

# Final Status Of Iraqi Kurdistan Region Under Method Of Remedial Earned Sovereignty After The Referendum Of 2017

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*Abstract: The method of remedial earned sovereignty (RES) could be seen as the first evolved concept in Public International Law. It is that a break-away entity does not deserve recognition as a new state immediately after its secession or quest for independence, but that the entity's sovereignty must be earned. Accordingly, the entity must show the international community its struggle for independence and prove that its rights have been violated by the central governments. While the sub-entity must demonstrate that it can exercise their administrative institutions freely within parent State. Significantly, the method of RES has an ultimate role in the statuses of those sub-entities which exercised their independence right without achieving recognition by parent states and the international community. Therefore, this paper aims to examine the final status of the Iraqi Kurdistan region after its independence referendum held on 25 September 2017 based on the RES whether it can provide a suitable solution for each Iraqi federal government and the Kurdistan regional government (KRG)?. Secondary information materials focus on providing the essential data base. This paper found that the RES is a suitable method that can give the Kurdistan region a final status, including independence right concerning Iraq sovereignty and it will be caused by settling the long baffling problems between both sides.*

*Keywords: Remedial Earned Sovereignty, Sovereignty, Kurdistan Region Independence, Iraqi government, Kurdistan region autonomy, Final status of Kurdistan region.*

## I. INTRODUCTION

The secession of the Iraqi Kurdistan region was probably one of the longest-standing self-determination struggles. For that reason, Kurdistan region has gone through several different stages, and at each stage, it has gained a kind of status platform with the successive Iraqi governments, for example, in its efforts between 1974 - 1991, made the Iraq Ba'athist government accept the Kurdish Autonomy. This achievement has led to the formation of the Kurdistan Region's parliament and government through elections. After the collapse of Iraq dictatorial system in 2003, the Kurdistan region has been able to move further back to the point where it has been recognized as a federal region in the new Iraqi Constitution of 2005. The region participated in the Iraqi federal government based on the common and equal governance as well as the implementation of Kurds' constitutional rights such as resolving the issue of oil, land, the

budget and the Peshmerga forces. This is why, this Kurdish political development has been a historic turning point for the Kurdistan Region, and has led to developing international relations of Kurdistan Region. However, there was a lot of concern by Kurdistan regional government (KRG) that the Iraqi government did not abide by the Constitution; hence, KRG as the first step started to sell its oil to the Western market by pulling a pipeline to Turkey's world port. Later, the KRG brought the large attracted oil companies to the Kurdistan region for investing in the fields of oil. However, the Iraqi federal government has resisted these steps, but it could not back down the Kurdistan regional government. Likewise, the Iraqi federal government tried to give the Kurdistan region its constitutional rights but it failed to do. This led the Kurdistan region to think of another way which was secession from Iraq. Hence, the (KRG) was able to hold a referendum on 25 September 2017 with the majority of the people voting "YES" to independence. However, the

referendum did not recognize by the international community. Thus, a question that will be raised here is what the status of the Kurdistan region can be after the referendum concerning the protection of the Iraqi state's sovereignty under the method of Remedial Earned Sovereignty (RES). Therefore, this paper will discuss an alternative remedial method to the right of self-government under international law: Remedial Earned Sovereignty (RES), historical background of Kurdistan region for Self-determination and application of Remedial Earned Sovereignty method on the situation of Iraqi Kurdistan region.

## II. AN ALTERNATIVE REMEDIAL METHOD TO THE RIGHT OF SELF-GOVERNMENT UNDER INTERNATIONAL LAW: REMEDIAL EARNED SOVEREIGNTY (RES)

Legally, the power of the State under international law can be used to define sovereignty. Politically speaking, the concept of sovereignty is that of almost absolute power, and it is in dialogue such as this that problems arise with the terminology.(Crawford,2006,p.32). Today, sovereignty is advancing into powers that might be conceded or denied. Despite the fact that the customary legal standards of power for the most part control, creative methodologies are rising. The power and seriousness of sovereignty-based disputes, their relationship to expanding levels of terrorism-based oppression, and the absence of viable legitimate standards and principles have created the need for another way to deal with settling these disputes. A new methodology called "Remedial Earned Sovereignty" (RES) has developed. (Williams & Peccit, 2004).

