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Referendum as a Legal Tool for Achieving Self-Determination: The Case of Kurdistan Region, Iraq

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Abstract:

Referendums on the right to achieve self-determination has become a significant tool used in attaining collective political, economic, social and cultural aspiration since the decolonization era. On 25 September 2017, the people in the Kurdish controlled area of Iraq decided overwhelmingly to submit a Referendum to attain self-determination. This paper seeks to examine the use of referendum as a legal tool to achieve self-determination. The literature on the use of referendum as a tool for attaining the goal has been scarce. The Kurdistan Region of Iraq, like its counterparts in other countries, has long been in the struggle to have their own sovereign state. The paper explores and utilizes secondary source materials to cross-examine arguments and draw conclusions. It is found that referendum is an acceptable tool for achieving self-determination as demonstrated in many similar situations across the world. Submissions from our findings will impact meaningfully on the Iraqi government policymaking, the KRG and the international community. It will also add to the pool of existing works on the subject matter.

Keywords: Referendum, legal tool, self-determination, Iraqi Kurdistan region

1. Introduction

The attainment of self-determination amongst people who feel or are under certain subjugation provides strong grounds for pursuing other means of secession referendum. Eritrea (1993), East Timor (1999), Montenegro (2006) and South Sudan (2011) (Qvortrup, 2018), citing a few examples, were evidence of how new states activated breakaways and were established through referendums.

In the past, two referendums were held; the first was for the sake of justifying the transfer of Crimea from Ukraine to Russia and the second, was in deciding if the United Kingdom should still maintain Scotland as its member. On other parts of the world, in the coming years, Bougainville and New Caledonia are also planning to vote for independence. Unfortunately, the Kurdish Iraqi's referendum, which was planned to be held in 2014, was postponed. Their regularity, along with their intention to stir up the division and exacerbate differences in volatile situations, makes research on referenda an imperative area for exploration (Loizides, 2014).

However, the Iraq Kurdistan use of referendum as the right to self-determination on 25 September 2017 has become an argumentative issue in public international law, just like many other important legal issues in international law that were expressed in different legal stages. This was exemplified in Article 1 of the 'International Covenant on Civil and Political Right (ICCPR)' in 1966 as well as in the 'International Covenant of Economic, Social and Civil Rights (ICESCR)' in 1966¹ on the subject of establishing the most essential stages in the development of this right², (Burak & Eymirlioglu, 2005). The issue is contentious because the constitution of the state of Iraq does not recognize or confer any part of its territories the right to self-determination unless to foster national unity. The people of Kurdish-controlled Region inside Iraq decided unanimously through a Referendum to self-determination of KRG with the majority of Kurds who wished to form Kurdistan as an independent state (Iraq's Kurdistan Region Holds Independence Referendum, 2017).

Existing works have raised arguments for and against the action of the Iraqi Kurdish people. For instance, Sriharil (2018) maintained that the constitution of Iraq³ did not have such provision. Conversely, the 117th article clearly supports Kurdistan as a semi-autonomous region under the Iraqi state. Consequence to this, the Kurdish Iraqi people have won their independence in 1991 and 1992 where they elected their primary parliament and established a De facto autonomous government called KRG in Iraq (Sriharil, 2018). The gap in this study is to examine the use of referendum as a legal tool to achieve self-determination by the Iraqi Kurds in KRG. Legal provisions in the Iraq constitution and jurisprudence contradict the KRG action but more importantly what are the views provided by the international law?

This study uses secondary sources to conduct a desk literature review for both the Iraqi constitution and international law. Proper scrutiny in the analysis and synthesis of both the available published and unpublished materials will be duly undertaken. The study is useful to separatist groups, sovereign States, policymakers and various participants

in the international community. It will also be useful to those nations who are yet to gain their independence and are still struggling for such right, for instance, Palestinians in the Middle East, Catalonians in Spain and Scottish in the United Kingdom of Great Britain because this study provides additional information within areas of right to self-determination especially based on Iraqi Kurdistan's experience as the case study. It is focusing on how Iraqi Kurdish people can get their own independent state after the referendum on 25 September 2017.

