratory in nature due to it merely being acknowledgment of a factual situation. (Montevideo Convention, 1933).

According to this theory a nation will be formed free from like prohibition on aggression, even when contested by others simply by meeting the requirements placed upon it. The result is that an entity becomes a nation because it meets the criteria placed upon it and recognition only establishes, confirms or provides evidence of the objective legal situation. (Talmon, 2004, p.100) [57].

Alternatively a nation may even exist without recognition. In such a situation it then has the right to be treated as nation by others regardless of its recognition status. As its existence cannot be disputed recognition is then afforded after the fact. This view holds that a new nation will acquire its rights simply due to it "being". Additionally it will already be legally constituted and does need the recognition of others. (Vidmar, 2013, p.43 & Shaw 0, 2003, p.445) [64]. other nations can opt to recognise the newcomer, or not, but their decision bears no weight on the new nation's legal status. Simply put by achieving the criteria of nationhood its legal status is irrefutable. (Wippman, Dunoff & Ratner, 2015p.138) [67].

Proponents of the constitutive theory maintain that an unrecognised nation has no legal standing. Duursma indicated that nations that have yet to receive recognition will face difficulties in being accepted as participating members of international bodies neither will they be able to establish diplomatic relations with the international community. These are practical, not legal effects. (Shaw, 2003, p.445 & Duursma, 1996, p.135-136) [20].

Typically an unrecognised nation is unable to establish diplomatic relations with other countries unless said countries enter into such relations of their own accord. (Wippman, Dunoff & Ratner, 2015p.138) [68]. Supporters of the declatory theory therefore argue that the formation of a nation or at the very minimum its receipt of basic rights and obligations occurs regardless of the act of recognition and results in the birth of a nation by default. A third theory has been advanced by academics suggesting a hybrid of declaratory and constitutive theories. (Brownlie, 1998, p.90 & Kreijen, 2004, p.13) [36].

3.3. Secession

Under international law, any attempt at unilateral secession, is without legal foundation. Views on secession are mixed as it has only traditionally been recognised in situation whereby a there existed a situation of colonialisation or out-right oppression. In recent times however the secession of non-colonial peoples has started to be received more positively especially in situations whereby the group involved had been collectively denied their civil and

political rights and/or have been subjected to abuse. (Buchanan, 2004, p.338 & Dion, 2011) [18].

This is known as the "remedial right to secession" and provisions have been afforded to groups facing such situations under international law. It is thus considered to be an act of last resort to overcome severe violations of human rights. In the event a cultural group acquires an individual moral code it can then be the subject of collective rights. As they earn value they become entitled to cultural protection. Nations are just one of many other cultural groups (linguistic, immigrant, religious) and as such, they do not deserve the right to self-determination. (Buchheit, 1978, p.73 & Buchanan, 2004, p.410 -415) [13].

The primary right to secede is rejected as it can be viewed as requesting the right violate the territorial integrity of a nation. However, all cultural groups could legitimately secede if: there were systematic violations of basic human rights, as with the Kosovars in Kosovo, and serious and persisting violations of intrastate power-sharing or autonomy agreements by the State, as the brutal secessionist conflicts that have occurred in Eritrea. This right to secede however can only be considered a remedial right to self-determination. (Seymour, 2007 & Buchanan, 2004, p.357) [54].

It is correct that the "remedial right to secession" suggests that if a group falls victim to serious breaches of fundamental human and civil rights, then international law recognises the right of the afflicted group to secede. Accordingly, the general right to secession exists only where the group in question has suffered injustices. There can however exist special rights to separate if (1) the State grants a right to secede (as with the secession of Norway from Sweden in 1905), or if (2) the constitution of the State includes a right to secede (as does the 1993 Ethiopian Constitution), or (3) the agreement by which the State was initially created out of previously independent political units included the implicit or explicit assumption. If any of these three conditions are met a group may then speak of a special right to secede. (Buchanan, 1997, p.31).

