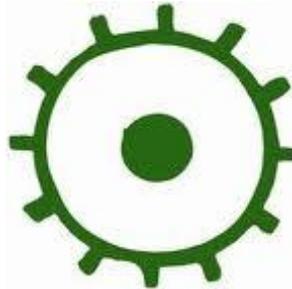


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THE FUTURE OF IRAQI KURDISTAN: THE "ISLAMIC STATE" AS A CATALYST FOR INDEPENDENCE?

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Contents

Introduction.....	4
A short history of Iraqi Kurdistan	4
The legal situation “pre-Mosul” and now	7
The IS invasion and changing realities on the ground.....	8
International attitudes	9
Autonomy as an alternative?	10
Concluding remarks.....	11

Introduction

The current situation in Iraq and Syria has given room to a lot of speculation about the future of both countries. The emergence of the self-proclaimed Islamic State (IS) group and its rapid spread throughout the region since 2014 has laid bare power vacuums and deeply running divisions along sectarian, ethnic and political lines. The ongoing violent clashes between insurgent groups, militias and the Iraqi military seem to promise that a restructuring of the region in one way or the other is inevitable. While the IS is relentlessly pursuing its undertaking of establishing a de facto caliphate state, another group of actors has been taking advantage of its crucial role in the fight against the militant Islamist group: the Kurds. Over the last couple of months, the Kurdistan Regional Government (KRG) of the Kurdistan region in Northern Iraq has effectively expanded its control over parts of the country that are contested between the KRG and the central government in Baghdad, and there seems to be little reason to believe that they intend to give them up again after a potential victory against IS.

What does this mean for the future of the conflict-ridden Middle East? Could the Kurdish power gain stabilize the region in the long run, or are we witnessing the foreboding of an era of future struggles to come? While it is not my intention to make any unfounded predictions of future events - especially with the Syrian civil war and the IS invasion still raging on - this working paper is an attempt to explore the possibility of an independent Kurdish state in the near future as well as possible alternatives to a full secession of the region from Iraq. After providing a quick summary of the history of Iraqi Kurdistan since World War I and the constitutional status of the region, I will collect some arguments for the IS invasion as a possible game changer pointing to imminent Kurdish independence in Iraq. In the following section, I will then critically engage with an alternative interim solution to total secession of the Kurdistan region from Iraq.

Due to the limited scope of this paper, it will not be possible for me to perform an in-depth analysis of the rapidly changing conflict dynamics and settings. The goal is rather to provide an overview of the current situation and potential future arrangements arising from it.

A short history of Iraqi Kurdistan

Just as in all other countries in which Kurds constitute a significant part of the total population (especially Turkey, Iran and Syria), the history of the Kurds in Iraq has been one of oppression and constant struggle. Since the establishment of the state of Iraq after WWI, Kurdish uprisings and revolts both against the British authority and the government regimes in Iraq have dominated the relationship between the state and its biggest ethnic minority population.

The years after World War I and the collapse of the Ottoman Empire were crucial in shaping the attitude of the central government in Iraq towards the Kurds. Initially, the Kurds were promised an independent Kurdish state in Woodrow Wilson's Fourteen Point Programme as well as the Treaty of Sèvres, of which neither was implemented