2. Conceptual Clarifications

This segment provides conceptual clarifications on three aspects: referendum, the law as the legal tool, and self-determination. The term "referendum" is a process where both an acceptance and a reaction of law passed by the legislative sector, can take place based on popular votes. In several countries, the word used is "plebiscite" or a vote on a ballot question (What is a Referendum, 2018). Green defined referendum as "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" (Green, 2018). However, 'referendum' can have different definitions in deferent States. For instance, changing the constitution by voting 'plebiscite' does not affect the constitution in Australia. Additionally, Majid defined this as "returnable to the people to take their approval, opinion or rejection in any general matter that is a legal, constitutional or political subject as an owner of sovereignty" (Majid, 1971). Cambridge Dictionary defines it as a vote in which all the people in a State or a Region are requested to provide their views about or decide on an important political or social question (Cambridge Dictionary). Therefore, in the light of the above definitions, "referendum" can be derived as asking the opinion of people to decide on a general issue. While the legal front implies being in line with the law, being lawful therefore, means to be defined as abiding by the law (whether man-made or God-made). The lawful sovereign refers to what is endorsed by law or in tradition with the law, especially as it is written or administered by the courts (Merriam-Webster Dictionary). For the purpose of this paper and within the context, legal tools imply any legal apparatus or means employed and acceptable by the law of the State to regulate action or behaviors of its people.

The term "self-determination" has various definitions. Yadgar (2008) defined it as "an inclusive principle that embraces economic, political, social, legal rights and embraces the right of the people to rule themselves liberally through democratic way without any compression and intimidation." According to Cobuild Advanced English Dictionary, "self-determination" is the right of a country for independence against control of power by a foreign country, and to elect its own government system. Synonyms that are frequently used include independence, freedom, autonomy, and liberty (Cobuild Advanced English Dictionary). "Self-determination" is to have the "international recognition of the rights of the inhabitants of a colony to choose freely their independence or association with another State" or where there is an evidence of a "collective right of a people sharing similar objective characteristics to freely determine their own form of government while further developing their economic, social and cultural status" (Collins, 1980).

In the Middle East, the northern Iraqi region is officially called the Kurdistan Region of Iraq (Kurdish: Kurdistan). Geographically, it is the southern Kurdistan of the whole Kurdish area that consists of four parts: south - eastern Turkey at the Northern of Kurdistan, northern Syria (at Rojava or the Western of Kurdistan) and northern - western Iran (at the Eastern of Kurdistan). The Kurdistan Regional Government (KRG) officially governs the region with 'Erbil' as the capital. The Kurdish system is a democratic parliamentary with 111 members of parliament (Kurdistan Regional Government, 2016 & Bengio, 2014).

3. Literature on Self-Determination Efforts by the KRG

According to the Court's principle, the right to self-determination justifies the independence of Iraq Kurdistan people from its existing Iraqi state. This has been exemplified by two United Nations' declarations of self-determination; the first, the declaration on the 'Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514' (Dec. 14, 1960); and the second, the 'Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625' (Oct. 24, 1970).⁴

Nevertheless, self-determination is regarded as being more controversial than what was specified in the 'International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Civil Rights'. In fact, the inclusion of self-determination in Article 1 of the United Nations' Charter underscored its importance in maintaining good relations and harmony among nations to "strengthen universal peace by upholding the principle of equal rights and self-determination" (U.N, 1945).

Thus, the United Nations carries the responsibility to establish an agreeable platform for dialogue in order for nations to achieve equal right and self-determination. More importantly, these rights are also associated to many other basic concepts of public international law. One of the concepts asserts the right of Iraq Kurdistan people to independently chart their own future, thus submitting all people are equal. This was the reality to the aspiration of the many Kurds (Nanda, 1981).

The Iraq Kurdistan crisis over territorial integrity⁵ and statehood⁶ have remained unsettled. The Kurdish nationals⁷ make the largest ethnic group in the Middle East with about thirty-five million people dispensed over countries such as Turkey, Iran, Syria, and Iraq. Historically, the mountains separating Iran and Iraq are their ancestral homelands.

