



Plebiscite as a Means to Enjoy Statehood Iraq's Kurds Plebiscite in the Shade of the Iraqi Constitution and International Practice

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Abstract

The idea that consists of the right of a people or a group could be incumbent of legitimate entitlement to enjoy a statehood, is already existed since the early years of the 20th century.

However, certain people have been conferred a positive entitlement to enjoy their own statehood. Those people are not only having the possibility to do that without breaching any rules of international law, but they literally have a right upon the international law to do so.

A referendum or plebiscite is considered as one of the peaceful means of exercising the right to self-determination, and a referendum or plebiscite is consistent with developments by the international community and the enjoy statehood, and it is considered one of the favorite tools of the United Nations Organization.

This research aims to highlight the concept of referendum and plebiscite then the importance of it as a peaceful means to enjoy statehood. Moreover, is to exemplify and evaluate the most important features and legal impediments to the Iraqi Kurds plebiscite in 2017 from the legitimacy point of view in relation to the international law and the Iraqi constitution.

Keywords: International Monitoring, voter, Kurdistan Region, Statehood, self-determination, referendum, plebiscite, Peaceful exercising, United Nations,

1. Introduction

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Introduction

The idea that consists of the right of a people or a group could be incumbent of legitimate entitlement to enjoy a statehood, is already existed since the early years of the 20th century.

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Importance of the Research:

This research addresses a complex matter in the domains of international law and the Iraqi constitution, which is the determination of the extent of enjoying statehood through a plebiscite. Neither international law nor the Iraqi constitution specifies any particular mechanism to be used. Although the development of this right has legal ramifications from both a theoretical and legal standpoint, there are also political ramifications related to the practical side of holding a plebiscite to enjoy statehood based on the exercise of the Right of Self-Determination concerning Kurds in Iraq. All of this demonstrates the significance of both extensive and desired searches in this field.

Research Issue:

The issue of this Research lies in the ambiguities surrounding the terms plebiscite and referendum, as well as considering it as a peaceful and legal means of enjoying the statehood. As for the Kurds -in-Iraq plebiscite, it is still, at least for many specialists, ambiguous in terms of its legitimacy and legality from the point of view of international law and the Iraqi constitution. This has resulted also in the ambiguities surrounding the results of the referendum and how to deal with it at the level of law and international practice.

Research Objectives:

With a focus on plebiscites and referendums, this research seeks to emphasize their significance as a nonviolent way for states to celebrate their independence. Furthermore, it aims to illustrate and assess the salient characteristics and legal obstacles to the 2017 plebiscite among Iraqi Kurds from a legitimacy perspective concerning both international law and the Iraqi constitution.

Methodology of the Research:

Assuming that the Iraqi Kurds are legally qualified to enjoy statehood in a peaceful manner, we will try, by using an analytical method, to reach out to the most legal elements to conduct a plebiscite and its consequences then provide reasonable recommendations upon reached conclusions.

Outline Research

In order to present the content of the research, this research is divided into two sections, as follows:

Starting with an introduction and two main sections. The first one is under the heading of Statehood and Peaceful exercising the Right to Self-determination which consists of three subheads; The Right to Self-determination: Rule or Principle, Enjoying the Statehood in Peaceful Manner, and Plebiscite or Referendum.

The second section is entitled the International Practice and the Plebiscite for Self-determination which consists of three subheads; Voter Approval and Consent, Consent



of the Concerned Parties, and International Monitoring. Then we conclude the research with a conclusion that consists of conclusions and recommendations.

1-Statehood and Peaceful exercising the Right to Self-determination

The objective of the exercise of the right of peoples to self-determination is the establishment of a sovereign independent state. This is done either by resorting to peaceful means or by the use of force. The international community, through practice, paid great attention to the issue of the referendum as a means of self-determination. The UN considered the referendum the best way for exercising the right of peoples to self-determination and manifested through decisions by the United Nations issued in this regard¹.

1-1 The Right to Self-determination: Rule or Principle

Having said that many researchers may not make a distinction between rule and principle, neither legally and or politically, regardless to the reason. However, we see that it is worthy to depict both. As the roots of the development of the Right to Self-determination are a mix of both and therefore the Right to Self-determination is mentioning often as legal *and or* political rule and legal *and or* political principle simultaneously.

Almost unanimously, all jurists saying that the rule is an applied general idea to be the solution for one problem. While the principle is an applied general idea to be the solution for more than one problem. Either the Right to Self-determination is a legal and/or political rule or legal and/or political principle, a nutshell of its development shows how this right has been developed from such a political principle to a legal rule.

There is a semi-consensus among the jurisprudence that the first appearances of the Right to Self-determination and the roots of it belong to the Magna Carta 1215 and the Bill of Rights 1626, then the Declaration of Independence of America 1776. So, the Declaration of Citizen and Human Rights after the French revolution 1789. In this context indicated to James Monroe Announcement 1823 concerning non-intervention to the recently independent countries of the Americas by Europeans. As well as in Lenin Manifesto 1917, also in Woodrow Wilson Peace Principles (Fourteen Points) 1918, then finally at the Peace Conference in Paris (Treaty of Versailles) 1919.²

Jurisprudence categorizes the stage mentioned above that unearthed the Right of Self-Determination as a political principle. As for the legal appearance of the Right of Self-Determination, is connected directly to the UN Charter 1945. The two pacts of rights 1966 as well as the (Tehran) Human Rights Conference 1968, Vienna conference 1993, and the Millennial Declaration of UN. Based on all of the above, we perceive the conclusion that the Right of Self-Determination in origin is a political principle then transformed into a legal principle.³

Whatever the opinions regarding the content and nature of the Right to Self-determination and the methods of exercising it, it is. It does not deviate from its being embodied in two aspects; First: the internal aspect where is regulated by the constitution within a state and is

¹ Marcus Cox, the Making of a Bosnian state: international law and the Authority of the international community (PhD on file with the University of Cambridge, 2001), at 2

² . د. واصل، سامي جاد عبدالرحمن. ارهاب الدولة في اطار القانون الدولي العام، منشأة المعارف، الاسكندرية، مصر، 2003، ص303.

³ Malcolm N. Shaw, International Law, 5th edition, Cambridge university Press, 2003, PP.185-186.



governed by domestic law. It is dependent on democratic practices, the extent of minority participation in political life, and their enjoyment of rights. Second: the external aspect which is regulated by international law and determines its scope in terms of (jurisdiction) subject, place, and time. And this is what was discussed previously.

