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Our Ambivalent Iraqi-Kurdistan Policy

Dennis P. Chapman

“So then, because thou art lukewarm, and neither cold nor hot, I will spue thee out of my mouth.”

-- *Revelation 3:16* (King James Version)

Twenty-three years ago I was nearing the end of a miserable Plebe year at West Point, having endured for ten months innumerable humiliating rebukes from upperclassmen and a severe and nearly constant state of mortification deriving from the great many embarrassing blunders, nearly all of my own making, that I had suffered since first passing through the Academy's gates the summer before. Throughout this year of horrors however, I had had one small comfort – I had fallen in love with a hometown girl whom we'll call “Eva.” Eva and I had been friends in high school and a stream of letters and phone calls through my dark time had deepened feelings, at least on my on end. In our correspondence Eva had given every indication of sharing my feelings and I had naturally very much looked forward to a reunion with her over the Christmas holidays. Things started out well enough – a couple of dates, a cuddle, a kiss – and then nothing. Eva became nearly unreachable and always unavailable. Disappointed and hurt I made my sad way back to my hard life on the Hudson only to find, to my surprise and joy, Eva once again renewing the connection! Another stream of letters and calls, more hopes for a joyful reunion and a happily ever after – and, upon returning home for summer leave, another disappointment – a date or two and another disappearing act. Needless to say, I'd have been better served had I taken the advice of the upperclassmen, who, when demanding to know “How are they all?” expected but one answer: “They are all fickle but one, Sir!” For my dear Eva was nothing if not fickle.

By now the patient reader will be wondering just what any of this has to do with Iraqi Kurdistan or our policy toward it. The answer is simply this: The United States has been nothing if not fickle in our treatment of the Kurdistan Region since 2003. By this point, seven years after the 2003 invasion, the Kurds of Iraq can be forgiven if America begins to look to them less like Lady Liberty, holding high aloft her shining torch as a beacon of freedom and justice, and more like my fickle friend Eva. Congress passes resolutions to commemorate Kurdish accomplishments but provides little or no practical help; American commanders rush to Erbil when Kurdish help is needed on thorny problems, only to disappear again as soon as the problem is gotten under control; Iraqi Kurds flock to America's colors during a long and difficult war, only to be turned away at our borders by immigration authorities too ignorant or naïve to see the difference between the Kurdish parties – our allies – and our many enemies throughout the

region. In short, we have not been able to make up our minds as to just what our relationship with Iraqi Kurdistan ought to be.

U.S. policy vis-à-vis the Kurdistan Region of Iraq since the 2003 invasion has usually been one of benign neglect. This approach has often been adequate given the relative stability, security, and overall success of the Kurdistan Region as well as the generally cooperative attitude on the part of the Kurdish authorities. Such an approach, while less than optimal, was certainly understandable during previous phases of the occupation, when raging violence elsewhere demanded the full attention and all the resources of both the allied Coalition and the fledgling Iraqi Government. That conditions on the ground have sometimes justified our treating the Arab-Kurd issue as an economy of force matter – or worse, as an afterthought – does not mean that the underlying tensions between Arabs and Kurds have disappeared, however. The question before us then becomes: Is the United States pursuing a course best suited to managing this conflict and defusing Arab-Kurdish tensions? I believe that we are not.

Conflict between the Kurds of northern Iraq and the central authorities in Baghdad have been a recurring feature of Iraqi politics from at least the days of the British Mandate, with periods of open conflict alternating regularly with periods of rapprochement.¹ Such a period of rapprochement has prevailed since the 2003 U.S. invasion, but as violence wanes in Iraq and the Iraqi State becomes more secure and confident, we can expect tensions between the Arabs and Kurds to rise as both parties turn their attention to long simmering disputes that have, until now, been put aside in the interest of dealing with the common enemy. These rising tensions could pose a potentially serious threat to the gains made in Iraq since 2003 and to the future success of the Iraqi State, but along with the danger also comes the greatest single opportunity for permanent peace between Iraqi Arabs and Kurds since the fall of the Ottoman Empire. This is so because facts on the ground in Iraq have changed in several material respects since the end of the 1991 Gulf War.

First, the Kurds have established viable, stable governing institutions in the Kurdistan Region and have achieved a level of political maturity not previously seen, making the danger of intra-Kurdish strife within Iraq the remotest that it has perhaps ever been.

Second, since the ratification of the Iraqi Constitution in 2005 Iraq is enjoying real, substantive democratic government for the first time in its history (as opposed to dictatorial regimes of the sham “republic” established by Abd al-Karim Qasim’s July 14th, 1958 *coup d’état* and the authoritarian Constitutional Monarchy that preceded it).²

¹ Some notable periods of conflict between Baghdad and the Kurds from the time of the Monarchy on include the First Barzan Uprising, 1931 – 1932; the Barzani Revolt, 1943 – 1945; the First Kurdish War, 1961 – 1970; the Second Kurdish War, 1974 – 1975; the Iran-Iraq War from 1980 – 1988, including Saddam Hussein’s dreadful *Anfal* Campaign; and the Kurdish Uprising (the *Rapareen*) following the 1991 Gulf War.

² Most observers – including Iraqis – tend to divide Iraqi history into two periods: The Monarchy, which began in 1921 during the period of the British Mandate, and the “Republic” which began with Qasim’s overthrow of King Faysal II and his government in 1958 – generally referred to as “the Revolution.” For myself, I can hardly credit the regime inaugurated by Qasim’s putsch with being republican in character. Qasim’s regime, and those that followed it, can only be deemed republican in so far as Iraq no longer had a hereditary monarch as head of state. But to be a true republic much more is required – specifically, a republic is a form of government where the people choose representatives who govern on their behalf. Nothing of the sort ever happened under the military or Ba’ath regimes

Third, with the demise of Saddam Hussein's Ba'ath regime Pan-Arab nationalism has been supplanted by an *Iraqi* nationalism better able to accommodate the idea of a bi-ethnic Iraqi State composed of Arabs and Kurds, making Kurdish aspirations in Iraq – if not pleasing to the Arab majority – then at least more palatable, while also making remaining within Iraq more acceptable to the Kurds.³

Finally, the Kurds have already achieved much of what they have sought for decades⁴ – namely political and cultural autonomy within Iraq,⁵ as enshrined in various provisions of the Constitution of Iraq ratified in October 2005.⁶

