

ATINER CONFERENCE PAPER SERIES No: POL2013-0727

Athens Institute for Education and Research

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ATINER's Conference Paper Series

POL2013-0727

**The Current Kurdish Iraqi
Governments Relations:
An Assessment**

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URL Conference Papers Series: www.atiner.gr/papers.htm

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ISSN 2241-2891

7/11/2013

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This paper should be cited as follows:

Hanish, S. (2013) "The Current Kurdish Iraqi Governments Relations: An Assessment" Athens: ATINER'S Conference Paper Series, No: POL2013-0727.

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Abstract

This paper will discuss the current problem between the Iraqi central government in Baghdad and the Iraqi-Kurdish regional government in Erbil, which might lead to an armed conflict. This paper will present a historical background to the Kurdish issue in Iraq and specifically after the collapse of the former Iraqi regime in April 2003. It investigates the causes of the current and continuous tense between the two parties and assesses the current political situation in Iraq. It presents the contending parties' arguments and proposes a possible solution to the issue, ending with concluding remarks.

Keywords:

Corresponding Author:

Introduction

The Kurdish people's struggle for national rights continued for most of the 20th century where the Kurdish nationalist movement employed arm struggle as a mean to achieve its nationalist rights especially since 1961. Its national struggle culminated in a de facto state in Iraqi Kurdistan in 1990s. After the U.S. invasion of Iraq in 2003, a constitution was adopted that recognized Iraq as a federalist state and guaranteed Kurdish nationalist rights. Since then, the Iraqi government is maneuvering and not making good on its main obligation of solving the disputed areas problem between the Kurdish region and the central government in accordance with Article 140 of the Iraqi Constitution. The Kurdish forces were securing most of the disputed areas after the collapse of the former regime. The recent heightened tensions between Erbil and Baghdad came after the Iraqi government led by the Iraqi Prime Minister Nouri al-Maliki announced the formation of *Dijla* (Tigris) Operations Command in the disputed areas of Kirkuk, Diyala, and Salah ad-Din provinces. It was rejected by the Kurdish leadership and the Kirkuk Provincial Council dominated by the Kurds. Al-Maliki ordered Iraqi troops to move to these areas, a move that is forcefully opposed by Massoud al-Barzani, the President of the Kurdistan region backed by other Kurdish parties, including President Jalal al-Talabani, a Kurd.

A partnership agreement was reached on August 8, 2010 between al-Maliki alliance and the Kurdistan Alliance regarding decision making and compatibility on all joints sensitive and strategic issues in the state, including the solution of all outstanding problems with the Kurdistan region, such as 'oil and gas law, arming, equipping and financing of the Regional Guard (Peshmerga). The agreement was also to 'take common positions on all outstanding issues between the federal government and the region. This agreement facilitated the creation of the current government but was not respected by Prime Minister Nuri al-Maliki, nearly two years after the commitment, according to Kurdish sources (Almada, 12/14/12).

Areas of Dispute

In addition to the disputed areas problem, there are other problems between Baghdad and Erbil. The Kurdistan Regional Government is developing an independent oil industry. It has discovered and begun to develop new oil fields inside its boundaries, entering production-sharing deals with foreign oil companies, without the consent of the federal government in Baghdad. Those deals have raised suspicions among Iraq's Arab-dominated government that the Kurdish regional government is laying the economic infrastructure for independence. For their part, the Kurdish officials suspect that Baghdad's failure to pass a national oil law and its failure to press ahead with a referendum to settle Kurdish claims to Kirkuk and other disputed areas are signs that the Arab majority plans to settle matters in its favor. A new

proposed oil law would supposedly give Iraq's provincial governments' greater control over oil industry in their territory.

Another area of dispute is over the national budget. The Kurds want the Iraqi government to pay for Peshmerga forces from its national budget, not from Kurdistan region's budget. The Iraqi government does not see Peshmerga a national force but a force loyal first to the Kurdish leadership. The passing of Iraq's 2013 budget in the absence of Kurds agreement and dissatisfaction on some of the budget items escalated the problem. Also, there are the issues of managing border crossings and airports, and the arming of Peshmerga forces.