Based on the issue that the Plebiscite intends to organize two types of plebiscites, in general, can be found: the legal Plebiscite (referendum) and the political Plebiscite. Thus, the type of political plebiscite varies according to the subject. There is a plebiscite about determining the system of government, a plebiscite about joining an international treaty, and a plebiscite to determine an independent political entity (state) based on the exercising the Right to Self-determination. The issues of the legal plebiscite (referendum) also differ in terms of the subject of the referee, whether it is a regular law or a constitutional law.¹

In the Arab world, there are two precedents for two states that gained international status through a Plebiscite for the right of self-determination, without armed conflict, namely Djibouti and Comoros. France organized the Plebiscite in both cases.² In addition to the declaration of independence by South Sudan from Sudan in July 2011 through a referendum, organized by the UN depending on the political agreement between the parties that finally installed in the constitution. There are 26 cases of Plebiscite on unilateral self-determination since 1991.³

It is to add to whatever has been explained previously, regarding the Kurds-in-Iraq eligibility to exercise the Right of Self-determination and take into consideration the affordability of all requirements and availability of the needed elements. We have to say that the Kurds-in-Iraq enjoy of the privilege of the principle/rule of the Right of Self-determination has become legally a matter of prima facie unequivocally. Thus, the discussion below is not within the legal circle, it is about the bases or mechanisms of exercising through the declaration of a state unilaterally by conducting a plebiscite, which consider as a political factor in often.

1-2- Enjoying the Statehood in Peaceful Manner

After fulfilling the conditions that qualify people to exercise the right of self-determination, then this people must demand the exercise of that right. Historical precedents indicate that there are two ways to exercise the right to self-determination. First, the Non-peaceful methods or the use of force. The second is the peaceful methods that are embodied, and as international practice indicates, in conducting a referendum, a public poll, elections, or any other means far from violence⁴.

¹ The researcher prefers to use the referendum term only here for legal conventionality.

² For details see Zineb Boujrada, The Story Behind Franc's Last Colony, An article published on May 26, 2018, accessible at: <https://theculturetrip.com/africa/djibouti/articles/the-story-behind-frances-last-colony/>, and a fact sheet affordable at : <https://www.diplomatie.gouv.fr/en/country-files/africa/france-in-the-south-west-indian-ocean/article/the-union-of-the-comoros-and-mayotte> last visit September 24, 2020.

³ For details, see the fact sheet affordable at: <https://peacekeeping.un.org/sites/default/files/past/unmis/referendum.shtml> last visit September 24, 2020.

⁴ Senda Selo Sabic, Sate-Building Under Foreign Supervision: Bosnia –Herzegovina 1996-2003(PhD thesis, on file with the EUJ,2003), at 121.



Regarding the expression of the Right to Self-determination in a peaceful manner, after the First World War, the peace treaties supported the principle of a referendum. For example, the referendum of the Austrian people to annex it to the state of Germany, and the referendum of the German people to leave the League of Nations in 1933. And before that the first mandatory referendum in 1919 for Mosul province in Iraq according to which Kurdistan region was forcibly annexed its residents in the Iraqi state. According to a decision by the Council League of Nations session 37, dated December 1925.¹

And after the founding of the United Nations, many countries created as a result of exercising the Right to Self-determination through a referendum for the peoples of the regions that wanted to enjoy the right to their independence and secession, for example, Cambodia 1945, Cameron 1959, Algeria 1961, and Western Samoa 1961, Djibouti 1977, Estonia and Martí 1991.²

The UN General Assembly affirmed that by peaceful means, public suffrage and referendum, or any other internationally recognized democratic peaceful means that can define the demands of peoples who want to exercise the right of determination. Its fate, preferably, is carried out under the supervision of the United Nations.³

International practice indicates that the referendum or plebiscite, as a peaceful means of enjoying the state, took three forms, similar in content and different in form or procedure:⁴

The previous referendum: A referendum is conduct before the state is declared. Where there is a period between the holding of the referendum and the declaration of the state. For example: Eritrea declared independence a month after the referendum, South Sudan six months later, Georgia six days later, and East Timor more than two years after the independence referendum⁵.

The posterior referendum: usually a referendum is conduct after the state is declared. There is a period between the holding of the referendum and the declaration of the state. For example, Armenia conducted a referendum a year after declared independence. Azerbaijan after two months and Lithuania eleven months after the declaration of the state.

The referendum on the legislation of the law declaring independence which was conducted in Ukraine in January 1991.

What happened in the Kurdistan Region on September 25, 2017, in terms of the timing of the state's declaration as a result of conducting the referendum, can be included in the first form. Where a referendum has taken place and the state has not been declared.

¹ عوسمان عهلى وهيسى، ريفراندۆم بۆ سه ربه خوئي باشورى كوردستان، چاپى يه كه م، چاپخانه ي شه هاب، هه ولير، ٢٠١٧، لا ٦٣

² بزار محمد طاهر مصطفى، الاستفتاء كوسيلة سلمية لممارسة حق تقرير المصير، بحث منشور في مجلة الفنون والادب وعلوم الانسانيات والاجتماع، العدد ٣٦، آذار ٢٠١٩، ص ٦٥.

³ See the General Assembly decision number 637 in 1952. Accessible at :

[https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/637\(VII\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/637(VII))

⁴ د. خاموش عمر عبد الله، مافى چاره ي هه ري مي كوردستان له ژير روشنايي نه زموني ولاتاندا، چاپخانه ي زانكو، ٢٠١٧، لا ٧٧-٧٨.

⁵ Karin con Hippel, Democracy by Force.US. Military Interventions in The Past-Cold War World (New York: Cambridge University Press, 2000.



But it may not happen, at least in the near future, in light of the decision to freeze the results of the referendum by the regional government, as well as through superficial reading of what is happening in the Middle East. In other words, political factors and international and regional interests are not encouraging and are not suitable for such an idea¹.

In terms of content, it is close to the third form, but with the difference that the Kurdistan Region's referendum included a question to poll the citizen's opinion about independence and not about the law declaring independence. As the Kurdistan Parliament did not issue an independence law until a referendum was organized about it. If that was the case, then the current regional government or any subsequent government would have an explicit legal obligation to ensure the implementation of the law declaring independence in form and content. As for now, the government should only work to fulfill the desire of the people who sought independence in favor of independence in the referendum. This is, in legal terms, a political obligation. From here the Kurdistan Parliament shall, and based on the result of the referendum, to legislate the law declaring independence after issuing a decision to cancel the freeze of the referendum results by the government².