What all this means is that instead of finding themselves locked in perpetual conflict across practically the entire spectrum of Kurd-Arab relations, Iraqi Kurds and Arabs now confront a range of differences generally limited to a few difficult but nonetheless discrete problems, including:

- Implementation of the Normalization process in the disputed territories as provided for in Article 140 of the Iraqi Constitution.
- Control over the exploitation of petroleum resources within the Kurdistan Region;
- The Kurdistan Regional Government's (KRG) share of Iraq's Federal budget;

that followed the Monarchy, where power was seized at the point of the gun and maintained by force and intimidation, and “constitutions” were repeatedly imposed by executive fiat. To ennoble such an arrangement with the honorable title of “Republic” is to discredit the very idea of representative government. In my opinion, only with the ratification of the Iraqi Constitution of 2005 can Iraq be said to have had a true Republican form of government. That said, the current Iraqi regime is not Iraq's first experience with *constitutional* government. Iraq existed as a properly constituted Constitutional Monarchy, established with the end of the British Mandate under King Faysal I in 1932, until Qasim's 1958 *coup*. Unfortunately, though constitutional, Iraq under the Monarchy cannot be said to have been truly democratic, as the executive shamelessly manipulated the electoral process on a regular basis to squeeze out opposition figures and vigorously suppressed the opposition press, and the military overturned cabinets on several occasions, once going so far as to overthrow the regent and replace him with its own candidate. Thus, while the current Iraqi Government is not the first constitutional one, it is certainly the first truly Republican one (for an excellent overview of the functioning of the Iraqi Government under the Constitutional Monarchy, see Majid Khadduri, *Independent Iraq: A Study in Iraqi Politics since 1932*, Oxford University Press, 1951).

³ Though writing over 40 years ago, Majid Khadduri perfectly captured the essence of this matter as follows: The Kurds, more outspoken than others favoring a separate 'Iraqi state, made it crystal clear to the Arabs that that they would not accept fusion within an Arab state, and that the dissolution of the 'Iraqi state in a larger Arab state must necessarily lead to the creation of a separate Kurdish identity, either within or outside the Arab superstructure. The Shi'a, on the other hand, forming the majority of the population of 'Iraq, have opposed an Arab union, because in it they would again become a minority in a large Sunni community.” See Majid Khadduri, *Republican 'Iraq: A Study in 'Iraqi Politics Since the Revolution of 1958*, Oxford University Press, 1969, pages 3 – 4.

⁴ This is the second time that Kurds have achieved a measure of autonomy within Iraq. The first was during the four year interlude from 1970 – 1974 following the First Kurdish War, a period that legendary Kurdish leader Sami Abdul Rahman termed “the Golden Period” – a period cut short by the tragedy of the Second Kurdish War (for the Rahman quote, see Gareth Stansfield, *Iraqi Kurdistan: Political Development and Emergent Democracy*, RoutledgeCurzon, 2003, page 75).

⁵ Kurdish public opinion in Iraq strongly favors outright independence, but the major Kurdish parties have long made autonomy within Iraq their goal. When I asked KRG Director of Foreign Affairs Felah Mustafa Bekir about this in November 2008, he said that the Kurds “live in a tough neighborhood” and that the parties have to manage the peoples' expectations.

⁶ See in particular Section 5, “Powers of the Regions,” Chapter One, “Regions.”

- The size, organization, roles and missions, command arrangements, and funding of the Kurdistan Regional Government's various security services; and
- The presence and activities of KRG security services in the disputed territories, and conversely the level of access by the Federal security services to the territory of the Kurdistan Regional Government.

As should be clear, the range of differences between Iraqi Arabs and Kurds is far narrower in scope now than at any time in the past with the possible exception of the four-year interlude following the Manifesto of March 11th, 1970 following the First Kurdish War. Of course, where Kurds and Arabs are involved even such a truncated list of disagreements can be quite explosive, as history has shown: The settlement that ended the First Kurdish War in 1970 failed only a few short years later, leading to a devastating Second Kurdish War from 1974 to 1975.

Nonetheless, the dramatically different conditions on the ground make lasting peace between Arabs and Kurds a real possibility if only the remaining points of contention are properly managed. The United States is well positioned to mediate these dangerous but manageable problems and our good offices may even be indispensable to reaching a settlement. It is all the more regrettable then that America has adopted a Kurdish policy in Iraq that is not only unlikely to contribute effectively to the management of these problems, but may even make them worse.

It would be bad enough were it merely a problem of “benign neglect” as noted above. Mere negligence would squander our great opportunity to positively influence the future course of Arab-Kurd relations, but the American approach to the Kurdish problem runs the risk of actually aggravating the situation. This is because since the 2003 invasion American officials have been unwilling or unable to recognize or properly acknowledge the basic organizing principal of the Iraqi state: that it is a *bi-national entity* in which two national components – one Arab and one Kurd – are confederated in a highly unusual manner within a single state. What is odd about this particular confederation is that each of its two constituent parts are themselves highly centralized political units in which political power is heavily concentrated at the center, with comparatively few powers being devolved to the subordinate provinces. The dominant component of the confederation – the Government of Iraq – controls 15 of Iraq's 18 governorates (provinces), devolving little power to subordinate echelons of government with the major exception of the junior component of the confederation, the Kurdistan Regional Government (KRG). For its part, the KRG has nearly complete autonomy from the Government of Iraq over the great bulk of domestic matters and even has some autonomy in foreign relations, immigration, and border control, but itself devolves very little of its own considerable power to its' three Governorates of Sulaymaniyah, Erbil, and Dohuk.⁷

Americans correctly understand centralization of government as the basic organizing principal in Iraqi politics, but Iraq's binary configuration of a strong autonomous Kurdistan Regional Government embedded within a state governed by a strong central Government in Baghdad seems utterly beyond the grasp of the American mind. When it comes the status and role of the KRG, we just don't seem to get it.

⁷ The ambiguous position of the three Kurdish governorates is aggravated by the fact that Kurdistan Regional Government currently has no Provincial Powers law, though an official at the KRG office in Washington DC has told me that such is on the agenda of the Kurdistan National Assembly for 2010.

At first blush our obstinacy on the Kurdish question seems downright mystifying. After all, the United States of America is a federal republic in which the Constitution permanently devolves massive powers to the several States, each of which has its own executive, legislature, judiciary, police forces, budgets, and even day-to-day control of a significant military force in the form of the National Guard. Yet Americans who take for granted these features of our own 50 States find it exceedingly difficult to accept the legitimacy of similar powers devolved by Iraq's Constitution upon the KRG.