The right of non-colonial people to separate stems from the infamous 1920 'Aaland Islands Case'. The League of Nations appointed The Committee of Rapporteurs to investigate aspects of the dispute over the Aland Islands and stated that:

the separation of a minority from the State of which it forms a part and its incorporation in another State can only be considered as an altogether exceptional situation, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees. (Aaland Island Case, 1928).

Equally, the 1970 Declaration on Principles of International Law Concerning Friendly Relations balances the right to self-determination and territorial integrity by prefacing the right to secede as a result of the denial of the right to a democratic self-government by the mother-State. (UN General Assembly Resolution 2625, 1970).

This is mirrored in the 1993 Vienna Declaration of the World Conference on Human Rights, accepted by all UN member States. Other UN bodies have also referenced right to remedial secession as reflected in the 1993 Report of the Rapporteur to the UN Sub-Commission against the Discrimination and the Protection of Minorities and the General Recommendation XXI adopted in 1996 by the Committee on the Elimination of Racial Discrimination. (Vienna Declaration and Program of Action, 193 & UN Doc. E/CN 4/Sub 2/1993/34, 1993).

New developments in international law indicate that the right to remedial secession has become a norm. For example, in the case of the former Yugoslavia, the republics of Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia had the right to independence because they had been denied the proper exercise of their right to democratic self-government, and, in addition had been subjected to ethnic cleansing by the central government in Belgrade. (Scharf, 2002, p.373) [53].

It should be explained how in certain situations, illegal territory disputes become lawful, where in others they are not. In other words, how can an act of unilateral secession be deemed illegal if there are no provisions under international law that state as much? Regarding this matter, the Supreme Court of Canada held that the right to autonomy from a state and an actual secession results in legal consequences are two separate legal issues.

The nature of unilateral secession is ultimately a violating one, and legalising it does not change that. However, the space between violation and lawfulness can be bridged by the concept of legitimacy. If the purported secession of Quebec was declared in defiance of the Canadian Constitutional principles, democratic principles, federal principle, rule of law, and the fundamental principles of the international community, respect human rights, peaceful settlement of the disputes, etc...' The process would most likely be seen as unlawful and gain only limited, if any, recognition in the international community. (Reference re Secession of Quebec, 1998, Para 143&144).

Therefore, a claim is more effective if it can be legitimised. In fact, legitimacy is not an alien concept to the law, but it builds on the basic legal principle of a certain community, be it national or international. Even the Supreme Court has stated that the legitimacy of the manner in which a de facto secession is in the process of is sufficient to constitute recognition of developing states. (Milano, 2006, p. 194 & Reference re Secession of Quebec, 1998, para 143).

Likewise, recognition and non-recognition of attempted secessions can be shown through the focal point of legitimacy. Legitimacy can be defined in two ways: through the internal merit of the claim and the factor of disruption. The former refers to criteria of effectiveness of the autonomous entity, such as ethnic and social cohesiveness, the inhabitation of a specific territory and the financial viability of a future State. The latter refers to the potential threat of the secession to regional and international peace and security, and its adherence to fundamental international norms, such as fundamental human rights and respect for minorities in the self-governing unit. (Buchheit, 1978, p.228 -238) [13]. Thus, it would appear for legitimacy that is inherently found within an international legal framework to be a pre-condition to secession's effectiveness and legalisation thereof.

4. International law Implementation to the Kurdistan region's Referendum for Independence

In the course of recent years, the realities of the issues encompassing the Kurdish battle for independence in Iraq, just as, the appropriate standards of International law have discovered that an answer for the contention could be conceivable dependent on the regard of such standards turns out to be somewhat straightforward. To do this, various

applicable international law theories described above statehood, recognition, secession as it applies to the circumstance of Iraqi Kurdistan region.