Brief History of the Kurdish Struggle

The Iraqi governments' policies, since the death of King Faisal I (1933), were to force the Kurds to abandon their nationalist demands and to make them obedient citizens. Kurdish demand during the monarchy was confined to the 1925 League of Nations promise of Kurds rights to political, cultural and administrative in the framework of international arrangements to mandate Iraq, where the Turks were claiming Mosul province (governorate) of majority Kurds. In the first republican era, the Kurds demand was to implement the 1958 Constitution that views Kurds as partners of Arabs in the Iraqi homeland. Since, the Iraqi governments used military force against Kurds in 1961, but the Kurds advanced their demand for self-government after failed Iraqi governments' campaigns to crush their resistance. In March 1970, they forced Saddam Hussein to accept their demand for autonomy. Soon, Saddam made deal with Shah of Iran to assist him in the elimination of the Kurdish nationalist movement, in return for half of the Shatt al-Arab waterway and other lands in accordance with the Algiers 1975 Convention. After the overthrow of the Shah's regime in 1979, Saddam negated 1975 agreement and waged an eight-year war with Iran. It was a disastrous war that was followed by another war in Kuwait. Following the 1991 uprising against Saddam, the Kurds were able to secure a de-facto region outside of the government control until the U.S. invasion of Iraq in 2003. Now, it seems that the current Iraqi government is trying to contain the Kurds in an ill policy that was historically proven wrong (Hussein, 2012).

Kirkuk

One of the main areas of dispute is over the province and city of Kirkuk. Kirkuk is the name of a governorate in northern Iraq, and it is also the name of the main city in the province. Kirkuk is located about 250 kilometers north of the Iraqi capital Baghdad. It is strategically and economically important as a center of the Iraqi petroleum industry. Kirkuk province inhabitants are mainly Kurds, Turkomans, Arabs, and some Chaldo-Assyrians. Virtually all Kurds in the province are Sunni Muslims, while the Turkomans are about half Sunni and

half Shia's, the Arabs are majority Sunni, and the Chaldo-Assyrians are Christians.

Kirkuk is the focus of nationalist struggle between the Kurds on one side and Turkomans and Arabs on the other side. The first wants Kirkuk to become part of the Iraqi Kurdistan region, while the latter wants to connect it to the central government. The Kurds believe that Kirkuk is and was predominantly Kurdish area, while Arabs and Turkomans believe that it is their area, and that it should continue its former status connected to the central government. The Iraqi Prime Minister Nouri al-Maliki desires Kirkuk to continue its current legal status outside of the Kurdistan region while the Kurdish leadership wants to make the city its capital. There is a struggle to dominate Kirkuk and other disputed areas in several border provinces.

Kirkuk was demographically changed during the former Baath rule, 1968-2003, through the infamous Arabization policy. Kirkuk demography and administrative boundaries were changed in a way that was not seen by any previous regime throughout Iraq's modern history. After the American invasion of Iraq in 2003, the Kurds pressed the Kirkuk issue and there was an agreement among main political forces to solve the problem. In the 2004 Transitional Administration Law (the interim constitution), a method was spelled out to solve the problem in Article 58 (Coalition Provisional Authority-Iraq, 2004). When the new permanent constitution was adopted in 2005, this article was transferred to the new constitution under Article 140 (Full text of Iraqi constitution, 2005). A deadline was set up to solve the issue in 2007, but till now there is no implementation of Article 140 despite the expired deadline.

The disputed territories have been a major contributor to the growing rift between al-Maliki and the Kurds. During August 2008, tension erupted over the central government's attempt to gain control of Khanaqin, in Diyala Province. Armed clashes were avoided by a U.S. military-brokered compromise under which Peshmerga (the Kurdish militia or freedom fighters) remained in control of Khanaqin (Katsman, 2009). The Kirkuk issue among others, if not solved, could develop into a severe problem that might cause a civil war between the concerned parties or the breakup of Iraq in connection with the sectarian divide between the majority Shiite government and the minority Sunni opposition.