It is natural that, in developing its Iraq policy, the United States give primacy to the concerns of Iraq's national government; also, to a large extent, America's paradoxical attitude toward Iraqi Kurdistan stems from fundamental imperatives that drive all nation-states. The key attribute of a state is *sovereignty*, which we may define as the exclusive right to exercise political authority within a defined and discrete geographical territory. Naturally states use every tool at their disposal to uphold the integrity of their own geographical territory and to consolidate their political authority over this territory. This works against Iraq's Kurds, as indeed it does against the aspirations many indigenous or minority peoples, because established states tend to view these movements as weakening not just the host state but the legitimacy of the very concept of state sovereignty itself and, by extension, their own legitimacy as well. Our own government is no exception, and will seek to reinforce its own sovereignty by upholding that of Iraq. Although the U.S. may pay lip service to the autonomy of the KRG, as a practical matter many American officials see the Kurds' actual exercise of that autonomy as weakening the Iraqi state and as therefore inimical to America's basic interests. On a purely practical level America's perception of the Kurdish issue is also shaped by the views of our associates in Iraq. The vast majority of Americans of all ranks who have any contact with Iraqis work closely with Arab Iraqis. Where these Americans like and respect their Arab counterparts they will naturally tend toward sympathy with the Arab point of view on Kurdish affairs. Americans who habitually work with Iraqi Kurds naturally sympathize with the Kurdish perspective, but these Americans by far the minority.

Such practical considerations notwithstanding, the chief obstacle to a clear and correct American understanding of Kurdistan's position in Iraq is our own history. Our view of the world in general and of Iraq in particular is filtered through our own historical experience. This is a perfectly natural human tendency, but a singularly unhelpful one in this case because the historical influences that shaped our country are radically different from those that shaped Iraq. The most searing event in U.S. history, and the one that probably most distorts our perceptions of the Kurdish question in Iraq, is our own Civil War. The American Civil War resulted from our inability as a nation to reach a political consensus on profoundly important issues, one of which was the nature of the relationship between the States and the Federal Government – how would political power be distributed between center and periphery? Should the States or the Federal Government exercise primacy? Was the Federal Union a perpetual one or could the individual States unilaterally sever or modify the connection?⁸

⁸ Of course, the other profound cause of the war was race, particularly black slavery. The American Civil and the many civil rights struggles that ensued discredited forever in the American mind the idea that political privileges of any kind ought to be distributed on a racial or ethnic basis. One result is that Americans will tend to look askance at

Aside from the obvious political results of the war, the Civil War profoundly shaped the way that we Americans see our Nation and ourselves. Since the Civil War the indissolubility of our Federal Union has become an article of faith to us, an object of veneration – along with the Constitution – of almost mystical importance. Southern convictions about the right of secession have given way a national consensus closer to the view of Chief Justice Salmon P. Chase that “the Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.”⁹ So strongly do we Americans believe in this creed that it colors how we view events in other countries. Viewing our own country as a sacred and indissoluble union, we assume that others view their own countries that way as well, and we view with suspicion anything that even arguably smacks of irredentism, separatism, or secession. In this respect Iraqi Arabs view their own country in a light similar to the way we view our own. Iraqi Kurds don’t. Unfortunately for the Kurds, our history predisposes us to uncritically accept the Arab view while leaving us uncomfortable with the Kurdish position. The problem is that the manner in which our Federal Republic was formed bears no resemblance to how Iraq was formed. While perpetual and indissoluble, our Union is nonetheless voluntary in so far as that to join the Union, each State had to voluntarily petition Congress for membership and, usually, meet specific requirements established by Congress before they would be permitted to join.¹⁰ It is worth noting that this voluntary aspect of our Union – a key source of its moral legitimacy, especially in light of its perpetual character – is totally absent in the case of Iraq. Although the people of Iraq were given the prior opportunity by plebiscite to approve the formation of the Kingdom of Iraq under King Faysal I, the Kurds themselves were never afforded an effective opportunity to voice their own preference as to whether or not they join Iraq.¹¹ The reader should not misinterpret me. I

an entity like the KRG, formed as it is largely for the benefit of a particular ethnic group, regardless of the fact that the circumstances leading to its formation bear no resemblance to anything in our own history.

⁹ *Texas v. White*, 74 U.S. (7 Wall.) 700, 19 L.Ed. 227 (1869), excerpted at <http://www.princeton.edu/aci/cases-pdf/aci2.texas.pdf>.

¹⁰ Some will be quick to try and undermine my argument by pointing to the unusual circumstances surrounding the admission of both Texas and Hawaii to the Union, given that in each case, Anglo-American settlers seized control of the local political structure and then petitioned Congress for admission. But even these two unusual cases still followed the model I cite in the text. In the case of Texas, the Anglo-American settlers had legally immigrated to Texas at the invitation of the Mexican Government and naturalized there according to the laws of the Mexico. When the tug between Mexico and Texas finally came, these Anglo-American settlers, by then Mexican citizens, set up an independent republic, only joining the American Union some years later. In the case of Hawaii, the “Americans” responsible for seizing control of the machinery of government and petitioning for admission to the Union were in fact the descendants of American missionaries but had themselves been borne and raised in Hawaii, and were presumably, therefore, subjects of the Hawaiian Crown. Thus whatever one might think of the Anglo-American led governments that petitioned Congress for admission to the Union, they were nonetheless functioning governments led by citizens of those respective countries at the time of petition. Critics might also point to the special case of Native American tribes within the United States, who certainly didn’t voluntarily join the Union. In these cases, the United States has acknowledged the lack of consent by conceding to the various tribes sovereignty within their reservations parallel and not subordinate to the sovereignty of the States within whose boundaries they exist. The United States has made similar arrangements with the Commonwealth of Puerto Rico. Save the abortive arrangements under the March Manifesto of 1970, the Kurds of Iraq had the benefit of no such arrangements before 2005.