This approach requires for people seeking self-determination to demonstrate to the international community that it is worthy of being granted statehood and that it has earned its sovereignty. According to RES, a population of a specific region has to illustrate to the international community that it is being governed and administrated independently from its parent State, which has enabled sharing of power between the people and the parent State, and that has developed capacity and institution building for people looking to be autonomous. It is imperative that these people demonstrate the inadequacy of their central government and that it is the reason for violence and unrest, thus requiring self-determination to maintain or bring about peace and security.(Williams, James R & Michael,2003,p. 355).

RES suggests that to become a sovereign State, people must first have strived for independence through legitimate means, engaged responsibly in relations with the State, and proven to the international community that they are worthy of sovereignty. This means that peoples that have used violent or illegal means to secure their autonomy will not benefit from RES, with such examples being Chechnya, Northern Cyprus, and The Republic of Srpska. For that reason, for a valid claim to statehood, people must have illustrated to the outside world that they are capable of carrying themselves as an upright member of the international community, and thus be accorded sovereignty.(Williams , James R & Michael,2003,p. 357).

With this notion of sovereignty being earned, external and internal rights can be negotiated. For instance, the sub-state

entity may not have the ability to defend itself externally or have sovereign immunity, but it has the legitimate right to administrate itself by making laws, imposing taxes, ratifying international agreements, and have representation in international organisations.( Heymann & Williams,2004, p.437).

The notion of earned sovereignty was at first evolved by Public International Law. It has become a centre component of the UN Security Council Resolution 1244. ES is portrayed as involving the contingent and dynamic devolution of sovereign forces and authority from a State to sub-state element under worldwide supervision. It is likewise characterized as containing three centre components (shared sovereignty, institutional structure, and an assurance of conclusive status), and there discretionary components: phased sovereignty, conditional sovereignty and constrained sovereignty. (Peccit & Williams, 2004). Earned sovereignty is a process of conflict resolution that enables an opportunity for the parties to determine certain criteria that sub-state entities must achieve through mediation to obtain and discuss final status. Due to the irrelevance and inadequacy of existing international principles and legal norms, including the right of self-determination of peoples, there stems the need for RES to resolve sovereignty-based conflict. ES not only enables status determination, but also promotes and ensures human rights, minority rights, and the creation of valid democratic structures.(Heymann & Williams,2004, p.437).

The new approach of RES looks to address the intrinsic errors with the sovereignty first approach and the self-determination first approach. As such, the concept of 'Earned Sovereignty' is that a break-away entity does not deserve recognition as a new state immediately after its secession or quest for autonomy, but that the entity's sovereignty must be earned. (Hadji, 2015, p.513).

As a dispute settlement approach, ES functions to establish peaceful coexistence between a State and sub-state entity by creating an agreed upon power sharing arrangement, and promoting democracy and institution building in an area of conflict. In this way, ES can be executed as a peace process in three ways:

The first endorsement of this approach is the international supervision of the self-determination entity both before and after sovereignty is achieved. The State and sub-state entity at this stage may exercise sovereign authority and function over a defined territory. The international community may occasionally exercise sovereign authority and functions in lieu of the parent State. An international institution is therefore arguably responsible for monitoring the parties' exercise of their authority and functions. (Heymann, Williams, 2004 & Scharff, Hooper & Williams, 2003).

The second is the optional element of "conditional sovereignty", or "conditional independence". To achieve sovereignty, the sub-state entity must reach specific goals, such as protecting human rights, developing democracy, respecting the rule of law, and supporting regional stability, before its sovereignty can be increased. This approach renders the exercise of self-determination conditional on self-determination unit meeting certain benchmarks such as 'halting terrorism, instituting rule of law, protecting minority

rights, and human rights, and promoting regional stability.(Williams & Hooper,2003,p.355).