Arabization Policy History

The Baath regime adopted the Arabization policy to Arabize the province. The policy included forced deportation of residents, confiscation of property, and manipulation of administrative boundaries. In 1975, Arab tribes from southern Iraq were moved to Kirkuk supported by government benefits and housing. Uprooted Kurd and Turkomans farmers were sent to government-controlled camps along the main highways. Many Arab districts belonging to neighboring Arab provinces were added to Kirkuk province in order to make Arabs the majority in Kirkuk province (Leezenberg, 2003). Other Kurdish

districts were detached from Kirkuk and attached to other provinces to make Kurds a minority in Kirkuk. By the 1980 Peshmergas, large parts of the Kurdish population were forced to leave Kirkuk and were replaced with Arabs. The aim was to weaken the Kurdish control and any future possible claim to the city. Since April 2003, tens of thousands of internally displaced Kurds and Turkomans have returned to Kirkuk and other Arabized regions, to reclaim their homes and lands. Many experts believe that the Kurds now make up a majority in Kirkuk. They retain control over most of the city's important political posts.

The Disputed Areas

Most of the so-called disputed areas had a majority of non-Arab until the advent of the Baath Party to power in 1968, where it was rearranging the provinces to have majority Arab population. Some Kurdish districts were detached from the province of Kirkuk and attached to Sulaymaniyah, Diyala, and Salah ad-Din provinces to make Kurds minority in Kirkuk.

The Commission on the Implementation of Article 140 of the Constitution of the Republic of Iraq is supposed to deal with these disputed areas. In Nineveh province, the areas includes several Christian, Yazidi, and Shabaks majority areas, such as districts of Shikhan, and Hamdania, Telkaif, Akre, and some parts of Sinjar of Yazidi concentration in addition to others. In Erbil, it includes Makhmour district that includes a majority Kurdish that was taken from it and put under the Nineveh after 1991. In 1966, the province of Kirkuk included Jamjamal and Klar, which are located today in the province of Sulaymaniyah, and Tuz Khurmatu of a majority Turkomans in located in Salah ad-Din province today, and Kafri of a mixture of Kurds, Turkmen and Arabs in located in Diyala province today. In Diyala, the dispute is also over Khanaqin district of a Kurdish majority and Mandali sub district in Baladrooz district. In Wasit province, the dispute is over Badra district of both Faili Kurds and Shiite Arab residents (Commission on the Implementation of Article 140, 2007).

A large part, the phase of normalization, is complete but not the second phase, the census. The dates of the vote were postponed more than once despite technical and logistical preparedness of the Iraqi Ministry of Planning. The current complex situation in the disputed areas is due in part to delays in moving towards a gradual process steps for the application of Article 140. The serious crisis between the territorial government and the federal government today on the formation of *Dijla* forces is a good example of what delays and postponements can lead to.

Transitional Administrative Law (TAL)

Following the invasion of Iraq in 2003, the United States-led coalition adopted an interim constitution called the Transitional Administrative Law

(TAL). Then, the Iraqi Governing Council (IGC) approved the TAL, which established the framework for drafting and approving a permanent constitution. The TAL included specific clauses for the return of, and compensation for forced migrants and for the resolution of disputed territories, including Kirkuk, through arbitration. TAL also included a clause to remedy the previous regime's practices of altering the demographic character of certain regions, including Kirkuk (Coalition Provisional Authority-Iraq, 2004).

According to the TAL, and to remedy such injustice, the Iraqi Transitional Government 'Shall, within a reasonable period of time, restore the residents to their homes and property, or, shall provide just compensation.' With regard to the individuals newly introduced to specific regions and territories, it was suggested that measures be taken to ensure that such individuals may be resettled, receive compensation, or receive new land near their residence in the governorate from which they originally came from, and to receive compensation for the cost of moving to their original areas.

The TAL also stated that in the event that the Provincial Council is unable to agree on an arbitrator, 'It shall request the Secretary General of the United Nations to appoint a distinguished international person to be the arbitrator.' The TAL also called for the permanent resolution of disputed territories. This would have been achieved after some measures were to be completed and fair and transparent census to be conducted.

Article 140 of the Constitution

In 2005, a permanent constitution was approved, which referred back to the TAL and set a deadline at the end of 2007 for completion. The constitution specifies that the executive authority shall undertake the necessary steps to complete the implementation of the requirements of all subparagraphs of Article 58 of the TAL. It calls for normalization, census, and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens (Iraqi Constitution, 2005).

A commission was created to facilitate the implementation of Article 140. Article 140 deals with all disputed areas in the country that have been subjected to racist policies. The bulk work of the commission is to delineate administrative borders for each disputed province. The article, in addition to Kirkuk, deals with areas in other Iraqi provinces, such as Nineveh, Salah al-Din, Diyala, and Wasit.