1-3- Plebiscite and Referendum

The plebiscite or referendum is one of the most important characteristics of semi-direct democracy. The semi-direct democracy is the middle system between direct democracy and representative democracy, which is based on the existence of representative bodies elected by the people. While indirect democracy, the people, as the holder of sovereignty, practice many important matters directly.³

The characteristics of semi-direct democracy can be identified, but not limited to, among the main ones such as the popular referendum, the popular proposal, and the popular protest. And secondary characteristics such as the right of voters to dismiss their deputy, the right to popular dissolution, and the right to remove the president.⁴

The referendum was originally used in the field of reservation, requiring the consent of the provincial governments in the old Germanic and Swiss federations, and then this word was changed, and its meaning expanded to include subjecting any action to popular approval.

The word plebiscite comes from the Latin word *plebiscitum*, meaning "a decree of the people," with the roots *plebs*, "the common people," and *scitum*, "decree." i.e., public or effeminate decision. And it corresponds to the parliament law, not the election.

¹ Marcus Cox, the Making of a Bosnian state: international law and the Authority of the international community (PhD on file with the University of Cambridge, 2001), at 2.

² James Dobbins et al., the UNs Role in Nation-Building. From the Congo to Iraq (Santa Monica, CA: RAND Corporation, 2005).

³ د. خاموش عمر عبد الله، مافى چارهى هه ريمى كوردستان له ژير روژنابى ته زمونى ولاتاندا، چاپخانهى زانكو، 2017، لا 01-00.

⁴ بزار محمد طاهر مصطفى، الاستفتاء كوسيلة سلمية لممارسة حق تقرير المصير، بحث منشور في مجلة الفنون والادب وعلوم الانسانيات والاجتماع، العدد 36، آذار 2019، ص 62.



However, with the passage of time, the term in use moved from end to means and became synonymous with voting.¹

Some jurists go to say that in terms of the science of derivation, the word plebiscite should have been preferred over the referendum, but custom and historical precedents led to the opposite. Both terms were used in the past in France as synonyms or to denote the meaning of convergent and are still used in Switzerland as synonyms, as is the case in the United States of America now.²

According to the *Budget Macquarie Dictionary*, a plebiscite is 'a direct vote of the qualified electors of a state in regard to some important public question'. A referendum by the same dictionary is 'the principle or procedure of referring or submitting measures proposed or passed by a legislative body to the vote of the electorate for approval or rejection'. A quick perusal of on-line dictionaries confirms these definitions. The referendum comes to English directly from Latin where plebiscite comes to English from Latin via French.³

Now the term 'referendum' is used in Australia to refer only to questions put to the electorate that involves a change to the constitution, while non-constitutional questions are described as 'plebiscites' (also known as an advisory referendum). It can be used to test whether the government has enough public to go ahead with a proposed action. Unlike a referendum, the decision reached in a plebiscite does not have any legal force.⁴ Therefore, some jurists goes with no difference between plebiscite and referendum, but some others are saying that both are different. And we go with the last one. As the referendum usually it would be regulated in advance by an act or constitutionally, but the plebiscite is not regulated. Whenever want to know the public opinion in terms of any issue (especially political matters), then the parliament will legislate a rule in the form of an act to conduct it without determining any specific rate of voting.⁵ Additionally, sometime is called an advisory referendum and often associated with popular votes to endorse a regime or a specific policy. Therefore, we see, in terms of legal terminology, the use of plebiscite is more accurate here.

2- International Practice and the Plebiscite for Self-determination

Having to said that the concept of international practice or international exercising falls within the so-called soft law, which includes within its rules and procedures that were not codified in the form of agreements or treaties. Hence, states and international organizations (International Subjects) were behind the emergence of such rules and they

¹ . د. ماجد راغب حلو، الاستفتاء الشعبي والشريعة الإسلامية، الدار الجامعة للطباعة والنشر، ٢٠٠٥، ص ١١.

https://ia801900.us.archive.org/2/items/estefaa_chaabi/estefaa_chaabi.pdf

² Ibid. P12.

³ Antony Green, Plebiscite or Referendum - What's the Difference, a media article published by ABC news on August 11, 2015, accessible at: <https://www.abc.net.au/news/2015-08-12/plebiscite-or-referendum---whats-the-difference/9388640>. Last visit. September 24, 2020.

⁴ A fact sheet published by Australian Parliamentary Education Office, accessible at : <https://peo.gov.au/understand-our-parliament/having-your-say/elections-and-voting/referendums-and-plebiscites/>. September 24, 2020.

⁵ A fact sheet published by Lawpath Blog on July 26, 201, accessible a: <https://lawpath.com.au/blog/whats-the-difference-between-a-plebiscite-and-a-referendum> Last visit. September 24, 2020., <https://www.encyclopedia.com/international/legal-and-political-magazines/referendums-and-plebiscites>



would become a reference, as International subjects accepted it by codifying it through proposing it as an instrument.¹

Accordingly, the international practice has projected the desires of peoples who are eligible to exercise the Right to Self-determination, in a peaceful manner and free from violence or armed struggle. Specifically, a plebiscite should be organized for this purpose and in accordance with three bases:

2-1-Voter Approval and Consent

The consent of the electorate to organize and conduct the plebiscite and agree to the subject of the plebiscite is a fundamental base. Whereas, the plebiscite is a true expression of the democratic practice in any country because the people have the authority (decision) in the matter that is presented to vote, whatever it is, political or legal. That is the consent of the electorate on the referee subject, is an essential condition for its approval.²

Here, states differ among themselves with regard to the methods of Plebiscite and its regulation. However, the matter does not go out of two ways;

First: The call for a Plebiscite to prepare for secession either informally, i.e. by non-governmental entities as in the 2005 Kurdistan Region Plebiscite³ and the Plebiscite that was organized in Crimea in 2014.⁴ Or by the regional legislature, by passing a law to organize Plebiscite procedures, as happened in the territory of Catalonia and Kurdistan in 2017.⁵

Second: That the Plebiscite is organized in a specific geographical area, or that it includes areas that are disputed over it, even though its borders are not defined precisely, or at least not legally unknown.