¹¹ In fact, the Kurds strongly believe that they were promised independence under the terms of the Treaty of Sevres, concluded between Turkey and the Allies on August 20th, 1920. Unfortunately, the Allies were unable to vindicate the treaty and were compelled by force arms at the hands of Mustafa Kemal, founder of the modern Turkish state, to conclude a new treaty in 1922, the Treaty of Lausanne, which was bereft of the protections for minorities that the Kurds believed they would have had under the original Treaty of Sevres.

neither question the legitimacy of the Iraqi state or its territorial integrity, nor advocate Kurdish independence from Iraq – far from it.¹² Nor, for that matter, have either the Kurdistan Democratic Party (KDP) or the Patriotic Union of Kurdistan (PUK), each of which have, for the full duration of their existence, adopted the identical motto of “Democracy for Iraq, Autonomy for Kurdistan,” the popular desire for independence among ordinary Kurds notwithstanding. However, what I *do* advocate is that we view Iraq in the context of its own history, not through the prism of our own. In other words, if we apply Chief Justice Chase’s formulation to Iraq, we must apply it whole by recognizing that to the extent that Iraq is an “indestructible Union,” it is one that incorporates an “indestructible State” – the Kurdistan Region – within it.

As noted above, differences over the size and activities of the various security services of the KRG are among the remaining unresolved points of dispute between Erbil and Baghdad – one where the U.S. Government’s defective understanding of the Arab-Kurd issue and our insistence upon viewing Iraq through the prism of our own country’s history are particularly problematic. One of the most controversial components of the KRG security sector is the *Peshmerga*, in effect the KRG’s regional army. In large part due to our basic predisposition to view the entire Kurdish project in Iraq with suspicion, as well as to an incomplete understanding of the relevant provisions of the Iraqi Constitution, many Americans labor under the mistaken belief that the *Peshmerga* of PUK and KDP are private militias and operate without legal sanction. However, this interpretation is simply false. Like most other elements of the KRG security apparatus, the *Peshmerga* is a lawfully constituted government security force. This is easily established by reference to the pertinent legal authorities. The Kurdistan National Assembly (KNA) – the legislative branch of the KRG elected under U.S. protection in 1992 – passed Law No. 5, *Law of the Ministry of Peshmerga Affairs*, on September 23rd, 1992. This law placed the *Peshmerga* – which until then were simply the military arms of the Kurdish parties during their struggles against the Iraqi State – on a formal legal footing subordinate to the elected civilian leadership of the KRG. After the 2003 invasion the United States implicitly recognized this status on June 2nd, 2004 when Ambassador Paul Bremer issued Coalition Provisional Authority Order No. 91, *Regulation of Armed Forces and Militias Within Iraq*, which specifically exempted the *Peshmerga* from the ban on armed forces contained therein. The legal status of the *Peshmerga* was ratified by the Republic of Iraq with the adoption of the 2005 Constitution via three specific provisions of that instrument: Article 117, Section 1, recognizing all the “existing authorities” of the KRG; Article 141, which provides that the legislation enacted by the KNA since 1992 remains in force; and Article 121, Section 5, which charges the Kurdistan Regional Government

¹² At risk of disappointing my many valued Kurdish friends, I offer as my own opinion that a Greater Kurdistan encompassing all the Kurds of Iraq, Iran, Turkey and Syria within a single state is simply not feasible. The Kurds have never been a particularly unified group, politically or even linguistically (the various Kurdish dialects are not always even mutually intelligible). Nearly a century of being parceled out as minorities among four very different – and often mutually antagonistic – states has undoubtedly accentuated the already substantial differences between various Kurdish groups. The Kurds of these different countries have developed at different rates and in different directions. One need only look at the differences between the Kurdistan Workers’ Party (PKK) of Turkey and the PUK and KDP of Iraq to see just how wide these differences are; for an even more stark contrast, compare the career and philosophy of Abdullah Ocalan of PKK with those of Jalal Talabani (PUK) and Masoud Barzani (KDP). It is hard to imagine the KRG of Iraq even absorbing, much less subsuming itself into a union with, the impoverished Kurds of eastern Anatolia, much less the Turkified Kurds elsewhere in Turkey. In my view, if the Kurds have a common future at all, it lies in the realm of cultural pride and linguistic affinity alone.

with the responsibility for the “establishment and organization of the internal security forces for the region such as police, security forces, and guards of the region.”¹³

The legal status of the *Peshmerga* was further defined and reinforced in 2007, when the KNA enacted a series of four laws reorganizing the *Peshmerga* as the “Guards of the Kurdistan Region” in accordance with Article 121, Section 5 of the Iraqi Constitution cited above. These laws were Law No. 19 of 2007, *Law of the Ministry of Peshmerga in Kurdistan Region – Iraq*; Law No. 33 of 2007, *Law of Recognition of the Peshmerga (Guards of the Kurdistan Region - Iraq)*; Law No. 34 of 2007, *Law of Retirement of Disabled Peshmerga (Guards of the Kurdistan Region - Iraq)*; and Law No. 38 of 2007, *Law of Service and Retirement of Peshmerga (Guards of the Kurdistan Region – Iraq)*.

Negotiations continue between the Iraqi Government and the KRG over the size, roles and missions, and command structure of the *Peshmerga*, but the legal basis and moral legitimacy of the *Peshmerga* has been established beyond all doubt and recognized by the Iraqi Government. Iraqi Prime Minister Nouri al-Maliki himself publicly acknowledged this in April 2008 when he made a distinction between the *Peshmerga* and the extra-legal militias he was in process of suppressing, saying of the *Peshmerga* that “the Guards of the province [sic] have the cover of legitimacy because they form organized forces”.¹⁴ Both al-Maliki and the Parliament of Iraq acknowledged not merely the legitimacy of the *Peshmerga*, but further its status as an element of the security system of Iraq, when the Iraqi Parliament began in 2007 to include provisions in the budget framework laws for the Iraqi Government to pay the costs associated with maintaining the *Peshmerga* (though to date no funds have actually been dispersed).

Despite the size and the cultural and historical significance of the *Peshmerga*, by far the most significant of the KRG security services in terms of day to day responsibilities is the *Asayish* (“Security”),¹⁵ which formally has jurisdiction over terrorism and other security-related matters but in practice handles the investigation of all major crimes including smuggling, narcotics trafficking and other vice-related offenses, as well as any politically sensitive crimes. The *Asayish* were first organized after the 1991 Kurdish uprising (*Rapareen*) against the Ba’ath regime, when Saddam Hussein’s decision to withdraw his administration from the Kurdish areas presented the Kurds with their first opportunity to govern themselves since the collapse of the March Manifesto in 1974. Reestablishment of security was a top priority of the new de facto Kurdistan Regional Government and *Asayish* was organized from the ranks of the *Peshmerga* in October 1992 to address this need.¹⁶ Like the *Peshmerga*, *Asayish* was soon placed on a legal

¹³ The numbering scheme of the 2005 Constitution varied somewhat among different versions circulating at the time of the instrument’s ratification. All citations to the Iraqi Constitution contained in this paper are to the copy of that instrument provided to me by the Public Affairs Officer of the Embassy of the Republic of Iraq, Washington DC, in the Fall of 2008.