It should be repeated here that statehood is a lawful idea that looks to legitimize the attribution of statehood based on objective requirements, which are from a certain perspective free from the actual politics behind the numerous endeavours at separation from the mother state or secession. In order to secede from Iraq, the IKR needs to demonstrate that it fulfills the lawful criteria of statehood, which are that it is has a specific area, a permanent populace, an administrative government, and the ability to create foreign relations. According to international law, it can be contended that this is sufficient to have procured the status of statehood. Be that as it may, it is proposed that these prerequisites have as of late been enhanced by others, thus suggesting that a State cannot be formed from unlawful utilization of power, disregard for the privilege of self-determination or in seeking to implement bigoted plans under the guise of politics or moral policing. (McCorquodale, 2005, 84-203) [40].

To begin with, it was contended before that the measure of a State's populace and region has no minimum limit. In this manner, it very well may be contended that the area of Kurdistan fulfills the requirements of permanent populace and specific area, given that the approximately 6 million Iraqi Kurds residing in the Kurdistan Region do so permanently. This is more than a sufficient number of individuals to constitute a State; Nauru, for example, is recognised by the United Nations, but has fewer than 9,000 people and covers an area of just eight square miles. (McCorquodale, 2005 & "Kurdistan Regional Government,"n.d.) [40].

Additionally, the Iraqi Constitution has officially acknowledged the Kurdistan region of 40,643 square kilometres, in spite of the fact that the regional boundaries of the area are still in dispute, and that the greater part of southern Iraqi Kurdistan is an allegedly contested zone. ("Kurdistan Regional Government," n.d.).

As discussed earlier, in 1992, the Kurdistan Regional Government (KRG) was established by the first parliament elected by vote in the Kurdistan territory of Iraq, following the no-fly zone intended to shield the Kurdistan Region from the brutality of Iraq's previous Ba'ath system. The Iraqi Constitution acknowledges the region of Kurdistan, and bestows the KRG significant power over it. Article 117 allows the KRG to make amendments to local legislation; to upkeep homeland security; and to set up government offices and consulates overseas. ("Brief History of the KRG," n.d.).

Further, the KRG is entitled to repeal national laws, decide on taxation issues for individuals living in Kurdish territory, and oversee the management of the region's water and oil resources. The KRG is responsible for preserving safety in Kurdistan region and defending the populace from threat and violence. The KRG has been functioning independently from the government in Baghdad since 1992. ("About the Kurdistan Regional Government," n.d.). The KRG is a representative governing framework closely designed to democratic countries like the UK government. Since 1992, the Kurdish Parliament has been elected five times, the KRG has gained knowledge and experience from various cabinets, particularly following the collapse of the former regime in 2003. ("Does independence beckon?," 2007). It therefore may very well be contended that the Kurdistan region fulfills the administration prerequisite since it has an autonomous government in power.

On a final note, the ability to forge foreign relations with different States should be recognized from the presence of actual relations, which involves different approaches for different States. Ultimately, statehood under international law does not oblige States to create relations with different states should they refuse. (Raič, 2002, p.41) [51]. Especially important is for an entity to demonstrate its existence on the global forum as a State in order for it to claim statehood. In September 2006, the KRG began efforts to forge foreign ties by establishing the Department of Foreign Relations. ("Kurdistan Regional Government," n.d.).

Today, the KRG organizes exercises outside of the Kurdistan Region through its delegate offices around the world. Erbil is currently host to various diplomatic ties. The Iraqi Constitution ensures the privilege of the Kurdistan Region to proceed with its act of keeping up delegate offices overseas so as to advance its financial, social, and learning interests. ("KRG offices abroad and Current Foreign Representations,"n.d.). However, in terms of practice, the KRG blamed the Iraqi federal government for not providing the rights to the Kurds as stated in the Iraqi Constitution. Foreign policy and international relations with members of foreign governments are conducted independently by the KRG without the need for Baghdad. The goal of KRG's foreign policy is maintenance through common interest and esteem. (Hadji, 2015) [27].

It can thus be said that on the surface, the KRG is capable of managing foreign relations independently, and can forge ties with other nations. However, critically, when Kurdistan region held a referendum for independence, not one of the international and regional countries recognized the referendum, despite the KRG having all three of the criteria of permanent population, effective government and defined territory. It would seem that the KRG has fulfilled the requirements of statehood; however, the issue of its legal right to independence by way of referendum is yet to be determined.