It is true that the popular and political consensus by the Kurdish political parties has stood as an internal obstacle to hold a Plebiscite at the beginning. However, as a result, the decision to hold the Plebiscite has won political unanimity. Then, the process went through the legal procedures that must be followed to legalize and regulate it.

The translation of the political consensus to a legal process has started from the regional legislature organ. Accordingly, as the Parliament is the supreme political reference for the people in the Kurdistan Region of Iraq, according to resolution No. 1 of 2005.

¹ الاستفتاء السياسي المؤدي الى الانفصال، شيماء علي سالم، بحث منشور في مجلة جامع تكريت للحقوق السنة ٢٠٢٠، المجلد ٢، العدد ٣، الجزء ١، ص ٤٧.

² سعيد بو الشعير، القانون الدستوري والنظم السياسية المقارنة، الجزء ٢، الطبعة ٤، الجزائر، ص ٣٦٤.

³ An informal independence Plebiscite for Kurdistan Region was held on 30 January 2005, with final results showing the vast majority of votes, 98.98 percent, cast in favor of independence.

<https://www.tandfonline.com/doi/abs/10.1080/13510340802362489>

⁴ A media article published by the BBC on March 16, 2014. Accessible at <https://www.bbc.com/news/world-europe-26606097> last visit September 24, 2020.

⁵ The Catalan independence Plebiscite of 2017, also known by the numeronym 1-O (for "1 October") in Spanish media, was an independence plebiscite held on 1 October 2017 in the Spanish autonomous community of Catalonia, passed by the Parliament of Catalonia as the Law on the Plebiscite on Self-determination of Catalonia. <https://time.com/4951665/catalan-Plebiscite-2017/>



Thus the Article 56 of the Act No. 2 of 1992, the article 2 of the Region Presidency Act No. 1 of 2005, and the article 2 of the Independent High Elections and Referendum Commission Act No. 4 of 2014 have formed the legal basis that authorized Masood Barzani, President of the Kurdistan Region, to issue Order No. 106 on 6/8/2017, which decided The Plebiscite will hold on 9/25/2017.

To implement this decision, the Independent High Elections and Referendum Commission recommended conducting the Plebiscite process to implement and exercise the right to self-determination for the people of Kurdistan, in the Kurdistan Region and the Kurdish areas outside the administration of the Region (disputed area).

The ballot of the Plebiscite was including the answer to one question: Do you agree with the independence of the Kurdistan Region and the Kurdish areas outside the administration of the Region and the establishment of an independent state? The participation rate reached 72 percent and 92 percent of it voted in favor of the independence decision.

The high rate of participation in the plebiscite corresponds with the first base of the international practice in regard to the consent of the electorates to hold such a process.

2-2-Consent of the Concerned Parties

The relevant party agrees, meaning the consent of the relevant state. The state where the plebiscite is held and the result of the plebiscite will affect it positively or negatively from the legal, political, and economic concerns. This political consent will translate through political and legal arrangements with the government that represents the region. Likewise, what happened in Sudan, which ended up with the referendum of July 2011 and the independence of South Sudan.

As for in the case of the disapproval of the concerned party, the success of any plebiscite is nil, and this is what actually happened in the case of Morocco and the Sahara Region.¹ The General Assembly decided to hold a referendum to decide the destiny of the people of the Sahara, but Morocco opposed and did not hold the plebiscite. The "Western Sahara" region is a good example of the inability to conduct a plebiscite, given the lack of acceptance by Morocco the "relevant state." In the same context, the United Nations ascertained in the Minority Rights Declaration 1992, Article 8, Item 4, that "it is not acceptable to take any action that a minority can take, against the sovereignty, unity, and independence of the state".² Or as it happened to the Catalonia plebiscite in 2017. Consequently, from the constitutional aspect, the organization and regulation of such a type of plebiscite is prohibited by almost all national constitutions.

However, some states' constitutions stipulated that a part of it may be to include the secession, such as the Article 39 of the constitution of the Federal Democratic Republic of Ethiopia 1955, the Article 72 of the constitution of the Soviet Union 1977, and the Article 222 of the constitution of Sudan 2005. Although the plebiscite is a democratic mean and the Iraqi constitution 2005 has stated that "The Republic of Iraq is a single

¹ The Settlement Plan was an agreement between the ethnically Saharawi Polisario Front and Morocco on the organization of a Plebiscite, which would constitute an expression of self-determination for the people of Western Sahara, leading either to full independence, or integration with the Kingdom of Morocco. See Terhi Lehtinen, The Unfinished Referendum Process in Western Sahara, a research affordable at: <https://www.eisa.org.za/pdf/JAE1.1Lehtinen.pdf>

last visit September 24, 2020.

² See a research affordable at : <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx>



federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic.... “

Nonetheless, the ambiguity in the texts of its articles and the lack of explicitly stipulating this mean, i.e. the plebiscite, has made it the main obstacle in the face of trying to give the legal base for the Kurdistan Region plebiscite.¹ Indeed, the constitution weaponized and became the tool that was adopted by the three federal authorities to stand up against to null the plebiscite. The Federal Parliament in its session held on September 12, 2017, which was boycotted by all Kurdish MPs, voted on the decision to reject the plebiscite and called on the Federal Prime Minister to take ‘all measures’ to preserve the unity of Iraq. It also voted to stop financial and banking transactions with the Kurdistan Region.² The decisions of the Federal Parliament have authorized the Prime Minister to have absolute authorization including the use of force. And this has already been done on October 17, 2017, with the assistance of the Shiite militias.

Likewise, the Federal Supreme Court issued state rulings No. 91, 94, and 98 on October 18, 2017, regarding to the suspension of plebiscite procedures and ruling No. 122 of November 6, 2017, regarding to the absence of a text in the constitution that permits secession, as well as ruling No. 89, 91, 92, and 93 on 20 November 2017 regarding the nullify of the plebiscite and its implications. Even more strange, the federal government, based on the court’s decision, asked the regional government to cancel the result of the plebiscite. Disrespecting that the plebiscite was held by the people and in order to cancel its result, another plebiscite must be carried out in the same regions³.

Individuals will give their opinions to cancel the previous result based on the principle of “the people is the source of the powers”. Only people has the authority to approve or reject a specific status. All that the regional government can do is only to freeze the result, and this is a tentative measure. Any new government can cancel the freeze decision and activate the result.