Many Kurds have always dreamed of having a Kurdish nation-state. Their desire almost came to reality after World War I under the Treaty of Sevres (Articles 62, 63, and 64). The Allied Powers (Great Britain, Italy and France) and the Turkish government signed a treaty on the 10th of August, 1920, admitting Kurdish people's political rights. (Peace Treaty, 1920). Three years later, another Treaty was discussed when Turkey's Kemal Ataturk took to power (Bird, 2004).

'The 1923 Treaty of Lausanne'(Marshall, 1927) recognized a new Turkish republic. Unfortunately, Kurds and their State were not mentioned (Everest, 2004).

'The Lausanne Treaty' completely disregarded the Kurdish demand to any form of independence. Consequently, the Kurds were separated into four countries, namely: Iraq, Iran, Syria and Turkey (Sluglett, 2007). Such has exacerbated the struggle to achieve an independent state.

The status of independent referendums across the World, and the benefits on "ethnic identity" (Chandler & Munday, 2016)⁸ in the Kurdish national movement have redirected the sectarianism (Roberts, 2017) and this pose justified concerns for the Iraqi Kurdish people. The importance of "ethnicity identity" is used as "political mobilization and myth building" tool by the Iraqi Kurdish people to influence the distribution of power (Yavuz, 2001).

The Kurdish people considered themselves as an ethnic nation and thus eligible to form an independent nation-statehood and this is achievable in future. Moreover, there has been an investigation of the nature of the independence. Results revealed that the pluralistes of federalism is the ideal and achievable political arrangement to tackle the matter of Kurd's self-determination in Iraq (Mohammed, 2013).

Federalism is a modern system that divides powers among strong Federated entities and smaller local governments with Federated entities holding significant power. In the constitutional law and federal system, it is challenging for the Federal State and the Federated entities to achieve harmony because of several complexities. In fact, it is not possible for the complexities to be addressed and solved by mere constitution solely.

One of the critical issues that federalism is facing is "contradiction of federalism" which minimizes the effectiveness of the "technological solution" (Pound, 2017). Federal system was adopted to end public conflicts and wars between national parties. (Law, 2013). Besides, the Federal processes ensure a smooth breakup of that federated country (Danilovich, 2017).

The "emergent" Iraqi federation (Burgess, 2012) explains the nature of the contradictions that happened. As an example, the Kurdish's presence in the new Iraqi federation reflects the ability to have what Danilovich defined as "self-governing state with a parliament, a presidency and cabinet, specialized departments, including foreign relations, defence and secret services, all of which would serve them well if the Kurdistan leaders decided to break away" (Danilovich, 2017). Moreover, the federal state has assured the development of the Kurd's economical public and international relationships (Aziz and Mustapha, 2016). The local political players accepted the Iraq federal system as a step to ease the challenging conflict between Arabs and Kurds.

The adoption of the Iraqi constitution, which monitored federalism by referendum in 2005 following a devastating war and regime change, degraded serious separation in Iraq (Danilovich, 2017). The scale of federalism was inserted in Iraqi system by the constitution adopted by the occupying power - the United States. The constitution referendum was largely boycotted by Arab Sunnis where Saddam power base regimes rendered its legality uncertain. Nevertheless, this controversial federalism introduced in Iraq prevails in order to defend the federal system.

Consequently, the federal principle is retained in the constitution. The same constitution could have been amended by easier procedure, besides the basic constitutional provisions, but it did not. 'Article 126' provides that "the constitution cannot be amended if such amendments take away the power of the regions" (Saad, 2013). Regardless of Baghdad's efforts and systematic safeguards in the constitution, a break-up of the federation as a result of federalism's contradiction and mistrust among its parties was certain.

The Iraqi constitution in both articles 1 and 2(1)⁹ highlights a different take from the usual local scenarios especially in political culture and traditions. The marked difference can be found in the introduction of a parliamentary republic, which was formerly strong in its presidential, and in secularism for Islam and unitary for federal. Burgess on the other hand used "the absence of the federal spirit" (Burgess, 2012) in describing the Iraqi federal model. This, reduced inter-governmental relations to rudimentary.