The committee charged with carrying out the implementation of Article 140, while denied that Arabs would be forcibly relocated, adopted a sound plan. The plan was to invite Arab families to voluntarily leave Kirkuk in exchange for a compensation package of about \$15,000 and a plot of land in their towns of origin (Qabani, 2008).

The Kurdish and Other Parties Arguments

Incorporating Kirkuk governorate in an autonomous (or independent) Kurdistan has been a consistent objective of Kurdish nationalists. The Kurds argue that there is no visible geographic demarcation between Kirkuk and the existing Kurdistan. They claim that historically Kurds made up three-quarters of the population of Kirkuk province (called 'al-Tamim' province during former regime rule), around Kirkuk city. The Kurds argue that if it was not for deliberate demographic manipulation, they would have constituted the majority group in both the region and the city (O'Leary, 2004). What worries the Kurds most is that the delay in implementation of Article 140 may become a limitless postponement, which leaves the status of Kirkuk to wane indefinitely.

The Turkomans consider Kirkuk to be their own ancestral capital and cultural center. They claim that Kirkuk was a Turkomans city and they try to use history to prove their point (Guclu, 2007). Turkomans indicate that soon after Iraqi independence, and especially with the growth of the oil industry, the demography of Kirkuk began to shift, and the Kurds moved into the city from the surrounding villages. Ethnic Turkomans point to a 1957 census that showed them making up a plurality of the city's population, while the surrounding province was majority Kurdish.

Sunni-Arabs, meanwhile, cite the 1997 census that showed Arabs—both Shi'ite and Sunni—made up 58% of the city's population. Some experts say the 1997 data is faulty because Kurds ran the risk of losing their land if they did not identify themselves as Arabs (O'Leary, 2004). Iraq's Sunnis and Shi'ite nationalists, fearing an eventual division of Iraq, say Kirkuk is home to Arabs as well as Kurds, and thus should not be incorporated into Iraq's autonomous region of Kurdistan.

The city's professional Chaldo-Assyrians would live with any resettlement that minimized the threat of communal violence.

Dijla Operations

Tensions between the central government and the Kurdistan regional government escalated when a clash occurred between *Dijla* forces and Peshmerga in Tuz Kkurmatsu, resulting in two casualties and many others wounded. Al-Maliki sought to consolidate his grip on power by the growing number of roles he has taken to reinforce his strength, playing occasionally on sectarian tone when in troubles. Al-Maliki had promised President Jalal al-Talabani to a new national dialogue and to stop the creation of *Dijla* Operations but has not made on his promise. The stated reason for *Dijla* Operations was to deal with 'poor' security coordination in areas that had seen violent attacks. The Kurdish Peshmerga forces had been protecting the disputed areas as Iraqi national forces were engaged in fighting insurgency or sectarian conflict for a number of years. *Dijla* Operation has not been approved by the House of Deputies (the Parliament) and most of *Dijla* commands have

loyalty to al-Maliki, making them increasingly sectarian and not a real national force, as many critics voice.

Before the announcement of *Dijla* Operations, coordination was a common feature under years of U.S. mediation, when joined patrols and commands between the Kurdish Peshmerga and the Iraqi army were set up. When recently the Kurds have moved politically closer to Turkey, reaffirming their stance against Bashar al-Assad of Syria, they made al-Maliki displeased, due to his tacit support for Assad against the Sunni insurgency. The Turkish (Islamic Sunni) government has established close economic and political relations with Erbil, and began to look to the Kurdistan Regional Government in northern Iraq as an ally in the face of the al-Maliki government, which it opposes. Erbil feels that the developments in Syria and solid relations with Turkey might give it a good negotiating position with al-Maliki government (Salem, 2012).

The new *Dijla* military exercises in the disputed territories seem political and have little to do with security. It is to weaken Kurdish power, undermine the Kurdish security forces, and strengthening the hands of Baghdad in an effort to control the disputed territories. The Kurdish security forces had warned that they will respond harshly if *Dijla* Commands take control of the area and this was met with Maliki's own firm warnings for Peshmerga forces not to provoke Iraqi forces. Maliki had ominously insisted in the past that there are no restrictions on the movements of the Iraqi army, which 'according to the constitution is a federal army and has right to be present anywhere' (Ismaeel, 2012).