The region has organized the plebiscite without any explicit text in the constitution that permits its conduct or the existence of any federal law that organizes that plebiscite. It was better relied primarily on the exercise of the Right to Self-determination in accordance with the international instruments, and secondly on the preamble of the constitution in which it stipulates: “We, the people of Iraq, of all components and across the spectrum, have taken upon ourselves to decide freely and by choice to unite our future...”⁴.

Likewise, the juristic interpretation of some specialists of what came explicitly at the end of the preamble, which states that commitment to this constitution is to guarantee the

¹ The word of Plebiscite has been mentioned in the Iraqi constitution only in four articles. Article No.131,140,142, and 144.

²See the Federal Parliament decisions:

<https://arb.parliament.iq/archive/2017/09/27>

³ Mary Ellen O’Connell, *New International Legal Process, in the Methods of International Law* 79-107 (eds.S.Ratner and Anne-Marie Slaughter, Washington, DC:36 ASIL Studies in International Legal Policy,2004), at 79.

⁴ Outi Korhonen, post as *Justification: International Law and Democracy building after Iraq*, 4:7 German LJ709-723(2003), at 723.



unity of Iraq. The federating is a voluntary union “The adherence to this Constitution preserves for Iraq its free union of people, of land, and of sovereignty”. In addition, the constitution stipulated that Iraq abides by international covenants and treaties, especially the Charter of the United Nations, as well as the two International Pact of 1966¹.

What angered the anger of the federal authority in Baghdad is the holding of the plebiscite in the disputed areas that are constitutionally unresolved conflict areas between the federal authority and the Kurdistan Region. And still the implementation of Article 140 of the constitution remains obstructed².

Although the local authority in Kirkuk, the heart of the conflict, has expressed its agreement that the Kurds constitute the majority in the provincial council and the executive authority in the province was subordinate to the region politically, and the local authority has legalized this subordination in regards of holding the plebiscite. According to article 123 of the constitution, the federal government has the authority to authorize governorates to hold a referendum.³ If the government does not do so, and since the local government, according to article 122 of the constitution,⁴ possesses extensive administrative decentralization, the local government can conduct the plebiscite.

Actually, this is what happened when Kirkuk Provincial Council on April 23, 2017, asked the federal government to conduct that plebiscite, but it did not respond, and the local government voted in favor of holding the plebiscite with the regional government. This is a clear legal reply for everyone who went on to say that the region has taken control of those areas by force and has exploited the weakness of the federal state. With regard to the legal imbalance in holding a plebiscite in some areas of the cities of Kirkuk and Mosul, based on the Stimson doctrine. Whereas, the "Stimson" doctrine, which was affirmed by the "Bogotá Charter" 1948 and the declaration of the "United Nations Principles of Cooperation and Friendly Relations", revolves around the necessity of not recognizing the effective control of states and entities over other regions by force of arms or in the event of instability. Stimson was the Secretary of the US State Department, where he called in 1932 not to recognize the "Manchukuo" state that Japan created on Chinese soil. Although, some states recognized this state, after World War II they adopted the "Stimson" doctrine, and the recognition has been withdrawn.

¹ Antony Green, Plebiscite or Referendum - What's the Difference, a media article published by ABC news on August 11, 2015.

² Sardar sharif, the right to self-determination in the experience of Kosovo's independence Analytical study of legal and political dimension, qalaai zaniest Scientific Journal ,2018, p.26.

³ See text of article No.123: “Powers exercised by the federal government can be delegated to the governorates or vice versa, with the consent of both governments, and this shall be regulated by law.”

⁴ See text of article No.122: “...Second: Governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration, and this shall be regulated by law. Third: The governor, who is elected by the Governorate Council, is deemed the highest executive official in the governorate to practice his powers authorized by the Council. “



In the same context, it takes into account the To bar doctrine or the "criterion of government legitimacy" that surfaced in March 1907 and stresses the need not to recognize governments that are established by force or by turmoil and instability.¹

To bar was the minister of the Foreign Relations of Ecuador.

However, this seems not to have interceded for the Regional Government at the level of the federal government, nor even for some legal specialists. While expressed an opinion regarding to the inclusion of disputed areas in the plebiscite of 2017, which basically referred to the control of the Peshmerga forces in the city of Kirkuk and neighborhoods after the defeat of the Iraqi army against ISIS in 2014.

In Resolution 3070 of 1973, the United Nations asked all member states:²

First - to recognize the right of peoples to self-determination and independence. Second - its commitment to work to achieve this goal and support its implementation on the ground, in terms of its external and internal aspects, respectively, in terms of achieving independence or integration within the framework of states or entities in any formula decided by the people without external interference³.

Whereas, exercising the internal aspect of this right is achieved by contributing or participating in the existing political system in the state and ensuring equality for the minority demanding the exercise of this right without any denial or abuse. The constitution is the guarantor and it is the tool that organizes that participation. Therefore, the stance of the Iraqi constitution regarding the Kurdish participation and respect for their rights is mixed and varies between denial, ambiguity, and sometimes approval and manifesting. In addition to that, it is no secret that the practice of the internal aspect of the Right to Self-determination by the Kurds over the past almost two decades have emerged that there are more than 30 constitutional articles that have been effectively suspended (de facto) and all of them are mainly at the heart of the true practice of the principle of the Right to Self-determination by the Kurds.

Starting from the article No.4 of the constitution ending with the obstruction of the implementation of Article 140 regarding the settlement of disputed areas in its three stages: normalization, census, and referendum. Indeed, Baghdad has so far refused to implement more than 50 articles out of 144 articles of the Iraqi constitution. This is a point affirmed by many, including Robert Ford, who was head of the Political Bureau at the American Embassy in Baghdad in 2005, during the negotiations on the new Iraqi constitution.⁴

In addition to the voluntary component, which is the legal and voluntary base for all ethnic ingredients living in Iraq. The federalism that exists in Iraq is the result of a voluntary agreement. With regard to the legal value of the preamble, in the absence of an explicit provision stipulating the constitutional legal compulsory of the preamble. Contrary to what we see in the interim constitution of the first republican constitution of

¹For more information refer to the following link:

<https://www.oxfordreference.com/view/10.1093/oi/authority.20110803104759880>

² For more information refer to the following link:

[https://undocs.org/en/A/RES/3070\(XXVIII\)&Lang=E&Area=RESOLUTION](https://undocs.org/en/A/RES/3070(XXVIII)&Lang=E&Area=RESOLUTION)

³ Malcolm N.Shaw, Territory in international law, 13NYIL61(1982),at 74.