This distanced the Kurdish people from any kind of bond towards federal partners and attempt to blame the Kurdistan region's encounters for problems relating to economy, finances or politics. Consequently, the idea to break from the federation took place when the regional government of Kurdistan (KRG) began to suffer from the consequences of the falling oil price, namely the financial crisis (Danilovich, 2017).

Thus, resistance accumulated against the federal government and the idea of self - determination was helpful. This has led to the recent development that 93 % of Kurds people voted in favor of the self-determined referendum on September 25, 2017, organized by Kurdistan Regional Government (KRG), (Grant, 2017). The referendum was then opposed by the Iraqi state government and consequently led to rejection on claims for independence by the Kurdish people.

There are two parts that contribute to the claim made by the Kurdish people' right to self-determination: firstly, the international laws guaranteed the right to self-determination for the Kurdish people, and secondly, Iraq Kurdistan region did not participate in exercising the federal and constitutional powers along with Iraq federal government.

4. Theoretical Framework

Vast amount of literature has been written regarding Kurdish split from Iraq. Economically, the disadvantages of a self-governed Kurdish state are tiny compared to its advantages (Bolton, Roland, & Spolaore, 1996). This could result from a cost - benefit tax analysis, as discussed by Buchanan (Buchanan, 2003). He said the rich would enjoy better advantage, as the tax rate increased, if they could exclude themselves from the boundaries set forth by the tax authority.

That is to say, public goods provided by the government will be lost. However, the Kurds could handle them in a more cost-effect manner by instead highlighting on their detachment from the richer regions like Eritrea, Croatia and

Slovenia. It would also be necessary to concentrate these benefits spatially in order to drive separatism for economic advantage especially where natural resources were concerned and found. (Collier & Hoeffler, 2002).

While legitimacy maintains as the main focus, based on the international law reasons for self-determination and secession are just second to legitimacy. In the local context, the people considered themselves as distinct. However, in the "statist" view, this posed a more restricted interpretation because the integrity of external borders is considered 'irrefutable principle' (Brilmayer, 1991 & Wellman, 2010). This was largely acknowledged until recently. Even in the process of decolonization, redrawing the external borders as exemplified by Biafra and Bangladesh would never gain traction with the international community (Horowitz, 2003 & Buchanan, 1997).

Secession could only occur for a "cause" and one of such example was the decline of annexed territories or the emancipation of discriminated communities which were excluded from national political processes (Buchanan, 1997, Brilmayer, 1991 & Heraclides, 1992).

This situation is supported by moral views, apart from defending the international status quo. According to the nationalist view, the minorities should not be allowed to impose their views by seceding or threatening to do so (Brilmayer, 1991, Buchanan, 1997 & Orentlicher, 2003). Conversely, a second claim indicates that states would be unjustified if they were meant to be displaced (Buchanan, 1997). Both the basis on which the third fundamental consideration was built and to whom it was given the right to sovereignty was the most important issue raised (Brilmayer, 1991 & Buchanan, 1997).

The 4th place consideration demanded nations to become politically and culturally independent, while the fifth touched on decision-making on secession as the most needed (Orentlicher, 2003) in that debate. Whether a vote by a separatist region's population be sufficient or not, it is necessary to fairly consider the population's feedback in the rest of the country (Buchanan, 2003). The last was related to isolating Yugoslavia and could become crucial in Spain's future (Anderson, 1995).

The 'Unilateral Declaration of Independence of Kosovo' (2009) has totally shifted with taking into account the historical treatment of separatism. Serbia's secession has not been mutually agreed upon, nor has it sought to go back on the annexation. Rather, the reasoning pointed on decolonization as it was based on discrimination on the minority as well as violation of human rights (Coppieters, 2010 & Muharremi, 2008). The unilateral issue dragged us on a moral argument on whose decision should it be when it comes to secession. In the case of Yugoslavia, Croatia determined the future of Bosnia.

5. Discussion

5.1. Self-determination Referendum

This referendum intends to take the people's aspiration whether to be an independent state or to stay in a state. For example, Kurdistan Region people's referendum that was held on 25 September 2017 indicated a separation from Iraq for them to be recognized as independent (Iraq's Kurdistan Region Holds Independence Referendum, 2017). Other examples included the Catalan people's referendum that was held on 1 October 2017 to also separate from Spanish (Alandete, 2017), as well as Austrian people's referendum that took place after World War I to stay with Germany (Nohlen & Stover, 2010).