It seems that al-Maliki plan to impose his authority and enhance his influence in all centers of power, keeping for himself in addition to being prime minister, ministries of defense, interior and national security. Critics charge him of copying Saddam Hussein and dealing with his political rivals and opponents in a manner far from democracy by exclusion political opponents, such as the Sunni Tariq al-Hashimi, Iraq's vice president who was accused of terrorism. This policy and the recent dealing with the Kurds escalated the dispute between the parties, which made the Kurds distrust al-Maliki, especially the delay in the implementation of Article 140 of the Constitution. As a reaction to such policy, the President of the Kurdistan region Barzani during the thirteenth Conference of the Democratic Party of Kurdistan in December 2010 explicitly spoke of the right of the Kurdish people to self-determination (Berefcany, 2012).

There is a trust issue between the Kurdish and Iraqi leaderships. The Kurdish regional President Barzani stressed that 'the problem (with al-Maliki) is not related to Kurdistan alone; it is 'part of the problem of governance in Iraq.' He warned against arming Iraq, stating that he is certainly not against the army and its development but the military to be controlled by one person. Barzani revealed that 'al-Maliki was speaking at a meeting with top military leaders about the differences with Kurdistan Alliance. One of the officers said: Sir, just when you order we can crawl on the Kurds and break them in Salah ad-Din (the Kurdish headquarters). Al-Maliki commented on the officer's words by saying: Wait just to receive F-16 aircraft from America and you will

see what I will do.’ Barzani warned that al-Maliki instead of thinking about using fighters to protect Iraq; he awaits their arrival to hit the villages and areas of Kurdistan (Shafaq News, 2012).

Al-Maliki Accusations

Prime Minister Nuri al-Maliki accused Iraqi Kurdistan regional government of blocking agreement on resolving the crisis in the disputed areas by entering the disputed areas ‘without any authorization, reinforced by heavy weapons.’ He warned that the conflict in Iraq will be different from previous conflicts, ‘because it will be ethnic.’ He added that the borders of the region expanded beyond what was set by the American led Coalition Provisional Authority and the Constitution. Al-Maliki further said ‘the President of the Republic presented a project for the demarcation of the border and it should come out of Parliament not impose unilaterally [by the Kurds].’ He asserted that Kurdish forces entered the disputed areas against the central government and the people [meaning the Arabs and may be the Turkomans]. Furthermore, al-Maliki emphasized that ‘it is not the right of the Kurdistan region to have tanks,’ criticizing the Kurdish leaders’ calls for self-determination, stating, ‘I hear every day a call on the Kurdish people for self-determination, adding that the people had decided their fate and selected to remain part of Iraq and its national unity.’ Al-Maliki also defended Iraq’s arms deal with Russia for, ‘it is needed to defend the country,’ not to target the Kurds or the state of Kuwait (Almada Press, 2012).

Even if al-Maliki as the Commander-in-Chief of the armed forces did not exceed his powers when forming *Dijla* operations, he should have had careful consideration and consultation with the Kurdish leadership by taking time and location into consideration. If he had done so, it would have not resulted in a new crisis, which escalated the already existing political tension and put Iraq in a great risk of civil war.

The UN Role and Possible Solutions

To implement Article 140, then in June 2008 the head of the United Nations Assistance Mission in Iraq (UNAMI) Staffan de Mistura recommended, that the Akra district of Nineveh governorate and the Makhmur district of Kirkuk governorate be incorporated into Kurdistan; however, he suggested that al-Hamdaniya district of Nineveh and Mandali districts of the Diyala governorate be excluded. These recommendations were rejected by the Council of Representatives of Iraq (the parliament) (Katsman, 2009). The U.N. specifically chose these four districts because they had Arab and Kurdish majorities and would be evenly split. The second report was to address Tel Afar, Telkaif, Shekhan and Sinjar in Nineveh, and Khanaqin in Diyala province.