⁴ The future of Iraqi Kurdistan Plebiscite, an analytical paper published by Aljazeera Studies Center on November 7, 2017. Accessible at:

<https://studies.aljazeera.net/ar/reports/2017/11/171107071254942.html#a1>

last visit: September 24, 2020.



1958, which clearly states that the preamble is a part of the constitution. It is inevitable to say that the preamble of the current constitution also has the same legal value as the articles of the constitution.

On the other hand, in the absence of a text that revokes the legal power of the preamble over the century from the founding of the Iraqi state, starting from the constitution of 1925 ending with the last one 2005, As it is for the sake of accounting it as a constitutional custom. We can consider the preamble at the level of the articles of the constitution in terms of the legal value and it is an integral part of the constitution. Therefore, the failure of the federal government to adhere to the provisions of the constitution and its obstruction of those articles aforementioned, will null the statement that the Kurds in Iraq have enjoyed exercising the internal aspect of the Right to Self-determination. This would further lead to say the failure to adhere to these provisions, and during that long period, is enough to say that the Iraqi Kurds do not expect their request to be accepted by the federal government to conduct the plebiscite.

Consequently, the impossibility of the federal government approval in this regard, is a summative achievement that does not accept any interpretation or possibilities. Waiting for any positive reply is utter futility. On the other hand, let say that the above is not true and assume that the Iraqi Kurds have truly enjoyed the exercise of their Right to Self-determination in its internal aspect. The simple question that arises is: Who says that the exercise of the internal aspect of the Right to Self-determination by a particular group fulfills the conditions of practice, will it be prevented from exercising the external aspect of the Right to Self-determination, which comes in the sense of enjoying an independent international political entity (state)?

2-3-International Monitoring

International supervision or monitoring to give the plebiscite more guarantees. This was ascertained by the United Nations General Assembly Resolution No. 637 of 1952 “...the wishes of the people being ascertained through a plebiscite or other recognized democratic means, preferably under the auspices of the United Nations”¹. According to what has been established internationally, a series of criteria have been adopted by the European Committee for Democracy, in accordance with the so-called Venice Commission Law or the so-called Law of Impartial Practices in Electoral Matters² which boils down to the plebiscite should be monitored by a neutral body.

It is well known that the General Assembly’s resolutions are not mandatory but just recommendations. Especially when examining the aforementioned resolution, we will be inspired by its content that it came as a matter of recommendation, no more. Thus, the issue of international supervision, with distinction, is a political matter, not a legal one. As the fact is that the result of the ongoing plebiscite, according to the exercise of the Right of Self-determination, is the enjoyment of an international entity that its foundations are based on state unilateral willingness. In other words, the birth of a new

¹ For more information, refer to the following link:

[https://undocs.org/en/A/RES/637\(VII\)](https://undocs.org/en/A/RES/637(VII))

²For more information, refer to the following link:

https://www.venice.coe.int/WebForms/pages/?p=01_Presentation



member of the international community depends on the willingness of the other members, individually or collectively, sponsor by the United Nations or without it¹.

Practically, the plebiscite procedures for "self-determination" were conducted according to the consensus of the relevant states under the supervision of the United Nations, as was done in the "East Timor" plebiscite in 1999 and South Sudan referendum in 2011. But, the international practice in this regard shows the extent of variation in attitudes, and the norms meet the political, not legal standard. The independence of Kosovo in 2008 is a good example. Although a large number of countries recognized Kosovo as an independent state, it not become a member of the international organization (UN) yet.²

However, it is worth to say that the affiliation of a new member to the organization does not necessarily mean recognition of it as a state by all members of the organization as is the case with Israel. It is an independent state and a member of the United Nations, but many Islamic countries have not recognized it yet³.

On the other hand, the recognition by states, no matter how many there are, of the status produced by the plebiscite, that is, the new state will be part of the international practices that produce what is called soft law when certain issues are achieved.⁴ Other than, a soft law can only be produced by those with international legal capacity, either international legal subjects or international actors, either states or organizations.

Accordingly, the international supervision as a deduced condition from international practice, regarding the plebiscite and the unilateral declaration of the state, is a revealing condition and not a source of legitimacy that should characterize the plebiscite process then approval of the result. No, but this revealing condition is limited to ensuring the extent of objectivity, impartiality, the integrity of the plebiscite procedures, and not violating the rules in force in such a process.

As a matter of priority, all of the above mentioned in the discussion does not fall within the realm of law. Rather, it is considered a pure political factor related to the supreme interests of the state or even the international organization and the national security of states. Axiomatically, Iran, Turkey, Syria, Iraq and even Armenia to oppose and reject any peaceful or non-peaceful attempt by the Kurds to gain independence, which will be vigorously countered as a direct threat to the national security of these countries. Whereas, the Kurds make up 12% of the population of Iraq, 6% of Iran, 8% of Syria, and 15% of the population of Armenia.⁵

¹ Mary Ellen O'Connell, *New International Legal Process, in the Methods of International Law* 79-107 (eds.S.Ratner and Anne-Marie Slaughter, Washington, DC:36 ASIL Studies in International Legal Policy,2004), at 79.

²For more information refer to the following link:

<https://ruwanthikagunaratne.wordpress.com/2013/06/02/kosovo-declaration-of-independence/>

³ Elihu lauterpacht ,The international personality of the united nations. Capacity to administer territory,5ICLQ409-413(1956), at 410.

⁴ For more information, refer to the following link:

<https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0040.xml>

⁵ Kurds from Sykes-Picot to Referendum and Independence, a media article in Kurdish published on August 9, 2017, accessible at: <http://wishe.net/details.aspx?hewal&jmare=22566&Jor=1> last visit: September 24, 2020.



Otherwise, from the legal point of view, due to approval of the legitimacy and the right of the Kurds to enjoy an independent political entity of the state, as it has all the elements, there is no legal inconsistency¹. Therefore, we believe that the Security Council has contented itself with a statement opposing the Kurdish plebiscite, and not an international resolution. Whereas, the exercise of the principle of Self-determination is not restricted internationally and is not prohibited except by a decision of the Security Council based on a legal basis. A resolution in accordance with Chapter VII of the Charter of the United Nations. The Security Council issued a unanimous statement on September 21, 2017,² in which it expressed its opposition to this unilateral step and expressed its concern about the destabilizing consequences. And the United Nations Secretary-General, Antonio Gutierrez, urged the Kurdistan Region of Iraq to cancel the planned plebiscite on secession, warning that it would turn a blind eye to the need to defeat ISIS and rebuild the areas that were recovered from the hands of its militants and the return of the displaced (IDPs)³.