The final and third determination of final status for the sub-state entity resorts to either a referendum to decide such final status or a negotiated settlement between the mother-state and the sub-state entity, with the help of international mediation. (Williams & Hooper, 2003, p.356). The options for final status range from substantial autonomy to full independence, whereby this decision is generally made through either a type of referendum or specific negotiations, but ultimately must include the consent of the international community. Examples of peace agreements, which suggest referenda, are Montenegro, Sothern Sudan, as well as the Baker Plan for Western Sahara. (Peccit & Williams, 2004).

### III. HISTORICAL BACKGROUND OF KURDISTAN REGION FOR INDEPENDENCE

The Kurdish people are a minority group who covers the rapidly defined frontiers of the Middle East. They can be accounted for the area's fourth-biggest ethnic minority, including populace statistics varying from 25 to 35 million. They principally reside in areas of Iraq, Iran, Syria, and Turkey. (Wadhawan, 2017).

The Kurdish people of Iraq comprise around 17 per cent of the populace of Iraq. They are the plurality in at least three capitals recognized as an Iraqi Kurdistan region in northern Iraq. Before decades of exile, the Kurdish people still had a plurality ruling in Kirkuk. They are also present in Kirkuk, Mosul, Khanaqin, and Baghdad. There are about 300,000 Kurds reside in Baghdad, the Iraqi capital, 50,000 in Mosul city and around 100,000 Kurds live somewhere else in southern Iraq. Between 1960 to 1975, Kurds headed by Mustafa Barzani were involved in intense fighting against various Iraqi regimes. Nevertheless, at the same time, the Iraqi government began a policy of Arabisation in the oil-rich Kurdish cities.(Harris,1977 & Human Rights Watch,1992).

The Iraqi government conducted the 1988 chemical weapons attack against the Kurdish people of Halabja committed by the Baathist dictatorship of Saddam Hussein. In this genocide around 5,000 Kurds died. The assault was one of these times of Operation Anfal initiated by the authorities in Baghdad, which destroyed further than 182,000 civilians and devastated more than 90 percent of the Kurdish villages. (Daher, 2018).

After the First Gulf War, Kurdish nationalist movements revolt against the Iraqi regime without success. Consequently, numerous Kurds were compelled to leave the Iraqi forces, and over a million Kurdish people migrated to Turkey and Iran. No-fly zones placed on Saddam's regime in 1991 equipped the Kurds with safe havens. After the First Gulf War, Kurdish nationalist movements revolt against the Iraqi regime without success. As a result, numerous Kurds were compelled to leave the Iraqi forces, and over a million Kurdish people migrated to Turkey and Iran. No-fly zones placed on Saddam's regime in 1991 equipped the Kurds with safe havens.(Fawaz,2017). Together the Kurds unified based on the leadership of the Iraqi Kurdistan Movement (IKM), formed the KRG in 1992 following elections. It then culminated in a de facto region

establishing a regional government (KRG) for Kurdistan. the autonomous zone had administrative influence over the boundaries of Iraqi Kurdistan region, could have its policy for international affairs with other states, and since 1992 Iraqi Kurds have continued to establish structures that adopted parliamentary, executive and judicial roles. This should be viewed as the launch of a significant phase of State structure. (O'Driscoll & Baser, 2019).

The 2003 U.S. - led the occupation of Iraq utterly altered the direction of destiny for the Iraqi Kurdish people. In defeating the dictatorship they remained partners with the US and the UK. The current development offered the Kurds considerable constitutional incentives to govern independently. The Iraqi constitution of 2005 gave the Iraqi Kurdistan region (IKR) autonomy, which implied that it could possess a high level of external supremacy and had its own legislature, military forces and administration. (Jude, 2017 & O'Driscoll & Baser, 2019). It has made the KRG pose as a powerful non-state player that has been successful in both political and economic sides. Many states established formal offices at the IKR, and foreign airlines linked entrepreneurs to capital projects. (Shea, 2016 & Woolf, 2010). One of the essential components in the secession discourse of the Kurdish leaders, though, is their tense alliance with the federal government and their perception of Iraq as a failed state. The KRG criticized Baghdad for repeatedly breaking the constitution and the authority- structure. (Hama& Jasim, 2017).