or ratified.¹ Between 1919 and 1930, numerous uprisings (most prominently led by Shaykh Mahmud and members of the Barzani clan) were met with violent oppression by Baghdad and the British occupiers. Limited autonomy concessions to the Kurds were promised, but never implemented.² After World War II, the declaration of the short-lived Kurdish Mahabad Republic in 1945 in Iran as well as the foundation of the Kurdistan Democratic Party of Iraq (KDP) marked a peak in the Kurdish nationalist movement. Mulla Mustafa Barzani, who had been leading the uprising of 1943 and played a significant role in Mahabad, became the party leader in exile and later on site after the regime change. The following decades were characterized by continuous revolts against Qasim 1961-63 and later the Ba’thists, whose Arabization campaign of Kirkuk aimed at repopulating Kurdish inhabitants of the city and make it predominantly Arab.³ After their second coup in 1968 and continued fighting against the Kurds, the Ba’thist regime and Kurdish leaders signed an autonomy accord in March 1970, which was never enforced, but replaced by the unilaterally implemented, far less charitable Autonomy Law in 1974⁴. The following war, in which the KDP received support from the US and Iran⁵, was ended abruptly one year later, when Iran and Iraq signed the Algiers Accord in 1975, leading to the defeat of the Kurds and a wave of Kurdish refugees streaming into Iran. At the same time, ex-KDP member Jalal Talabani formed a new, more socialist oriented party, the Patriotic Union of Kurdistan (PUK), which led to the division of the Iraqi Kurdistan region into two territories of influence. The Iran-Iraq war starting in 1980 provided an opportunity for the Kurds to reunite their forces against Saddam Hussein’s regime and form the Kurdistan Front in 1987, which was met with extensive violence by Iraqi security forces, culminating in the 1988/89 genocidal Anfal campaign that left hundreds of thousands of Kurdish civilians dead, wounded or displaced.⁶ During the campaign, Iraqi troops attacked Kurdish villages with chemical weapons, the most prominent example being the city of Halabja that at this point was filled not only with civilians, but also refugees from other parts of the region⁷ - the tragedy is still remembered and commemorated among Kurds today⁸. After Iraq’s defeat in the Gulf War of 1990/91, a Kurdish uprising known as “rafareen” advanced towards a weakened Baghdad from the North, while an Arab-led intifada threatened Iraq’s territorial integrity from the South, driving the refugee numbers in Iran and the Turkish borders up to two million. The establishment of a safe haven and no-fly zone in Northern Iraq with the UN Security Council Resolution 688⁹ provided only limited humanitarian relief, as the double sanctions for the regions imposed by the UN and Baghdad worsened life

¹ Aziz 2011, p.60-61

² Dahlmann 2002, p.286

³ Ibid.

⁴ Aziz 2011, p.73

⁵ Yildiz 2012, p.20

⁶ Dahlmann 2002, p.286-289

⁷ Ibid., p.288

⁸ Some argue that the attack on Halabja was not actually part of the Anfal campaign, as the latter was aimed at the rural Kurdish population in order to prevent grassroot assistance to the peshmerga fighters (Yildiz 2012, p.24); however, the terror inflicted on the Kurds by Saddam Hussein’s Ba’th regime can be seen as a focal reference point for Kurdish self-perception and identity today (Interview with Kurdish person on Åland, 9.7.2015).

⁹ The full Resolution can be accessed online here: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/596/24/IMG/NR059624.pdf?OpenElement> (last accessed: 13.8..2015)

conditions even further. In 1995, Resolution 986 established the oil-for-food program to meet the constant undersupply of the people in the region^{10, 11}.

In 1992, the Kurdistan Regional Government was elected. Since KDP and PUK managed to win almost half of the votes each, Kurdistan was administratively split between the two parties, leading to unrest and violent disputes over territories of influence from 1994-98 as well as to the collapse of the safe haven zone. The US-led invasion of Iraq in 2003 is seen by some as a tremendous step towards more political unity in Iraqi Kurdistan¹², which was - at least formally - achieved in 2006¹³. In March 2004, the Transitional Administrative Law (TAL) was put into place and its guarantees for the Kurds further extended in the 2005 constitution.¹⁴

The violent oppression of Kurdish culture, identity and nationalism, and collective traumas of forceful expulsion and genocidal attacks are still present in the minds of the Kurds in Iraq. Despite the recent gains in political weight and influence both within the region and internationally, especially since 2005, Iraqi Kurdistan's status as an autonomous region in Iraq has been tied to economic dependence to and a constant power struggle with the central government in Baghdad, which has been backed up by powerful international players such as the US.