¹⁴ It is particularly significant that al-Maliki made this statement – which followed a meeting with KRG Prime Minister Nechirvan Barzani – at precisely the same moment that the Iraqi Army was suppressing Moqtada al-Sadr’s militia in the southern city of Basra. See “PM: Status of Kurdish *Peshmerga* remains unchanged despite crackdown on militias,” *International Herald Tribune*, www.iht.com, April 12, 2008.

¹⁵ Some of this material is adapted from my book *Security Forces of the Kurdistan Regional Government*, forthcoming from Mazda Publishers, Costa Mesa, California, expected to be released in 2010.

¹⁶ Interview by author with former Sulaymaniyah *Asayish* head Dana Majed at Sulaymaniyah, Iraq on November 17th, 2008; Human Rights Watch, *Caught in the Whirlwind: Torture and Denial of Due Process by Kurdish Security*, Washington DC July 2007.

footing by the newly inaugurated Kurdistan National Assembly, in this case with the passage of the Law No. 9 of 1993, *Law of the Ministry of the Interior*.¹⁷ *Asayish* is far and away the single most professional and effective security entity in the Kurdistan Region – if not in Iraq as a whole – and yet, like the *Peshmerga*, the U.S. Government remains reluctant to recognize its legitimacy, despite its statutory basis.

While the U.S. has invested significant attention and resources in the KRG's municipal police and prison system, we persist in ignoring the KRG's most disciplined and effective security services, the *Peshmerga* and *Asayish*, despite the fact that both of these institutions are legally just as legitimate as the police and prisons. Critics and nay sayers can easily find reasons to justify ignoring the *Asayish* and *Peshmerga*, such as the domination of both institutions by KDP and PUK; human rights abuses by both, particularly *Asayish*, as reported by Human Rights Watch and other prominent non-governmental organizations; and the many shortcomings, errors, and abuses of the PUK and KDP over the years, especially during the Kurdish civil war (the *Shari Bra Khuzi*)¹⁸ in Iraq during the mid- to late 1990s. At the end of the day however, such reasons must be viewed for what they are – mere pretexts for withholding our support. When examined in context it becomes obvious that *Asayish's* record, taken in toto, is superior in every respect to that of their counterparts in the rest of Iraq and, at least in terms of the morality of their conduct, probably better than any of their counterparts throughout the region.¹⁹ What's more, they have achieved this superiority almost entirely on their own. While the security umbrella maintained over Iraqi Kurdistan by the United States and our allies after 1991 certainly helped, the fact remains that the Kurds established these institutions themselves almost from scratch with practically no outside help, either before or after the 2003 U.S. invasion. Thus it hardly makes sense from a pragmatic perspective that we should hesitate to work with legal entities in the KRG that have successfully established and maintained law, order and public safety on their own, while at the same time continuing to lavish resources and attention on Iraqi Government institutions that only now are beginning to demonstrate the capacity to discharge their security functions. I do not question either the legitimacy of the Iraqi federal security services or the importance of our work with them to date or in future. Quite the contrary, I support and affirm both. What I do say though, is that having proven able to effectively discharge their responsibilities without external support, the KRG's security services should be taken at least as seriously as those in the rest of Iraq, which owe their existence entirely to the massive infusion of American blood and treasure since 2003 and which only now begin to be able to stand on their own. Nor is it logical that we should continue to question the moral legitimacy of *Asayish* and the *Peshmerga*. Their defects notwithstanding, the KRG security services have so far behaved to a much higher standard than their Iraqi Government counterparts. At no time since the 2003 invasion have *Asayish*, *Peshmerga*, or any other KRG police or security agencies indulged in the kinds of outrages – the kidnapping, lynching, terrorism, and intimidation of every sort – routinely practiced by the Iraqi National Police and other sectarian or militia-dominated Iraqi Government agencies in years past. Historically speaking the Kurds of Iraq have a strong record of proper conduct. Their battlefield conduct during the many uprisings and wars against the Iraqi

¹⁷ Human Rights Watch, *Caught in a Whirlwind*.

¹⁸ Kurds don't like the term "civil war", preferring other formulations such as the "brotherhood fight."

¹⁹ As one author observed in a piece of historical fiction, "as far as human rights were concerned, many things had improved when compared with many other countries in the same region." Hama Dostan, *Saddam Land*, Janus Publishing Company, London, page 302.

state was generally exemplary as was their treatment of captured Iraqi Army soldiers. Iraqi Kurds have never indulged in high-jacking or other forms of terrorism and have rarely engaged in any kind of military activity targeting non-combatants. The records of the PUK and KDP are hardly free from blemish of course; both parties lapsed badly during the period of the *Shari Bra Khuzi* and both have far from perfect human rights records. Nonetheless, no government in the Muslim Middle East has come as far in the field of human rights, and with as little external pressure, as Iraqi Kurdistan. Where other Middle Eastern insurgent groups have become more and more extreme in their embrace of radical Islam, PUK and KDP have moved from Marxist rhetoric to something reasonably akin to mainstream center-left politics; where *Hamas* and *Hezbollah* have inaugurated bloody and repressive regimes when and where they have achieved power, the Kurdistan Regional Government has viable democratic institutions; where other Middle Eastern governments and groups operate completely in behind closed doors, the KRG has opened the doors of its prisons to outside inspection, even when such inspection has been likely to, and in fact has, produced severe criticism.²⁰ In sum, for all its faults the Kurdistan Regional Government operates on at least as high a moral plane, if not higher, than any of our other allies in the Middle East, and certainly higher than our other partners in Iraq. We should accord its institutions, therefore, the same level of moral legitimacy that we accord those of the rest of Iraq.