5.2. Legal Base of the Referendum

The prescribed method to independence plebiscites particularly encompasses its legislative law. In terms of legitimate regulation, this has to do with the legal requirements that offer and control referendums (Al-Helou, 2000). In international law, this includes either 'international accords' or 'customary law'. Moreover, issues of formal legitimate appraisal of autonomous plebiscites have to do with the legality of making the nation. This has to appear from the international law perspective as well as the main constitutional power's validity.

Suffice to point out opposing naturalist's and positivist's perspectives of law on the cogency of legal standards and therefore totality of the complete legal order. Naturalists uphold the view that only satisfaction of high caliber morality validates legal norms. Positivist on their part believe any law without source is a law hence morality is seen beyond the boundaries set forth by the law, or known as 'a meta-legal concept' (Beaud, 1997 & Mormor, 2012).

Consequently, in the absence of written lawful ground for referendums, positivists' position declined to appraise them from a 'juridical viewpoint'. However 'natural law theorists' define appropriate moral norm as having a legal value despite not fully accounted for in the constitution; international agreements or legal documentations elsewhere. The naturalist view law-making exercise as reduced to gathering from the law and establishing it. Thomas Aquinas¹⁰ sees it as "ordinance of reason", hence human reasoning is the main basis of law. The paramount aspect of it is that natural law theory view rationality of lawful standards in conforming to the standards ethics. By this position, only the 'holders of sovereignty' have the jurisdiction to deliberate on and estrange their independence. Plebiscites, therefore, are the "only ways that establish the legality of the de-facto situations of state and structural creation" (Gozler, 1997).

The inquiry pushed from positivist angle illuminates that independence votes are held at the source of such laws. In this case, it may conceive be as a legal order whereby a rudimentary norm, a structure institute the oneness of a group of norms (Kelsen, 2002).

These foundations can be illustrated from some court opinions as a referendum. The Canadian Supreme Court in Quebec Secession departed from the written laws and came up with the "model of optimistic responsibilities" by noting "central constitutional principles." According to the Court, "these principles can spring very scholarly and wide-ranging

onuses or may remain more definite and precise in nature." The doctrines are not just expressive, but they are strongly connected with 'normative power' that is prerequisite to courts and governments alike. Following the assertions, the Court took the position that despite it being unilateral, the plebiscite favoring the secession would enforce on Canada and related provinces to enter into the further deliberations (Chartrand, 2003).

It, therefore, implies that the fundamental legitimizing proposition that the constitutional rules governing the secession process are those of consent. A reliable way to know if a community wishes to secede is through plebiscite (Radan, 2010).

5.3. Sovereign Referendums in International Law

Referendum, based on the international law, is an element composed of (1) the issue at stake for the poll is an international law matter; (2) the legitimate basis of the referendum as a tool of international law, which may be an agreement or the deed of a universal body; (3) the international players during the implementation stage.

It seems a must for these criteria to be implemented as far as international law is concerned, though it can be just a matter of thought. Having international subjects within the proceedings is highly agreed upon.

Unilateral polls when held by post-revolutionary regimes and a break away from the national or ethnic groups and when were not based on any international treaty, would not carry any weight within the context of international law. Consequently, these de facto referendums may not even establish a state of any geographical adjustment (Gawenda, 1946).

However, the concept plebiscite international is best meant for referendums held in connection to an international commitment established jointly or mutually through pacts or through a resolution achieved by an agreement of an international organization. Generally, referendums held following an act of internal sovereignty do not fall within the class of international referendums, either constitutional or statutory.

5.3.1 Sovereignty Referendums According to Contemporary International Law

According to Farraj, referendums situated in the state creation is a point for discussion (Farraj, 2001). Academically, based on the view of the state's independency, the terms of hard and soft law should be distinct. The first concerns two main roots: agreements, and traditional law, among others. The second involves the non - legally binding instruments used by states and the international community in current international relations. An example of soft law includes an "instrument such as state declarations of conferences, UN instruments (the resolutions of the General Assembly), codes of conduct, rules and approvals of international organizations or supranational communities" (most notably the European Union) (Aust, 2012). Soft law cannot be regarded as a law in itself, but it is a proof of "existing law or the *opinio juris*¹¹determinant or State practice that breeds new customary law" (Boyle, 2014).