The final report was to deal with the tough issue, Kirkuk. A referendum would then be held there. If Kirkuk governorate voted to become part of

Kurdistan, then non-Kurdish sub-districts adjacent to the rest of Iraq might be given the right to join. Likewise, if it voted to stay part of Iraq, then sub-districts in Kirkuk adjacent to actually existing Kurdistan might be given the right to join Kurdistan. Non-Kurdish districts should be given the right to become part of Arab adjacent governorates if Kirkuk population chose to join Kurdistan region. Whatever the final status of the territory, it is vital that durable power-sharing arrangements be created within Kirkuk that will protect all communities.

It is essential to prevent the use or the threat of the use of the Iraqi army for internal political conflicts. Provocative and escalation of negative media statements must be halted.

The two parties must return to the 2009 agreement between Baghdad and Erbil on the deployment of joint federal and Kurdish forces in the disputed areas. Also, the need is to establish coordination between Peshmerga forces and the Iraqi army to deal with the armed insurgency and terrorist groups in the country. The need is for a sincere political will and good intentions to resolve these issues in a spirit of tolerance and the proper application of the relevant constitutional articles. Political parties must resort to dialogue, debate and negotiation to solve the many problems that still stuck between the center and the region.

The Iraqi Constitution and laws must be respected and implemented to de-escalate the tense and to call for national meeting and dialogue as part of a solution. It is also good to resort to the Federal Court in the event of differences in the interpretation of the Constitution. Article 140 provides the best peaceful democratic mechanisms to resolve the dilemma of the disputed areas; the article left it to the indigenous people in the disputed areas to decide their future in a referendum.

Conclusion

There is an urgent constitutional obligation to resolve the disputed areas issue. Any postponement of the implementation of Article 140 of the Constitution would be understood as a call for its withdrawal and a desire of the central government to escape from Kirkuk's and other disputed areas obligations. This will also threaten trust between the engaged political parties and could extend to include other issues.

Since the ratification of the Iraqi Constitution in 2005, Iraq's Kurds have viewed the issue of the Kirkuk referendum as a 'red line'. They have been persistent in their call for the implementation of Article 140 of the constitution in order to determine the political future of the oil-rich governorate of Kirkuk and other areas.

Within Kirkuk city, it is vital to have sustained power sharing arrangements based on proportional representation. The benefits of oil resources should be fairly distributed to benefit all the local ethnic populations. There must be a fair employment policy. If the property restitution process works fairly, then—after the return of the refugees and after the departure of

some settlers—the boundaries of the Kirkuk governorate should be restored to what it was prior to the Baath regime rule. The four districts of Kifri, Chemchemal, Kalar, and Tuz Khurmatu annexed to neighboring governorates in 1976 should be returned to Kirkuk governorate.

Kirkuk should be for all Iraqis living there. The solution lies in finding a political consensus; otherwise, the political process in Iraq is at risk. The issue is about the coexistence among its various national and sectarian factions created throughout the history of the area.

The insistence of the Kurds to implement Article 140 is an indication that Kurds consider themselves the plurality group in the city, and the majority group in the governorate. There is no doubt, of course, that the Kurds' geographic, historic, national, demographic, and moral arguments are also motivated by Kirkuk's natural resources, which would dramatically boost Kurdistan's development prospects.

Any long delay in the implementation of Article 140 will have a dire consequence, not just for people of Kirkuk, but for all Iraq. The Kurdish fear should be eased; otherwise, the Kurdish leadership will not allow the central government to run Kirkuk. The situation could escalate to a fight between the two parties that could involve other regional and international parties. Still, there is a fear that holding the referendum in the ethnically mixed governorate could lead to ethnic conflict.

Successive Iraqi governments' policies have resulted in a lack of confidence in the Iraqi government and its army, which has often been used by previous governments to suppress the Kurdish people and other factions. Historically, when the Iraqi central government is weak, it usually agrees to Kurdish nationalist demands but when it feels that it is strong, it negates its promises. It seems that the Iraqi army has turned into an army of loyalty to sectarian and partisan affiliations. The armed forces should be far from political affiliation and the ultimate allegiance must be to the whole nation. The army must not be used as leverage by the political parties to pressure other parties as it was utilized during Iraq's long history. Iraqi army must be constructed according to the Iraqi Constitution, which defines the functions of the army 'to defend the homeland and protect the country from any external military intervention.' The Peshmerga members fall under what the Constitution describe as borders guards that have the right to defend the region from external risks and carry out coordination with the Iraqi army.

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