Specific Recommendations for an Improved U.S. Iraqi Kurdistan Policy

Having identified the fundamental problem with our policy toward Iraqi Kurdistan and speculated as to its basic source, and having argued for full acknowledgement by the United States of the legal and moral legitimacy of the Kurdistan Regional Government in general and its security services in particular, I now offer a few specific policy proposals for consideration by the United States and by our partners at Baghdad and Erbil, relating in particular to the security services of the KRG and the Iraqi Government.

KRG Forces in the Disputed Territories: A major point of contention between the Kurds and others in Iraq is the presence and activities of KRG security services outside the boundaries of the Kurdistan Region, particularly at Kirkuk, Ninewa, and Diyala. Happily, on this point if on no other, substantial progress has been made that should facilitate improved cooperation and reduced friction on all sides, as discussed below.

Naturally both the government in Baghdad and local authorities in the disputed areas where KRG forces operate chafe at the presence of *Peshmerga*, *Asayish*, and Kurdish intelligence within their jurisdictions. The Kurds respond by asserting a right maintain forces in those areas on the grounds that these areas remain disputed. When I raised the matter with the KRG Director of Foreign Relations Felah Bekir in a November 2008 interview, he corrected me, arguing that what I referred to as the boundary of the KRG is in fact a demarcation line between Kurdish and Iraqi forces, and that the final boundary of the KRG has yet to be finalized under the provisions of Article 140 of the Iraqi Constitution. Under Bekir's reasoning, the KRG is not acting extraterritorially in maintaining forces in the disputed areas of neighboring governorates because these areas may in future be adjudicated as properly parts of the KRG under the Article 140

²⁰ See *Caught in the Whirlwind*.

Normalization process.²¹ Although Bekir's reasoning here is clever and has some persuasive force, as a matter of law it is probably not correct and American officials in Iraq are understandably impatient with it.²² The currently recognized local governments are clearly the lawful and legitimate sovereigns in these disputed territories and can only be displaced upon a final finding that the territories in question rightfully belong under the KRG. Nevertheless, if presented with legal challenges to the presence of its forces in these areas, in its own defense the KRG can rightfully point to the failure of the Iraqi Government to implement the Article 140 Normalization provisions, including the provisions of Article 58 of the Transitional Administrative Law (TAL) of Iraq (incorporated by reference into Article 140 of the Iraqi Constitution). Article 140 provides for the completion of the Normalization process, "to include [a] census and ... a referendum in Kirkuk and other disputed territories to determine the will of their citizens," not later than December 31st, 2007 – a missed deadline more than two years old.

Legal arguments aside, it is extremely unlikely that the KRG will voluntarily withdraw its forces from the disputed territories so long as the Normalization process remains stalled, and especially so given that some Iraqi politicians have argued that once the December 2007 deadline was missed Article 140 ceased to have any legal force.²³ As resolution of this matter by force of arms is and ought to be out of the question, the only course left is one of mutual accommodation by all the parties. Fortunately all concerned, including the United States, have largely pursued just such a policy.²⁴ This is especially so in and around Kirkuk. PUK *Asayish* withdrew their Kirkuk headquarters out of the city proper to Qara Hanjer, between Sulaymaniyah and Kirkuk, sometime ago at Coalition request.²⁵ In 2008 Turhan AbdulRahman, Kirkuk Chief of Police, told the *Washington Post* that despite his view that the presence of KRG forces in his city is illegal, they had "become a reality on the ground,"²⁶ and he works with them accordingly. In a 2008 telephone interview with me, AbdulRahman credited *Asayish* with being a very effective anti-terrorism force, and allowed that his Kirkuk police had good working relationships with the KRG security services, facilitated by formal coordination mechanisms such as monthly meetings – attended by the Coalition – to coordinate the actions of the Kirkuk police and the KRG entities operating in the city, cooperation that includes generally good information sharing by all. Also helpful is fact that after 2006 the KRG forces acquiesced in limits upon their powers of arrest and detention in and around Kirkuk, conceding an obligation to turn over any detained persons to the Coalition or to the Kirkuk authorities.²⁷

²¹ Director Bekir also pointed out that in part the KRG forces are present in the disputed territories at the request of the Coalition.

²² One U.S. State Department employee in Erbil actually rolled her eyes when I related Bekir's reasoning on this point to her.

²³ Self-serving as such a claim by the Kurds' opponents obviously is, it may have at least some basis in the text of Article 140, which provides that the Normalization provisions in Article 58 of the TAL and in Article 140 of the Constitution remain binding upon the new Iraqi Government established under the Constitution "*provided that it accomplishes completely* [sic] ... by a date not to exceed the 31st of December 2007" (emphasis added). While I do not agree with this reasoning, it can be (and in fact, has been) argued that the emphasized language renders the Iraqi Government's obligations under Article 140 as conditional upon their full completion by the stated deadline, thus implying that any unexecuted portion of such obligations expired on that date.

²⁴ With the very grave exception of Khanaqueen in Diyala and of some lesser disturbances in Ninewa.

²⁵ Majed interview, November 2008.

²⁶ Sudarsan Raghavan, "Ethnic Divide in Iraqi City a Test for Nation," *Washington Post*, December 20th, 2008.

²⁷ Interview by author with General Turhan Abdurahman, Chief of Police, City of Kirkuk, by Telephone, October 24th, 2008.

In stark contrast to the *modus vivendi* prevailing in Kirkuk, the KRG presence in Diyala Governorate, centered around the largely Kurdish city of Khanaqeen, nearly ended in disaster in 2008 when Iraqi Government and KRG forces almost came to blows over the KRG presence there. The PUK presence in Diyala began with a 2007 meeting at the headquarters of the Iraqi Department of Border Enforcement (DBE) for Diyala Governorate, attended by representatives of the PUK *Peshmerga* and the US brigade responsible for the area. The meeting focused on suppressing terrorist activity in Diyala and its chief outcome was a joint decision to deploy the PUK *Peshmerga* 34th Garmian Brigade there to augment Iraqi Army and Coalition forces there.²⁸ Subsequent tensions over the *Peshmerga* presence there first emerged in late July 2008 when the Iraqi Army's 5th Division asked the 34th Garmian Brigade to evacuate Qara Tapa and several other towns – a request which the *Peshmerga* commander flatly rejected. The conflict continued to escalate, culminating in August 2008 with a 24 hour Iraqi Government ultimatum to the Kurdish forces to depart, followed by reports of Iraqi Army forces “blockading” *Peshmerga* units in their bases. Fears of armed clashes began to be reported in the local media soon thereafter. Ultimately a compromise averted violence: The PUK agreed to withdraw its *Peshmerga* from Khanaqeen but left police and *Asayish* behind in the city, while maintaining a reduced *Peshmerga* force outside the city but still within Diyala Governorate.²⁹