Now, with the over-spilling Syrian civil war next door and the rise of the Islamic State group in 2014, the situation seems to have changed in favour of the Kurds. Over the last couple of months, scholars and commentators have increasingly described the advance of the Islamic State as a chance to establish and consolidate Kurdish autonomy and, possibly, the emergence of an independent Kurdish state in the region¹⁵. Other cases have shown that the implementation of successful autonomous regimes often coincides with times of "major regional political restructuring"¹⁶ in the region. With the power vacuum left behind by the US occupation of Iraq, the Syrian Civil War and the recent IS invasion, we can certainly speak of a major restructuring process in the entire region with yet unpredictable outcomes. Bengio sees the IS invasion of Iraq and Syria as "a catalyst for Kurdish nation-building and state-building"¹⁷ and assumes that the declaration of Kurdish independence – at least in Iraq – "seems to be merely a matter of timing"¹⁸. Stansfield asserts that "[t]he Kurdistan Region now stands on the threshold of restructuring Iraq according to its federal or confederal design, or exercising its full right to self-determination and seceding from Iraq"¹⁹. However, as I will elaborate in the following sections, it is far from clear what form the Kurdish strives for self-rule in the Middle Eastern playgrounds of power will ultimately take.

¹⁰ The full Resolution can be accessed online here: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/596/22/IMG/NR059622.pdf?OpenElement> (last accessed: 13.8.2015)

¹¹ Dahlmann 2002, p.289-90

¹² Interview with a Kurdish person in Åland, 9.7.2015

¹³ Aziz 2011, p.87

¹⁴ cf. Anderson/Stansfield 2010, p.221ff

¹⁵ cf. e.g. Kajji 2014, Bengio 2014, Stansfield 2014a,b

¹⁶ Nordquist 2012, p.120

¹⁷ Bengio 2014, p.1

¹⁸ Ibid., p.5

¹⁹ Stansfield 2014a, p.1

The legal situation “pre-Mosul” and now

In order to grasp the challenges and opportunities for a more autonomous or even independent Kurdistan region in the future, it is important to understand the contemporary legal status of Iraqi Kurdistan as defined in the Iraqi constitution²⁰. The contemporary constitution was ratified via public referendum in October 2005. Unlike former constitutions, the document was drafted with considerable influence from the Kurdish side, resulting in visible, constitutionally entrenched concessions. Firstly, the administrative status of the Iraqi Kurdistan region is clearly defined in the constitution: Kurdistan is recognized as a federal region of Iraq (Art. 117) with the KRG as its own administration. No constitutional changes touching the power and competences of the region can be implemented by the Iraqi government without a referendum in the region as well as the approval by the regional legislative authority (Art.126(4)) – namely the KRG. As a federal region, Kurdistan has the right to autonomously handle internal security questions (Art.121(5)); however, the constitution remains unclear about the legality of the Peshmerga forces²¹. Further ambiguities in the constitution with regard to the Kurdistan region touch the issue of natural resources: Article 111 asserts that the oil fields belong to the “people of Iraq”, yet does not elaborate on what this means in (administrative) practice²². “Present fields” that are already in use fall under the competences of the central government in Baghdad (Art.112(1)). However, without any further specification of what constitutes “present” resource fields and clear legislation concerning the discovery and development of future oil fields, the legal text lacks clear dispute resolve mechanisms for claims over resources²³. Another weak point and constant source of dispute over the years has been Article 140, dealing with the disputed territories between Erbil and Baghdad. The article originally contains the plan for the implementation of a referendum by the end of 2007, which has not happened to this day (July 2015), leading some to believe that the article itself has been rendered invalid²⁴. However, with the recent developments in the region and Barzani’s call for a referendum committee in 2014, the delay might ultimately work in the interest of the regional government. In terms of cultural and linguistic protection, the constitution clearly establishes Iraq as a bilingual state with Arab and Kurdish as the two official state languages (Art. 4).

Additionally, a Kurdistan Regional Constitution was drafted in 2009 by the Kurdistan National Assembly. The Kurdish constitution claims, among others, the city of Kirkuk as part of the Iraqi Kurdistan region and states the right of Iraqi Kurdistan to secede from the state of Iraq, should the latter violate its own constitution or fail to adhere to human rights²⁵. However, the central government has not acknowledged the legitimacy of the regional constitution to this day.