Furthermore, it should be considered that, in case of availability of statehood criteria, the recognition role to the new statehood can be required at both political and legal level. Therefore, as discussed in previous sections, there are two recognition theories, the constitutive and declaratory theory. For the former, there is no automatic way to create an international character. The contention is that in each legislative framework, some organ must be skilful to decide, with conviction, the subjects of the framework; the constitutive theory school infers that such a demonstration must be practiced by the States through acknowledgment. It is thus also contended that, without acknowledgment, the unrecognised State cannot exist a propos different States. In this manner, as per this hypothesis, acknowledgment is a prerequisite for an entity to be carried into lawful subsistence and ties with other States. (Crawford, 2006, p.20 & Kelsen, 1941, p.605) [35].

Conversely, according to the declaratory theory, acknowledgment is a political demonstration which is separate from the presence of the new State. This shows subjects other than the State may likewise have a bunch of rights and obligations on an international scale; therefore, this may be construed as statehood being derived from its international standing, or in other words to have certain presence of force and duty at the international level.

(Crawford, 2006, p.22). As per this hypothesis, the character of a current State is presented by the activity of international law, as opposed to other existing States. Along these lines, most present day essayists have embraced this hypothesis. This implies that acknowledgment, whether it is deemed as a lawful or political act, directly affects the logical assurance of statehood; regardless of whether an entity will have the option to genuinely carry itself as a State in the global arena. (Brownlie, 1998, p.87 & Harris, 2004, p.131).

Recognition according to the declaratory theory view means that the freedom to commit political acts of other states, such as recognising or denying acknowledgment of the IKR, would ultimately have no consequence on the legal status of IKR as a future State. (Brownlie, 1998, p.87). However, during the independence referendum by the Kurdistan region, all international and regional actors did not recognize the referendum, therefore, the referendum was not successful; hence, under the declaratory theory, non-international and regional recognition cannot be effected upon the Iraqi Kurdistan region referendum for independence because on one hand the recognition process was more political based on the interests of some outside actors which they had with the Iraqi State rather than Kurdistan region, and on other hand, the referendum process was held democratically as emphasized by the UN General Assembly under resolution 637.(UNGA resolution 637, 1991). Thus, the referendum action was legal and may be in effect in the future.

While, if the reality would be that most nations that will perceive the Iraqi Kurdistan region as a State would likewise make little difference to the legitimate inquiry of whether the Iraqi has accomplished statehood. Be that as it may, under the constitutive view, acknowledgment of the Iraqi by outside entertainers is one of the components of its statehood. Under this view, states that have decided to perceive the IKR would demonstrate that in any event one of the criteria of the IKR's statehood has been satisfied. In any case, the IKR would need to demonstrate that it fulfills the four other criteria of statehood. Similarly, it is contended that outside entertainers would have an obligation to perceive the IKR as another State in the event that it satisfied the four target criteria of statehood. (Wippman, Dunoff & Ratner, 2006) [67].

Acknowledgment is therefore genuinely a political demonstration, and that the geo-political truth of a given area demonstrates whether an entity will be perceived as another State. Appropriately, it very well may be inferred that, the acknowledgment of the Iraqi Kurdistan region will be conceivably political as opposed to according to international law: that strategically, outside players will confirm that it is ideal to acknowledge the Iraqi Kurdistan region as an autonomous sovereign partner; right now, however, these same players will overlook the legal aspect of Kurdish independence.

Another controversial issue through which the Kurdistan region's referendum for independence can be evaluated is under Remedial Theory of Secession as it was noted in the previous sections. Under this hypothesis, international law gives the privilege of secession to individuals subject to extraordinary abuse or incapable of enforcing their entitlement to self-governance domestically. Secession should however only be resorted to in the event of continuous and severe prejudice, which can be construed as infringement of essential human rights. (Seymour, 2007 & Buchanan, 2006, p.83) [54].