The difference in how this matter was handled at Khanaqeen as compared to Kirkuk is both surprising and illuminating. Although Khanaqeen is home to a large Kurdish population and is within one of the disputed territories, it is Kirkuk that the Kurds see as the jewel in their crown and is the emotional focal point of their campaign to reverse the Arabization program that Saddam Hussein directed against areas with large Kurdish populations. At the same time, Kirkuk is and always has been important to the Iraqi Government because of the important petroleum reserves in the area. It is here therefore, rather than at a relatively peripheral (though still important) point like Khanaqeen, that one would have expected a major confrontation between the Iraqi Government and the Kurds over the presence and activities of one another's security forces. Yet the opposite happened – why? The key factor seems to be the presence and activities of the U.S. forces. Kirkuk has been an important focus of U.S. efforts in northern Iraq from the beginning of the war, probably for all the same reasons that both Arabs and Kurds regard it as vital to their interests, and it is precisely this strong U.S. presence that made a major confrontation between the KRG and the Iraqi Government inconceivable there. By the same token, when a breach did occur, it happened at a locale where the U.S profile was lower.

The different course of events at Kirkuk as opposed to Diyala dramatically illustrates the importance of the United States as a buffer, mediator, and facilitator in averting conflict and managing – if not resolving – the points of friction remaining between the Arabs and Kurds. The importance of our role was further underscored by a recent series of incidents in Ninewa Governorate, which includes Mosul, in which a new governor attempted to assert his authority in disputed territories within his Governorate where his authority was under challenge. The governor was rudely rebuffed with some unpleasant shoving matches between members of each side's security services, with U.S. forces unfortunately caught in the middle. As a result of these

²⁸ Kamal Shakir, *Peshmerga Femandayee Gishti*, interview by author, Sulaymaniyah Iraq, November 19th, 2008.

²⁹ Kamal Shakir interview, November 19, 2008.

incidents, LTG Odierno sponsored a system of joint US/Iraqi Government/*Peshmerga* checkpoints throughout all disputed territories.³⁰ Additionally, KRG and Iraqi Government forces have been able to cooperate in securing polling places during the most recent election cycles.

All of this indisputably demonstrates the importance of the United States in developing confidence-building measures between the parties in the disputed territories. The measures taken thus far have been very successful and the U.S. should work to establish permanent measures that will survive the coming reduction and ultimate departure of our forces. Such additional measures might include permanent exchange of observers and liaison officers between the headquarters of the Iraqi Government and KRG security services, both in the disputed territories and at Baghdad and Erbil; and expanded efforts by the KRG to recruit non-Kurdish personnel into the *Peshmerga* and *Asayish*, particularly in the disputed territories.³¹ But if the United States is to continue to effectively mediate between these contentious parties, both sides must perceive the US as an honest broker. This in turn requires that the United States view and treat both sides as fully credible and legitimate partners – precisely what the United States has failed to consistently do for the KRG.

Access to the Kurdistan Region by the Federal Security Services: Another major point of friction between Baghdad and Erbil is the refusal of the Kurdistan Regional Government to grant Baghdad unfettered access to the territory of the Kurdistan Region. The KRG insists upon the right to place limits on the nature, extent, and duration of the activities of Iraqi Federal forces in the three Kurdish governorates. The Iraqi Government does have some presence inside the KRG: Iraq's international borders in KRG territory are policed by the Federal Department of Border Enforcement (DBE); the Iraqi Ministry of Defense Intelligence Service maintains an office outside Sulaymaniyah; and the Iraqi Army has brigades based in each of the KRG's three Governorates (though these units are actually operating elsewhere). However, this is an extremely limited presence and, significantly, these Federal entities are manned almost entirely by locally recruited Kurds, often former *Peshmerga* members. Understandably, Baghdad is not satisfied with this token presence and asserts its right to operate without restraint throughout the full extent of Iraq's territory. The Iraqi Government undoubtedly - and rightly - views such as a fundamental incident of national sovereignty and as necessary to the discharge of its responsibilities to secure the territorial integrity of the state. As a matter of principle, Baghdad's position is undoubtedly the right one, particularly in light of the KRG's own insistence upon stationing security forces in the disputed territories. However, Iraq cannot escape its history and as a matter of pragmatism if not principle, the Kurds' views must be taken into account. In resisting unfettered federal access to their territory while insisting upon stationing their own forces in disputed areas outside the KRG, the Kurds are motivated by the fear and mistrust accumulated over the course of three quarters of a century of conflict in which they have suffered untold misery at the hands of forces dispatched against them by several successive Baghdad regimes. Complicating matters is the fact that the most recent incursions – Saddam Hussein's infamous *Anfal* Campaign of the mid- to late 1980s and the suppression of the Kurdish Uprising after the 1991 Gulf War – have been by far the most savage and devastating. Thus Iraq finds itself in a dilemma where the Federal Government seeks to assert its natural rights to operate within all the

³⁰Telephone interview with a KRG security advisor, April 25th, 2010.

³¹ PUK claims to have had some success along these lines.

territories of the state, while the Kurds find themselves emotionally and politically unable to cooperate because of their history. While seemingly intractable, there is a way through this impasse based, as with the disagreement over Kurdish forces in the disputed territories, on pragmatic mutual accommodation, if only the two sides will see it.

In September 2007 Iraqi Prime Minister Nouri al-Maliki ordered the formation of two infantry divisions in the Kurdistan Region, subsequently denominated as the 15th Division (Erbil) and the 16th Division (Sulaymaniyah). These units were to consist of 14,700 officers and men each and be organized and equipped in the same manner as other Iraqi Army infantry divisions. The date for activation of the divisions was ultimately set as August 2008 and both PUK and KDP identified the units and/or officers and soldiers from among the ranks of the *Peshmerga* that would be transferred to the Iraqi Army to form the new divisions. However, the process stalled and the divisions were never formally activated. When I visited Erbil on a research trip in November 2008 the process was on hold, ostensibly over two points: unavailability of funding from the Iraqi Ministry of Defense to carry out the project; and a dispute between Baghdad and the KRG over the qualifications to be required of the officers to be transferred from the *Peshmerga* to the Iraqi Army to lead the two divisions. On the latter point, KRG wanted certain educational and training requirements to be waived in light of the past operational experience (as had been done in previous instances), and Baghdad insisted that every nominee meet all the formal requirements for appointment to the grade in which they would serve. Other points of dispute that have probably contributed to the delay have been Kurdish dissatisfaction with an Iraqi Army command rotation policy that requires rotation of commanders every two years, resulting in some Kurdish officers being involuntarily transferred to units in southern Iraq, or resigning instead; and the Kurds' desire to exercise some control over the deployment of these new divisions outside the KRG. Probably the biggest factor in stalling the formal activation of these units, however, is politics: Some political factions in Baghdad are loathe to further legitimize the *Peshmerga*, which they believe incorporating yet more *Peshmerga* into the Iraqi Army would do.