The constitutional concessions to Iraqi Kurdistan and the cultural, administrative and economic rights of the Kurds in Iraq are much greater than in other parts of Greater Kurdistan, especially the Kurdish regions in Iran and Turkey. Iraqi Kurdistan is the

²⁰ An English translation of the document can be found here: http://www.iraqinationality.gov.iq/attach/iraqi_constitution.pdf (last accessed: 30.06.2015)

²¹ Romano 2010, p.1345

²² Yildiz 2012, p.79

²³ Ibid.

²⁴ Romano 2010, p.1351

²⁵ cf. Kelly 2010

only Kurdish region with an autonomous status and comparatively extensive cultural rights and recognition.

The IS invasion and changing realities on the ground

Recent internal and external developments in the Iraqi region have indicated that the Kurdish nationalist project of an autonomous or even independent state is more likely in the near future than in the days before the imminent threat of the IS invasion. Firstly, the advance of Peshmerga forces against the IS into territories that are still disputed between Baghdad and Erbil has altered the balance of power between the regional and the central government in favour of the Kurds. Iraqi Kurdistan – or rather, the area under the KRG’s de facto control – has enlarged up to 40% during the conflict against IS²⁶ and includes presently for example the disputed city of Kirkuk and oil fields around Kirkuk and the Nineveh governorate²⁷. Even before the emergence of IS, Romano pointed out that “[w]hen KRG leaders display a more effective capacity to govern [the disputed territories] than authorities in Baghdad [...] they increase their chances of extending their authority over these territories”²⁸ - a scenario we might be witnessing at the moment. The frailty of the Iraqi government and its current inability to reclaim the territories gained by the Kurds as well as the obvious military weakness of the Iraqi security forces could further contribute to advance Kurdish plans to secede²⁹. The Kurdish de facto control over the new areas could be legalized and institutionally entrenched within a short time frame, as Barzani already called for the establishment of a referendum committee within the KRG to implement the final stages of the referendum concerning the contested territories as outlined by Article 140 of the Iraqi constitution³⁰.

Secondly, blurred boundaries between Iraq and Syria allow for an increased flow of military personnel between the two countries, which is significant for the project of a united Kurdistan. The spill-over of the Syrian conflict and the trans-border activities of the IS as well as other insurgent groups necessitate increased “trans-border cooperation”³¹ between the KRG and the Syrian Kurdish defense units (YPG) and authorities from the Rojava region in Syria. Similarly, trans-border party interdependency is currently undergoing a process of development, for instance between the KPD-Iran and KRG, thus further uniting several formerly antagonizing strands in the Kurdish nationalist project. Similarly, the tense situation allows (and requires) the strengthening of bonds, not least in terms of military force and a resulting centralization of control over the Peshmerga. While military control was formerly mainly exerted along clan and party lines rather than government loyalty, structures of command are undergoing long necessary changes. Foreign aid and training for the Peshmerga fighters further holds the potential for an increasing professionalization and expertise of the forces³². Thus, both the expansion of the Kurdish territories and the building of centralized structures within the political system of Iraqi Kurdistan can be seen as important steps towards a larger project of de

²⁶ Bengio 2014, p.1; Stansfield 2014a, p.2

²⁷ Stansfield 2014a, p.2

²⁸ Romano 2010, p.1348

²⁹ Stansfield 2014a., p.6

³⁰ The Guardian 2014; Stansfield 2014b, p.1336

³¹ Bengio 2014, p.2

³² cf. Hlavaty 2015

facto state-building³³. Related to those points, Bengio argues that “the IS threat worked wonders in arousing strong feelings of patriotism and solidarity among the Kurdish people as a whole, including in the diaspora”³⁴, although we still lack empirical evidence for this claim.