As such, it has been contended that meeting specific conditions may give rise to remedial secession. In the first place, secessionists must sufficiently fulfil the criteria of being "people"; for the end goal of self-determination, there must be grave infringement of human rights or a disavowal of autonomy. Lastly, secession has to be the sole option to right the prejudice that has occurred. For instance, in the cases of Southern Sudan and Kosovo, they were granted independence on the basis of maltreatment of human beings and infringement of domestic self-governance; however, they were not associated with decolonisation, dictating regimes, or disintegration of the State. (Buchanan, 2004, p.357 & Seymour, 2007) [54].

The Kurds have clearly demonstrated that they possess an individual identity, and make up most of the population in a specific area. The Kurds therefore adequately qualify as "people" with the end goal of self-governance. Then again, the issue of self-determination for the Iraqi Kurds as a segment of Iraq's constitutional and political structure goes back to March 1970, when Iraqi Kurds and the Iraqi government marked a proclamation that called for Kurdish self-governance, and where a census was meant to be conducted in 1974 to decide the boundaries of Kurdistan region. (Bengio, 2006, p 174) [3]. The agreement for self-determination however totally missed the mark concerning Kurdish requests. Kirkuk was not surrendered, and more importantly, it forced an unfathomably more focal government command over the area than the agreement initially visualized. (Yildiz, 2007, p.20-24) [70].

Accordingly, violence broke out between the Kurdish freedom fighters and the government of Iraq. Amidst the fighting, the Iraqi armed forces bombarded Kurdish towns, and attacked them with poisonous gases and chemical weapons. It is approximated that in the 1980's, the Iraqis demolished somewhere in the range of 5000 Kurdish towns and over 100,000 Kurdish people vanished and were killed. (Bengio, 2012, 180- 181) [4]. The self-governance concurred by the 1974 agreement was in place until 1991, when the Iraqis pulled out from north Iraq as per SC Resolution 688. The Kurdistan region was united in the first free and just democratic-based vote to fill the gap in the political arena left by the pulling out of Iraqi governance organizations and administrations in the area. The Kurds set up their own Parliament and domestic governance that controlled the territory in total autonomy from the central government. Accordingly, Iraqi Kurdistan thus turned into a "de facto" Kurdish state from 1991-2003. (Tripp, 2002, p.117) [60]

In 2005, as a type of shared principle and self-governance, the Iraqi Constitution built up a Federal focal government and provincial governments. The new Iraqi Constitution forms a federation that consolidates components of self-governance, where they can experience a specific level of self-governance with regard to the government, despite them sharing control of the administration. That notwithstanding, the KRG criticised the subsequent Iraqi governments for plainly abusing the social, traditional and financial privileges of the Kurds. (McGarry and O'Leary, 2007) [3]. Consequently, it may be contended that the most logical ground for the statement that making a claim for self-governance surpasses a claim for regional integrity is quite uncomplicated; fair self-governance is more exemplary than the primitive, undemocratic, and repressive qualities related to maintaining regional limits. There are

therefore no more appropriate grounds for this rationale than on account of unprejudiced massacre. (Brilmayer, 1991, p.177) [7].

It is viewed that if the doctrine of remedial secession is acknowledged in the international legal system, a right to secession ought to be perceived by international law only in the uncommon situation when the physical presence of a regionally focused group is compromised by infringement of essential rights. International law condemns genocide and renders it illegal; major infringement of human rights is also categorically condemned. (Hannum, 1993, p.18) [10]. Nevertheless, assaults by Iraqi army in March 1988 culminated in the killings of about 5,000 Kurdish citizens in the Kurdish city of Halabja by massacring them with chemical weapons, that is deemed a genocide, and one of the most tragic crimes against humanity under Article (II) and (III) of the 1948 Convention concerning the Prevention and Punishment a genocide. ("The Iraqi State‘s Genocide against the Kurds," 2007). In this sense, justifying the conduct of referendum in 2017 can be another justification under international law for the unlawful killings and extermination of a race and breach of human rights.