Therefore, during the second election of Nouri al-Maliki as Prime Minister from 2010–2014, conflicts between the KRG and the Iraqi government intensified in 2014 over financing, oil sales and the contested area of Kirkuk. Total autonomy from Iraq came to be a greater target. This September's referendum marked a move towards that aim. The outcomes revealed the participation of 72 percent, of which 93 percent voted for independence. But the Iraqi government refused the referendum. If nothing, it's clear the vote was symbolic. It has also been the consequence of abuses by Iraqi governments against the Kurdish population. (O'Driscoll, Baser, 2019 & Wadhawan, 2017). This was also the result of a horrific past of injustice that numerous former Iraqi nationalist repressive governments imposed upon the Iraqi kurds. (Daher, 2018).

### IV. APPLICATION OF REMEDIAL EARNED SOVEREIGNTY METHOD ON THE SITUATION OF IRAQI KURDISTAN REGION

This segment discusses application of remedial earned sovereignty (RES) in order to answer the paper question that is what the status of the Kurdistan region can be after the referendum concerning the Iraqi state's sovereignty.

This controversial issue is the final status of the Iraq Kurdistan region (IKR) after its referendum for independence based on the earlier discussion concerning the approach of (RES). Any one-sided severance or ill-conceived secession could imperil the odds of global acknowledgment, which relies substantially upon the lawfulness and authenticity of the secession. However, when the Kurdistan region held a

referendum for independence, it was not recognized internationally and regionally, and was rejected by the Iraqi federal government because it was unilateral. However, the Kurdistan region justified its referendum as a legitimate and legal referendum based on international law norms. (Hanish, 2018). On this note, the Supreme Court of Canada stated that "One of the legal norms which may be recognized by states in granting or withholding recognition of emergent states is the legitimacy by which the de facto secession is, or was, being pursued." (Reference re Secession of Quebec, 1998).

In this manner, under the viewpoint of international law, Iraqi Kurds might be qualified for the privilege of self-governance, including the option to create a free State. After the breakdown of the Iraqi armed force in the north by the Islamic fanatics, the radical Islamic State (ISIS), the Kurds have progressed to take over contested territories, including the oil-rich city of Kirkuk and the area's huge oil reserves, which are deemed as tremendously vital and of financial significance to the Iraqi Kurdistan region. Therefore, they proceeded with the referendum for independence on 25 September 2017. (Skelton & Saleem, 2019). Simultaneously, the KRG has been required to commit to protect and shield their populace from brutality. This could legitimize the Kurdish authentic secession from Iraq and make a free Kurdish State in the north.

Likewise, applying an RES approach on account of the Iraqi Kurdistan region might result in enduring harmony and success for the Kurds. At the end of the day, the acknowledgment of the Kurdistan region's entitlement to self-determination might be accomplished through the RES approach. It was noted before that, RES comprises of two stages, intermediate sovereignty (or conditional sovereignty), and earned recognition. The main central component is shared power. In the event of earned sovereignty, the State and sub-state entity may both exercise sovereign position and capacity over a delineated area. (Williams & Hooper, 2003).

It may be contended that the connection between the KRG and Iraq can be depicted presently as shared power, the component endorsed by a period where the sub-state element is given significant components of self-government. Since 1992, the KRG has been independent and the Kurds have been compelled to administer themselves. The Kurds could set up their own parliament and local government to administrate the Kurdistan territory in complete autonomy of the Iraqi government. This can be deemed as a considerable achievement that can be improved somewhat, in contrast with different areas of Iraq and Middle East territories. Today, the Iraqi constitution forms a federation that consolidates components of self-governance, where entities can have a specific level of self-governance with regard the central government, despite both having to share authority in that administration. (McGarry & O'Leary, 2007).

Second is the optional element of "conditional sovereignty", or "conditional independence." To gain sovereignty, the sub-state entity must achieve ambitious goals, such as protecting human rights, promoting democracy, following the legal system and maintaining stability in the region, before it can raise its sovereignty. This method makes the practice of self-determination conditional upon the unit of self-determination fulfilling such criteria such as ' fighting

terrorism maintaining rule of law, upholding indigenous rights and human rights, and ensuring stability in the region. The sub-state can therefore establish self-governing bodies and evolve facilities suitable for the implementation of enlarging sovereign role and capabilities. (Williams & Hooper, 2003).