It is known that the essential difference between international law and state law is "the principle of states' sovereign equality which excludes a superior law" - that is in positioning "the body" above the states, as well as centralizing police enforcement. This creates confusion between "hard and soft laws" and inspires the scholars to avoid excessive formalism and overlook the importance of soft law tools. Soft laws are the conduits prescribed by which consent - based legality arguments flow to and from both national and international forums.

Though, the indisputable moral strength of arguments of consent-based legality in contemporary international relations is well remembered, it can be argued that democratic customs in the exercise of political power have become predominant aphorisms in international and national legal orders (Al-Mehtaibi & Abu Khuzam, 1996). Furthermore, the merger of international and national legal orders is progressing in this regard (Giorgio, 1997). Another illustrates the interrelationships between domestic constitutional law, international law and European law: there are direct and indirect legal incentives between all three legal premises, regulated by one or more different legal systems (Lanchmayer, 2007).

Furthermore, emerging international constitutional order, supported by an international community, underlined the international value system and rudimentary structures for its enforcement. The egalitarian customs and basic creeds of human rights now establish the rudiments of the "International Value System" which includes all other norms strengthened by moral support. Such were included by the states into the norms of positive law and has acquired a superior ordered standing through State practice (Erika De Wet, 2006).

The convention of the governed i.e. "democratic entitlement," has become "a new legal prerogative" in international law for states at the early 1990s (Al-Helou, 2000). This is partly based on customary practices and partly based on collective agreement. Furthermore, it is indicative that the growing use of globally adapted referendums on sovereignty was key to a global rule system that identified the minimal basics of a democratic process capable of legalizing the use of power (Franck, 1992).

In addition to the legal status of rules relating to referendums, moral authority should be considered good by implication. By contrast, soft law instruments' irrefutably prodigious authority over self-determination and other democratic doctrines of state creation distinguishes between instruments of hard and soft law. Priority consideration should be given to the issue of hard law.

5.4. Sovereignty Referendums in Customary Law

The classical view did not see referendums as necessarily part of customary law. Several accords on the breakaway undertaken in the nineteenth century that established the session should only be legal in as much as the people subscribed to it via plebiscite. Nevertheless, it cannot be said that international law made the situation of every session authorized by a plebiscite. Somehow, it can be viewed that the referendum in session agreements were of a facultative nature and by no means a vital element for the legal cency of a deed of the session.

Rudrakumaran attempted to resolve the debate on whether the prerequisite of the referendum in territorial compromise was a component of international customary law. He reached a negative conclusion. From the premises of state practice, he found that the nineteenth century and post-WWI polls were not held regularly and were frequently prejudiced by historic and prevalent considerations. He also supposed that *opinio juris* had always been absent in past events: plebiscites were employed primarily for reasons of administrative convenience, and not due to seeming legal onuses (Rudrakumaran, 1990).

"Plebiscite's" viewers rely on the theories of natural law and the arguments of "self-determination, and national and popular sovereignty" were based on consent. The common assumption that there must be a public consent when it comes to a question of territorial adjustment can be traced back to Erasmus, who opposed the right to conquer and claimed that any authority over people is only possible when they allow it. This assumption allegedly led to the consultations conducted as generally stated in Verdun Metz and Toul's three bishoprics. Grotius states:

To render the alienation of the whole public dominion valid and to confirm the transfer of any particular portion, the consent of the whole body as well as of that particular member will be necessary: for otherwise such alienation would be like the violent separation of a limb from the natural body (Grotius, 1901).¹²

"The powerful annexation of states or territories of states by other states" can be declared void in Perpetual Peace. Such acts were contrary to the original contract idea (Kant, 2006). In the late nineteenth and early twentieth century, French and Italian writers sought to incorporate the fundamentals of the "plebiscite" into the rhetoric of international law. According to some in international law, the residents' approval to a valid session had become an "absolute principle" (Hassan, 1991). Some others also claimed that the referendum device was an integral part of international law despite its shortcomings and thus had become a custom (Al-Muzaffar, 1992). Alternatively, some of them were more specific about the issue of consistent international law use of referendum, noting that the seniority of plebiscite practice is an indication of its tendency to prevail in customary law.