Additionally, if different solutions are not accessible or viable, the privilege to secede can be enforced if all else fails. In any case, the Iraqi Constitution provides significant authority to the Iraqi Kurdistan region. The Constitution regards the Kurdistan provincial government's associations with the Iraqi central government, in light of opportunity and autonomy. The Kurdish associations with the central government have been founded in harmoniousness on the condition of not violating the protected privileges of the Kurds by the central government. Hence, any infringement of Kurdish rights gives them the option to implement the external component of the right to autonomy. For this reason, it is contended that any claim to secession must be construed very carefully. (Cassese, 1995, p.121) [14].

Since the Kurds were afforded the opportunity to practice domestic self-governance, be it independence or different types of self-governance inside the existing State, the component of “after all other options have run out” is not applicable under the remedial secession theory. Be that as it may, if Kurdish privileges rights have been abused by the Iraqi central government and different solutions were not accessible or successful, the privilege to secede may be implemented if all else fails. Therefore, the Iraqi Kurdistan region justified its independence referendum of 2017 as legal based on the violations of the Kurds rights by the Iraqi federal government. ("GOV, KRG," 2017).

5. Conclusion

The Kurdistan region’s Referendum for Independence held on 25 September 2017 needs to be assessed from the point of view of international law, which advocates self-determination as a right of a group or person.

A focal area in this paper was the notion of statehood according to international law. The work featured the role of statehood requirements including defined territory, a permanent population, a government, and the capacity to enter into international relations. Accordingly, it has been argued that the Iraqi Kurdistan region has all the criteria for statehood, that in the eyes of international law have been fulfilled. This paper also discussed the significance of recognition and analyzed its role to determine if the issue is with the criteria itself given the presumption of the role recognition plays in international law. Therefore, both recognition theories which are constitutive and declaratory theories have been analyzed. The constitutive theory considers recognition as legal act, while the declaratory theory considers recognition as a political act. However, under the declaratory theory, states are free to recognize the Kurdistan region referendum for independence or not because the theory does not compel the states to recognize the new State based on the obligated principle.

In contrast, an element of its statehood under the constitutive theory is recognition of the Iraqi Kurdistan region by outside actors. It is important to mention that the Kurdistan region referendum of 2017 was not recognized by international actors, therefore, under the declaratory theory, the non-international actors’ recognition can be considered as a political act and will not be effected on the independence of the Kurdistan region in the future when the Kurdistan region wants to declare it based on the referendum of 2017 while their position is changeable based on their interests in favour of the Kurdistan regions’ independence. On the other hand, the international actors had their interests in the Iraqi State; otherwise they are supposed to recognize the referendum, which is the democratic way of people under international law. Thus, it can be concluded that, the recognition of the Iraqi Kurdistan region will be potentially political rather than legal.

Another issue discussed in this paper was the legality of the Kurdistan region referendum for independence under remedial theory of secession. Accordingly, international law gives the privilege to secede to individuals subject to explicit oppression or who cannot realise their entitlement to self-governance domestically. It indicated that secession is only to be a last resort option after all other options have run out for continuous and serious acts of prejudice, seen as infringement of essential human rights. However, it has been shown that the Iraqi Kurdistan region held a referendum due to lack of ensuring the Kurds’ rights by Iraq successive government; however, they have been persecuted, deprived of their constitutional rights.

Thus, the legitimacy and illegitimacy of the Iraqi Kurdistan referendum for independence is subjective, in the sense that there is rigid legal framework at international level that clearly stipulates the manner and method a group can adopt to secede from a national government. The issue of secession needs to be established as a matter of domestic constitutional framework. In the Kurdistan region, there are cases of repression, persecution, economic repression, genocide and wanton killings. All these cases have been clearly identified as significant enough for a populace to secede from a host nation.

Overall from this paper, it can be said that achievement of right to self-determination has two aspects: firstly, legal aspect which goes through international law perspectives, and secondly, the political aspect which depends on the interests of the States when they decide to recognize a new State. Therefore, independence of Iraqi Kurdistan region can fall into the political context rather than legal context.

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