The Secretary-General stressed that he respects the sovereignty, integrity and territorial integrity of Iraq, and sees the need to resolve all outstanding issues between the federal government and the Kurdistan Regional Government through an organized dialogue and a constructive settlement.⁴

Accordingly, the attitudes and stances of the states towards the Kurdish plebiscite fluctuated from complete rejection to impartiality, silence, or acceptance. But as departing from what is ordinary, is the rejectionist stance of the United Nations and the Secretary-General. But the strangest of all it relied on domestic law as a justification for its rejection of the Kurdish plebiscite. Meanwhile, the UN's charter is the first legal base for proving the mandatory power of the principle of the Right to Self-determination that was based on, the Kurds to conduct the plebiscite and express freely the willingness to live independently⁵.

The Kurds have been wronged twice. The first: When the Sykes-Picot agreement prejudiced their right to form an entity that preserves their dignity and independence among other nations. The second: national racism, when most Arab countries, indeed the Middle East and the world, stand in the opposite way of the mere right to think about demanding self-determination by the Kurds.⁶

Despite this, the plebiscite will not achieve independence immediately. This is a point confirmed by the Iraqi Kurdish leadership continually. The borders of Iraq will remain

¹ Kamaran palani, Strategies to Gain International Recognition: Iraqi Kurdistan's September 2017

Referendum for independence, ethnopolitics, 2019:

<https://dio.org/10.1080/17449057.2019.1596467>.

² For more information, refer to the following link:

<https://www.un.org/press/en/2017/sc13002.doc.htm>

³ ياسين محمود عبابكر، الدبلوماسية الموازية بين النظرية و التطبيق، مكتبة التفسير للطبع و النشر، أبريل، 2022، ص 178.

⁴ For more information, refer to the following link:

<https://www.un.org/sg/en/content/sg/statement/2017-09-25/statement-attributable-spokesman-secretary-general-Plebiscite>

⁵ Kamaran Palani, Kurdistan's facto statehood, an new explanatory framework, routledge, 2022, p.65.

⁶ Sardar mosa sharif, An Analysis of Kurdistan region of Iraq Diplomacy and foreign policy objectives 2003-2013 case study, partial fulfillment of the requirements for the degree of doctor of philosophy in international relation, 2015, p.79.



as an internationally recognized sovereign state as it is. In addition to the internal borders between the Kurdistan Regional Government and Iraq, will stay intact aftermath of the plebiscite, at least for the foreseeable future.

By default, if the Iraqi Kurds have relied on the scenario of converting the plebiscite through one of the countries, often "Israel" and some Arab countries, to international forums such as the General Assembly or the Security Council. Which is acceptable. As, according to Article 37 of the Charter of the United Nations "the foundations of the dispute are presented to it by the member states, then based on the UN will recommend what it deems appropriate. "

In the context of gaining independence, perhaps the Kurds aimed to show their insistence on holding a plebiscite within the borders of the region plus the disputed areas. In order to become a subject to a regional attack, Turkish and/or Iranian military intervention pays "Israel" to put pressure on the United States. In accordance with Article 51 of the Charter, which states the right of the nations of the United Nations within the framework of an international military alliance to keep international peace and security¹.

While, the principle of "humanitarian intervention" which, if not based on a Security Council resolution, could be based on the principle of "the responsibility to protect R2P."² And Resolution A377 which known as "Union for Peace",³ or the "Acheson Plan" which passed in 1950,⁴ meaning that the United Nations General Assembly at an emergency meeting adopts recommendations it deems necessary to fend off any aggression and restore international peace and security. In order to overcome the impediment to the five members of the Security Council unanimously agree to the intervention.

If this scenario materializes, then the "Hayes" principle, which requires recognition of new governments or authorities for a region, is activated if it pledges to take care of its international responsibilities.⁵ If the goal is to declare a state. The president of the region, Masood Barzani, on the eve of the plebiscite, has made it clear on several occasions that the triumph of the Pro-plebiscite parties does not mean the declaration of independence immediately. But rather the beginning of serious and comprehensive negotiations with the federal government in Baghdad.

¹ Kamaran palanai,jaafar khidir,mark Dechesne and Edwin bakker, the development of Kurdistan's de facto satehood: Kurdistan's September2017 referendum for independence, THIRD WORLD QUARTERLY,2019, VOL,40,NO.12,2270-2288:

<https://dio.org/10.1080/01436597.2019.1619452>.

²For more information refer to the following link:

<https://www.globalr2p.org/what-is-r2p/>

³For more information refer to the following link:

<https://unispal.un.org/DPA/DPR/unispal.nsf/0/55C2B84DA9E0052B05256554005726C6>

⁴ The Uses of the Uniting for Peace Resolution since 1950, Keith S. Petersen, a research published on May 22, 2009, accessible at:

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⁵Legal view on the referendum in the Kurdistan region of Iraq, an article in Arabic by Jalal Salmi published on September 23, 2017, accessible at: <https://www.noonpost.com/content/19972>

last visit : September 24, 2020.



The regional government may only aim to obtain a "popular mandate before negotiating with Baghdad about new conditions for relations between the two parties." The appropriate political structure for the next stage¹.

Although, the Post-plebiscite stage has proven that none of those scenarios has been taken and that the friends and allies who the Kurds relied on to lend a helping hand and help are not fulfilled, but rather a feeling of frustration, contempt, and the opposite of what was expected was and still overwhelms the characteristics of the current stage to the Kurdish regional government in Iraq².

On the other hand, despite the fact that external interventions have forced the two parties to the crisis (both regional and federal governments) to concede to each other. While the law (the constitution), which the federal government relies upon its war with the regional government, did not specify the type of future relationship or the nature of upcoming political understandings between the two parties.

The persistent problem that this study focused on is the landmark feature of such a relationship. Rather, what determines and delineates all these problems is the political factor within political agreements by the blessing of foreign parties. Including neighboring countries and the United States strongly.

The problem between the federal government and the regional government has accumulated for a long time. With the evidence of a torrential of problems created by the federal government. Such as border crossings, airports, and disputed areas. All these problems have nothing to do with the plebiscite. The federal government is now trying to reformulate the relationship according to its unilateral aspirations and interpretations, as the Kurdistan government says.