Assessing the above, based on the latter expertise, including "post-WWII and post-communist referendums", the general assumption may be that historical expertise does not carry the opinion of the majority with their sporadic statements for political expediency. Instead, the statements are habitual responses that have been repeated over time in favor of internal historical change.

It can be deduced that the concepts of "pedigree and coherence assist the rule of self-determination in the historical evolution of the contemporary system of international organization and sovereignty referendums monitoring". The territorial-related referendum requirement can therefore be assumed along with international contemporary and state-creation standards (Hafez, 1999).

6. Conclusion

The use of Referendum as a tool for achieving self-determination by the Iraq Kurdistan region, like other similar cases, has always been contentious. The Iraqi federal constitution did not provide for any of its component parts to breakaway as put in Article 1 of the document. However, the Kurds have tried to justify the constitutional legitimacy of the referendum based on three main sources: Firstly, Kurdistan Regional Government (KRG) governs the autonomous territory of Kurdistan. This is according to article 117, which firstly stated that: "This Constitution, upon entry into force, recognizes the region of Kurdistan as a federal region, together with its existing authorities, and secondly: it affirms new regions established in accordance with its provisions."

This provision recognizes the legal autonomy of the Kurdish region, and advocates the legitimacy of any legislation, court decisions and contracts of Kurdistan unless the Kurdish government through any subsequent laws has canceled the same legislation. Article 117 clearly provides Kurdistan as a semi-autonomous region under the Iraqi state. Because of this, the Kurdish people in Iraq achieved independence from the Iraqi regime in 1991 and 1992 where they elected their first parliament and progressed to build a *de facto* autonomous government known as KRG in Iraq.

The right of the Kurds to manage internal affairs is not a federal task and thus the regional state has the right to hold Referendum for self-determination without recourse to the federal government. The 115th article states that authorities of the system possess the whole power of the federal state. Moreover, the federal state shares the authority with the regional powers, and it holds priority in cases of disputes.

The regional law would, therefore, take precedence in the case of a conflict between federal law and regional law. On the other hand, the Referendum is constitutional and lawful based on the Iraq constitution's preamble that mentions, "The adherence to this Constitution preserves for Iraq its free union of people, of land, and of sovereignty". Thus, it could be said that Iraq has not honored the Constitution that was the basis for the voluntary union, and the Referendum as a Marker of Constitutional Dissolution." Consequently, these compositions give legitimacy to unilateral Referendums and claimed validity. Self-determination is an important standard of international law.

In fact, self-determination is described as the tools that take into consideration the principle of people's right in governing their politics including how they want to be developed from various fronts including social, economy and culture. What this means is that everyone can chart the course of how he/she wishes to be governed as well as who will be governing her/him from which location. Furthermore, the decision to self-determination clearly becomes a political disengagement once Kurds care more about their own than their whole benefits. However, several jurists referred to self-determination as relevant only in the context of decolonization and within the doctrine of territorial integrity and "uti possidetis."¹³

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6. Montevideo Convention on the Rights and Duties of States, Montevideo, 26 December 1933, available from <https://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml>, Art. I provides about statehood that "The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory, (c) government; and (d) capacity to enter into relations with the other states."
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8. Chandler, Daniel and Munday, Rod. (2016). *A Dictionary of Media and Communication*. Oxford University Press. "Ethnicity identity is a distinctive identity felt, shared, or claimed by individuals or a group, or ascribed to them, based on shared characteristics associated with a definition in terms of ethnicity and forming the basis for their subcultural and/or political differentiation from other groups in a society. A salient aspect of identity for individuals from ethnic minorities."
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10. Aquinas notes, in this line of thinking, that "a legal norm fails to be valid if it goes against the human reason, regardless of the fact that it has been adopted by the state". Quoted in Murphy, *Philosophy of Law: The Fundamentals*, 38-45.
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