The Iraqi Kurdistan region is further developed at the initial stage of its quest for statehood regarding the organizations that are important to have a completely functioning democratic administration. For instance, the Kurdistan locale has its own administrative establishments including parliament, government and Presidency, as acknowledged by Article 117 of the Iraqi Constitution. Similarly, under Article 121 of the Iraqi Constitution as previously mentioned, the Kurdistan Parliament has the option to amend the use of Iraqi-wide law that is beyond the jurisdiction of the exclusive authority of the federation. (Hadji, 2015). Moreover, the Iraqi Kurdistan territory's foundations practice executive and legislative power in numerous zones, including distributing the local finances, police and security, policies for health and education, managing natural resources and improvement of infrastructure. (Kurdistan Regional Government, n.d.).

However, the KRG had consistently criticized the Iraqi federal government for not giving the Kurdistan region its constitutional rights and violating the Kurds' rights. Hence, this situation is another reason to hold the referendum for independence. ("A Record of the Violation of Iraq's Constitution," 2017).

The KRG secures individuals' opportunity to profess their religion and supports religious tolerance. Ample opportunity has been given to all religions in IKR. The KRG thus conceded to the making of a federated, elected, and pluralistic Iraq. (Kurdistan Regional Government, n.d.) However, now the KRG criticizes the Iraqi federal government for violating the federal, democratic and pluralistic principle, hence it is justifiable for the Kurdistan region to seek recourse for independence, while shared sovereignty between the Kurdistan region and Iraq is voluntary. ("A Record of the Violation of Iraq's Constitution," 2017).

KRG authorities assume that the people are for the most part liable for protecting the privileges of ethnic minorities all through the country. The IKR with the Office of the High Commission of Human Rights (OHCHR) under the United Nations Assistance Mission for Iraq (UNAMI) propelled the Regional activity plan for human rights. The arrangement accentuates the basic job that all local society associations and human rights activists all through the Region had in cooperating with individuals from parliament, administrators, and important KRG ministries in drafting the plan of action for advancing human and minority rights in a civilized and democratic community. ("Welcome to the Kurdistan Region of Iraq," n.d. & Kurdistan Regional Government, n.d.).

Lately, the KRG has embraced a more clear financial vision in terms of its economy. More than 90 percent of the KRG's GDP originate from oil. Also, the IKR has tremendous elective resources; for example, trading, farming, the travel industry, and manufacturing. In conclusion, the KRG built up the Department of Foreign Relations (DFR) and administrations that have just started to lead relations with the international network. (Kurdistan Regional Government, n.d.).



Therefore, to have the Iraqi Kurdistan Region ready for the complete implementation of its privilege to autonomous governance and the opportunity for international acknowledgment, it is essential to permit the IKR to establish formal ties with neighbouring nations and international associations. However, the Kurdistan region referendum for independence was not recognized by the international community. (Şen,2017).

A last manner by which the RES approach can be applied to the circumstance of the IKR is the possible assurance of the final status of the IKR and its connection to the State of Iraq. The choices for conclusive status go from significant self-determination to full independence. This choice is usually made through either a type of referendum or negotiating process, yet perpetually includes the assent of the international community. Fundamentally, the nature of final status will be dictated by a referendum, or might likewise be resolved through an arranged settlement between the State and sub-state entity, usually with foreign intervention.(Williams and Peccit,2004 & Scharf, Hooper, and Williams,2003). However, the Kurdistan region held a unilateral referendum for independence; thus, in reality, the final status of Kurdistan region can be considered an independent state, whereby over 92% of the Kurdish people voted for independence of the Kurdistan region. Nevertheless, the international community did not recognize it, but it is presently a registered legal document in the hands of Iraqi Kurds for establishing their future state. (Khalid, 2017).