Consequently, these aspirations absolutely intersect with the aspirations of the regional government.

conclusion

Firstly, according to the international standards, Iraqi Kurds are consistent in the declaration of the state unilaterally rely on the exercise of the external aspect of the Right to Self-Determination in peaceful means. We found that the Kurds-in-Iraq have enjoyed all legal elements enabling them to exercise their Right to Self-Determination peacefully by plebiscite at internal level and not the external one.

Secondly there is a semi-consensus among the jurisprudence that the Right to Self-determination emerged as a political principle then shifted to a legal rule.

Thirdly a plebiscite as a peaceful means to enjoy statehood is the most desirable by the international community.

Fourth the members of the international community dealt with the plebiscite process conducted by the Kurds in 2017, with distinction, on the basis of a political, not legal basis.

Fifthly the Iraqi Kurds' plebiscite of 2017, is considered to be lawful and if it is frozen, this does not lose its value and will remain effective until the appropriate time comes to work according to it. As no one has the power to null it but the people who create it.

¹ Aleksandar Pavkovic and argyro kartsonaki, *Declarations of independence: their sub-genres*, this article was published in 2021 through the following link:

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Serhun AL, *Kurds, State Elites, and Patterns of Nationhood in Iraq and Turkey, Rethinking Nation and Nationalism*, 2 June, 2015, project on Middle East Political Science, p.6-8 ²



Sixthly the declaration of the state unilaterally and the birth of that legal political entity depends primarily on the political, not legal, factor. All other issues in terms of the international react will go in accordance with the policy rather than the eligibility.

Recommendations

Firstly, members of the international community must urgently convene a general conference at the state level to adopt legally defined determinants and standards for means to peacefully exercise the right to self-determination.

Secondly the United Nations should speed up the issuance of clarifying legal regulations that distinguish the plebiscite as a peaceful means of enjoying the statehood.

Thirdly the Kurdistan Regional Government should cancel the decision to freeze the results of the 2017 plebiscite.

Fourthly the Kurdistan Parliament should legislate an act of declaring the right to enjoy the statehood after the government's decision to cancel the decision to freeze the results of the 2017 plebiscite.

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رأبأرسى وهك ئامرازى چىزوه رگرتن له دهولت
 رأبأرسى كوردى عىراق له چوارچىوهى دهستورى عىراق و پىاده ئىودهوله تىه كاندا.

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پوخته

بىرۆكهى ئه وهى كه گه لىك يان گروپىك مافى ره وای دهوله تىكىان هه به، هه ره له سالانى سه ره تاي سه دهى بىسته مه وه هه بووه.

به لام هه ندىك كه س مافىكى ئه رىنىيان پىدرا كه چىز له دهوله تى خويان وه رىگرن. ئه م كه سانه نه ك هه ره ئه گه رى ئه وه يان هه به بى پىشلىكردنى هىچ رىسابه كى ياساى ئىوده وه له تى، به لكو به شىوه به كى رسته بى مافى ئه وه يان هه به به پىي ياسا ئىوده وه له تىه كان ئه و كاره بكه ن.

رىفراندۆم يان رىفراندۆمى گشتى به يه كىك له ئامرازه ئاشتىخوازه كانى موماره سهى مافى چارهى خو نووسىن داده نرىت، رىفراندۆم يان رىفراندۆمى گشتى له گه ل پىشها ته كانى كۆمه لگهى ئىوده وه له تى و چىزوه رگرتن له دهوله تىكدا ده گونجىت و به يه كىك له ئامرازه په سه ندىكاره وه كان داده نرىت بو گه لى فه له ستىن. رىكخراوى نه ته وه به كىگرتو وه كان.

ئه م توؤزىنه وه به ئامانجى تىشك خسته نه سه ر چه مكى رىفراندۆم و رأبأرسى پاشان گرنىگىه كهى وه ك ئامرازىكى ئاشتىانه بو چىزوه رگرتن له دهوله تدارى. جگه له وه ش، نموونه هىئانه وه و هه لسه نگاندى گرنىگرتىن تايه تمه ندى و به ره به سته ياسايه كانى به رده م رأبأرسى كوردانى عىراق له سالى 2017 له روانگهى شه رعىه ته وه له پىوه ندى له گه ل ياساى ئىوده وه له تى و ده ستورى عىراق.



ووشه سه ره تاييه كان: هه ريمى كوردستان، ده ولت، مافى چارهى خو نووسين، پيراندوم، پروسه بياتانى ناشتى، نه ته وه يه كگرتو وه كان، پراكتيكي ناشتايه، ده نگدهر، چاوديري نيوده ولت.

الاستفتاء كوسيلة لتمتع بالدولة استفتاء كورد العراق في ظل الدستور العراقي و الممارسات الدولية

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ملخص

إن الفكرة التي تتألف من حق شعب أو مجموعة في التمتع بحق مشروع في التمتع بالدولة، موجودة بالفعل منذ السنوات الأولى من القرن العشرين. ومع ذلك، تم منح بعض الأشخاص استحقاقاً إيجابياً للتمتع بدولتهم الخاصة. ليس لدى هؤلاء الأشخاص إمكانية القيام بذلك دون انتهاك أي قواعد من قواعد القانون الدولي فحسب، بل لديهم الحق حرفياً بموجب القانون الدولي في القيام بذلك. يعتبر الاستفتاء أو الاستفتاء العام إحدى الوسائل السلمية لممارسة حق تقرير المصير، ويتوافق الاستفتاء أو الاستفتاء العام مع تطورات المجتمع الدولي والتمتع بالدولة، ويعتبر من الأدوات المفضلة للشعب الفلسطيني. منظمة الأمم المتحدة. يهدف هذا البحث إلى تسليط الضوء على مفهوم الاستفتاء والاستفتاء وأهميته كوسيلة سلمية للتمتع بالدولة. علاوة على ذلك، يتم عرض وتقييم أهم الملامح والمعوقات القانونية لاستفتاء أكراد العراق 2017 من وجهة نظر الشرعية فيما يتعلق بالقانون الدولي والدستور العراقي.

الكلمات المفتاحية:

اقليم كوردستان، الدولة، حق التقرير المصير، الاستفتاء، عملية بناء السلام، الامم المتحدة، ممارسة سلمية، الناخبين، الرصد الدولي.