International attitudes

However, not everyone is seeing the developments in Iraqi Kurdistan with optimism. The lack of support for the Kurdish independence project from the international community is an obstacle that will not be easily overcome. Especially neighbouring countries such as Iran, which hosts a significant proportion of the Kurdish population, are still highly averse towards an independent Kurdistan, fearing a spill-over effect to their own Kurdish regions³⁵. While Turkish officials had recently not ruled out the possibility of an independent Kurdish state in former Iraqi territory³⁶, current violent advances against the PKK and, allegedly, YPG fighters in Syria³⁷ speak a different language. The US and other major Western players within the international community are hesitant to declare support for the Kurdish cause. Commentators and analysts are rather unenthusiastic about the developments in the region and warn about the possibility of a Kurdish secessionist war after the end of the IS conflict³⁸. Oppressive and discriminating actions against the Arab population³⁹ are not only seen as possible strategic means of altering the ethnic population proportions in the contested areas in order to reverse the Ba’th regimes prior to the Arabization policy and thus achieve a favourable outcome in a possible upcoming referendum, but are also perceived as a danger of further angering Sunni Arabs, possibly encouraging them to join extremist groups such as IS. In fact, voices urging caution towards the growing influence of the KRG in the region argue that the Kurdish “land grabs”⁴⁰ and “politics of opportunism”⁴¹ – the de facto expansion of Kurdish control over disputed territories – might endanger the US project of preserving Iraq as a sovereign state and undermine the “larger cause of keeping [Iraq and Syria] in one piece”⁴². While assessments like these fail to provide a satisfactory answer to the question of how Kurdish containment can go hand in hand with their crucial involvement in the struggle against the IS, it is noteworthy that, at least concerning the present state of affairs, Kurdish independence in Iraq would probably not occur without resistance from the side of militant Arab groups, the Iraqi government, and other inter- and transnational players.

At the same time, the current situation in the Kurdistan region is posing a serious threat to the positive economic development in the Kurdistan region and therefore the foundation for a possibly independent Kurdish state. Iraqi Kurdistan has been facing tremendous economic challenges since the beginning of the Syrian Civil War and the

³³ cf. Stansfield 2014b, p.1346

³⁴ Bengio 2014, p.3

³⁵ Ibid., p.10

³⁶ cf. Cagaptay 2014

³⁷ BBC 2015

³⁸ Vick 2015; Natali 2015a,b

³⁹ Human Rights Watch 2015

⁴⁰ Natali 2015a

⁴¹ Natali 2015b

⁴² Vick 2015

IS invasion, mainly due to the excessive influx of refugees and internally displaced people. For the beginning of 2015, the World Bank estimates a total number of over 1.5 mio. refugees and IDPs in the region, which equals an increase of Kurdistan's population by about 28%⁴³. The unstable situation lead to a decline of economic growth (from 8% in 2013 to an estimated 3% in 2014⁴⁴), decrease in foreign investment and export as well as tourism, and at the same time increasing rates of unemployment and poverty. Another reason for this is the timing of the IS attacks in the middle of the Iraqi budget crisis and the lacking revenue transfer from Baghdad, which constitute for 80% of KRG's annual revenues⁴⁵. Indeed, the World Bank report bares the financial dependency of the region on revenues from Baghdad and the need for a more extensive private sector, which might be difficult to fulfill with the looming humanitarian crisis and the unclear duration and outcome of the conflict. It is quite possible that the difficult economic situation in the Kurdistan region will harden frontiers between the KRG and Baghdad concerning the disputed territories and their resources after the war against the IS if Baghdad fails to provide sufficient financial incentives that will not diminish at least a certain degree of economic independence for the Kurdistan region.

It might therefore be sensible to consider alternatives to a full separation of Iraqi Kurdistan, even though it will not be possible at this point to determine the likeliness of their implementation.

Autonomy as an alternative?

One frequently discussed alternative is the extension of Kurdistan's autonomy status, centered on the implementation of effective, clearly defined and constitutionally entrenched conflict resolution mechanisms, especially with regard to resource management and the governing of disputed territories. Already before the prominent emergence of the IS, scholars such as Anderson and Stansfield proposed the establishment of an "asymmetrical federation" autonomy model for Iraqi Kurdistan⁴⁶. While in the contemporary constitution, the Kurdish region is not granted a special status among other regions in Iraq, Anderson and Stansfield argue that an amendment of the constitution towards the explicit recognition of the Kurdish case as unique would satisfy the Kurdish needs for protecting their specific ethnic and cultural interests, while at the same time allowing the central government in Baghdad to keep its status as a strong authority and consolidate the territorial integrity of the Iraqi state. In order to make this a viable solution and limit the dangers of exploitation of competencies on both sides, unamendable entrenchment of this status in the constitution is necessary.