Therefore, the assent of the international forum is imperative to the assurance of the final status for the IKR as international acknowledgment. For effective enforcement of the third stage, it is recommended that the international community's role must be played to oversee and execute the interim plan and help with the groundwork for future autonomy.(Williams and Hooper,2003)

Henceforth, for the effective execution of RES, the coordinated effort between the IKR and the State of Iraq is necessary. At the end of the day, for authentic freedom after the referendum of 2017, and for building long-haul goals of the IKR and the Iraqi government conflict, some matters must be contemplated. To begin with, either local law or the Constitution would need to provide an article on secession, regardless of whether through selection of enactments explicitly permitting it or some different strategies. Furthermore, forming systems for joint venture between the IKR and the administration in Baghdad is fundamental. Third, the creation of explicit responsibilities with respect to the IKR and the Iraqi State needs to be done, in the region of human rights and minority rights, and participating in a progression of specific measures to build confidence. The last prerequisite is the groundwork for status definition with potential help of the international community.(Sterio,2009).

In particular, the assurance of the international system would be founded on the Iraqi Kurdistan territory's adherence to the duties attempted during the interim time frame, with Baghdad's compliance towards its duties being taken into consideration, and the after-effects of the referendum held in the Kurdistan region.(Sterio,2009).

Overall, the essential point of this method is the participation between the IKR and the administration in

Baghdad. There are two unmistakable criteria for RES. To begin with, the Iraqi Federal Constitution and local law must arrange for a provision on secession, whether through appropriation of laws explicitly permitting it or some other strategy. Second, the IKR would need to participate in principled discourse with the Iraqi government on the issue of self-determination.(Williams and Hooper,2003) However, the Iraqi federal government could never accept the results of the referendum of the Kurdistan region for independence; even the Federal Supreme Court rejected the results of the referendum.(Federal Supreme Court Decision,2017 & Hanish, 2018).

## V. CONCLUSION

The paper concluded that the method of remedial earned sovereignty (RES) as a notion of international law can be applied to people who can show the international community that they deserve to establish statehood. The RES requires people who can rule over their administrative institutions independently within parent state. Therefore, this situation can encourage people toward independence. However, people must prove that the central government violates their rights. According to this method, people must illustrate that they have struggled for independence through legitimate tools. More importantly, As an approach to conflict settlement, ES works to create peace and cooperation between a state and a sub-state body by conducting three forms as a peace process; firstly, the international supervision of the self-determination body both before and after sovereignty is achieved, at this point the State and sub-state body might practice and act sovereign authority over a given territory. Secondly, the elective component of "conditional sovereignty", or "conditional independence" whereby the sub-state body must accomplish particular objectives, such as upholding human rights, fostering democracy, following the rule of law and supporting regional peace, before it can raise its sovereignty. Lastly, the decision of the final position for the sub-state body options, with the aid of international negotiations, to either a referendum to determine this final status or a mediated arrangement between the parent-state and the sub-state body.This paper also demonstrated that Kurdish people as the biggest ethnic group who strived against Iraqi successive governments for achieving their own political and economic rights. Although, Iraqi Kurds achieved several platforms in their struggled movements including Autonomy and Federal statuses while the Kurdistan regional government (KRG) always accused the Iraqi federal government by violating the rights of kurds. Hence, the main goal of Iraqi Kurdish people became the establishment of an independent state. The KRG held an independence referendum on 25 September 2017 in which the majority of people voted for independence. However, the referendum has not been recognized by the international community, but it can be a legitimate base for changing its status under remedial earned sovereignty (RES) concerning Iraqi sovereignty. Thus, cooperation between the IKR and the administration in Iraq is an important element of this approach. The RES has two requirements that could be shown here. Firstly, any provision for independence will have to be

rendered through the Iraqi federal constitution and national legislation, or by the compilation of laws that expressly require it or by other mechanisms. Secondly, on the issue of sovereignty, the IKR will have to engage in principled negotiations with the Iraqi government. Thereby, RES may be re-imagined as a beneficial tool that can be implemented on the situation of IKR to attain Independence, in a way that receives international support and contributes to negligible conflict for the region. Likewise, this advancement can be developed IKR long-haul targets and confrontation with the Iraqi government.

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