The question of (federal) power in Iraq is tightly interwoven with control over the hydrocarbon resource fields throughout the country. Disputes concerning the rights to exploit oil and gas fields have been at the core of the territorial discord between Erbil and Baghdad and will most likely be in the near future. Since 2004, Iraqi Kurdistan has been engaging in intensive planning of an independent natural resources sector to

⁴³ World Bank 2015, p.2

⁴⁴ Ibid.

⁴⁵ World Bank 2015, p.5

⁴⁶ Anderson/Stansfield 2010, p.230

achieve economic independence from Baghdad⁴⁷, for instance by implementing its own hydrocarbon legislation⁴⁸ and establishing independent bilateral oil and gas agreements with Turkey. As a result of the KRG's policy and the failure within the central government to ratify the 2014 budget, Baghdad has been withholding the region's venues which, according to the constitution, should account for 17% of Iraq's total budget (\$14,6 billion/year⁴⁹).

An attempt to solve the discrepancies surrounding energy policy and control over the disputed territories could be an arrangement consisting of Territorial Self-Governance (TSG) and asymmetrical consociational arrangements⁵⁰. A more specific constitutional arrangement of shared resource revenues as well as the implementation of clear conflict resolution mechanisms and legislation is not only necessary to stabilize the situation in the region, but could also provide benefits both for Baghdad and the KRG with regard to foreign investment and, ultimately, economic gains. As either side is currently creating a dead-lock situation for foreign investors by forcing them to neglect the respective other authority as a trade partner as a precondition for trade arrangements, a more refined legislation concerning resource revenue distribution could ease the situation⁵¹. However, as already mentioned above, the clarification of Iraq's resource policy cannot be separated from the development of a more advanced federal law that not only specifies the status and competences of Iraq's federal regions in general, but also acknowledges the special status of the Kurdistan region.

“Hard international guarantees”⁵² have proven helpful in the context of other autonomous regions, such as the Åland Islands, where the involvement of the international community has contributed tremendously to safeguarding the process of peace between the autonomous islands and the central government of Finland⁵³. In the case of Iraqi Kurdistan, international guarantees such as the official recognition of Kurdistan's autonomy status would serve the protection of constitutionally testified guarantees for Kurdistan as a special region of Iraq and thus lessen the incentive to forcefully separate from the state of Iraq. The extension and entrenchment of a new, asymmetrical autonomy arrangement on several levels might therefore not only appease the power sharing conflict between Baghdad and Erbil, but could also conciliate the divided attitudes of neighbouring states and other powers involved in the region within the international community. Furthermore, increased international monitoring could provide the chance to lower the risk of human rights abuses and discrimination against minorities such as Arabs or Turkmen in the Kurdistan region and especially with regard to power sharing agreements in the contested regions.

Concluding remarks

The issue of Kurdish independence and the likelihood for its success is not a new topic. The current situation in Iraq, however, brings up yet another set of variables relevant for the development of the Kurdish nationalist project. Fueled by decades of

⁴⁷ Stansfield 2014a, p.4

⁴⁸ Alkaridi 2010, p.1321

⁴⁹ Stansfield 2014a, p.4

⁵⁰ cf. Wolff 2010

⁵¹ Alkaridi 2010, p.1328; Wolff 2010, p.6

⁵² Anderson/Stansfield 2010, p.232

⁵³ Ghai 2012, p.102

systematic oppression and the recent advances against both the IS and the central government in Iraq, it remains questionable whether the KRG or the Kurdish public in Iraq would accept the retention of the contemporary autonomy arrangement as a part of Iraq. Even the extension of federal and special rights might come with territorial and political curtailments compared to the present situation. However, the IS conflict has laid open the weaknesses of both the Kurdistan region and the Iraqi state with regard to economic dependency and military power, and the threat of an upcoming violent territorial conflict might have the potential to lead both governments to the negotiation table rather than the military maps. An advanced and more refined autonomy status for the Kurdistan region could serve as an interim solution to prevent a relapse into armed conflict with state forces and neighbouring countries after the war against IS comes to an end.

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