The United States should pursue implementation of al-Maliki's order as the basis of a compromise on the matter of Federal access to the territory of the Kurdistan Region. Both sides would have to give some ground, but would also benefit significantly. The most immediate beneficiary of course would be the Iraqi Government, which would immediately gain a greatly expanded presence in the Kurdistan Region with unimpeded access to Iraq's international borders and other critical assets within the Region, not to mention two additional divisions of troops that could be employed throughout the country. Arab doubts about Kurdish loyalty notwithstanding, the fact is that Kurdish units in the Iraqi Army have performed their duties in an exemplary fashion. This was certainly the case with the Kurdish Iraqi Army Brigade with whom I served in both Sulaymaniyah and in Baghdad; another U.S. officer, an advisor to the Strategic Infrastructure Brigade (SIB) securing the Bayji-Kirkuk pipeline near Kirkuk, told me that the battalions of my Kurdish brigade were the best Iraqi troops he'd seen (they often augmented the SIB units on a rotating basis). For its part, the KRG would immediately benefit as well. Formal activation of these divisions would transfer more than 29,000 soldiers from the KRG payroll to the Iraqi Government payroll, thus achieving the important KRG objective of freeing up substantial funds for application against other priorities without having to lay anyone off (in fact, the move would actually result in pay raises for many if not all the affected Soldiers – an Iraqi

Army private is paid about twice the wage of a *Peshmerga* private). Both sides would have to make concessions as well, however. The KRG cannot reasonably expect to transfer such a large financial burden to Baghdad without sacrificing control over the personnel effected, and would have to concede to Baghdad the right to deploy and employ these divisions as they see fit without the prior authorization or concurrence of the KRG. Likewise, the two sides would have to compromise on personnel policy. The Kurds would likely insist on an exemption for Kurdish officers assigned to these two divisions from *involuntary* transfer to non-Kurdish units elsewhere in Iraq, but they should also be willing to accept the assignment of at least some number Arab officers – though perhaps not senior commanders – to these divisions in exchange. As to the matter of officer qualifications, compromise is also in order. Baghdad should temporarily waive the formal qualification standards for the first cohort of officers appointed to lead these divisions based upon their prior military experience with the *Peshmerga*, subject to a requirement they to procure the requisite training incrementally in future; additionally, officers subsequently appointed to or promoted within the two divisions would be required meet all formal training and educational standards. One approach that could serve as a model for such a compromise is that taken by the Army National Guard in the United States in 1985 to raise officer educational standards: All officers then in service were given four years to complete two years college work or equivalent (that is, until 1989); beginning in 1989, newly appointed officers required at least two years college work to qualify for appointment; and all officers appointed after September 1983 (that is, two years prior to the date of the reform initiative)³² were required to have a Bachelor's Degree for promotion to Major,³³ and later for promotion to Captain. Such a gradual approach might work satisfactorily for officers of 15th and 16th Divisions. Compromise would be further warranted in the delivery method of the required training, in that officers of the 15th and 16th Divisions should be authorized to receive the requisite training at institutions set up in Iraqi Kurdistan, either by the Federal Government or by the KRG *Peshmerga* Ministry. This is necessary first to mitigate any bottlenecks that might develop as a result of injecting such a large group of additional trainees into the Iraqi Army's training system; it would also alleviate Kurdish suspicions that the Iraqi Government might discriminate against 15th and 16th Divisions in allocating training seats. Such an arrangement should be acceptable given the strong precedent already established: After Administrator Paul Bremer dissolved the Iraqi military, the new Iraqi Army established four military colleges to train new officers. Among the four were the former *Peshmerga* academies at Zahko (KDP) and Qalachwalan (PUK), both of which were donated to the Iraqi Government by the KRG to help satisfy the pressing need for new officers. At the same time, both academies continued to produce *Peshmerga* lieutenants. In the case of Qalachwalan at least, the Iraqi Army and *Peshmerga* training programs shared the same staff and facilities. It has been reported that the Iraqi Ministry of Defense was planning to close three of Iraq's four military academies by January of this year, including the Zahko and Qalachwalan, in favor of a single, consolidated facility at Baghdad (The KRG *Peshmerga* Ministry plans to retain the *Peshmerga* facilities at these locations).³⁴ This does nothing to undermine the precedent or discredit the viability of such a proposal. Support for such a compromise on training can also be

³² These officers would all have been lieutenants at the time of the 1985 reform.

³³ Department of the Army Historical Summary: FY 1984, Chapter 4, Reserve Forces, page 105, <http://www.history.army.mil/books/DAHSUM/1984/ch04.htm>, accessed April 25th, 2010.

³⁴ Rashaddin, Hawjin; *The Kurdish Globe*, November 26th, 2009, <http://www.kurdishglobe.net/displayArticle.jsp?id=5CCAB4D0CB41A59A764108DF5E843BE8>, accessed May 1st 2010.

drawn by analogy by comparison with the U.S. experience. The Reserve Components of the U.S. Army have long been required to complete the same program of training as their Regular Army counterparts. While some Reserve and National Guard personnel do attend training at Regular Army schools, most receive equivalent training at a system of schools including State Officer Candidate Schools, National Guard Regional Training Institutes, and Army Reserve Training Commands. It should also be noted that the bulk of all U.S. Army officers are trained, not at the United States Military Academy, but at Reserve Officers Training Corps (ROTC) units on college and university campuses across the United States.³⁵ The United States could bring this extensive experience to bear in establishing such an alternative system inside the KRG to address the needs of the officers of the 15th and 16th Divisions, as well as of the newly unified *Peshmerga*. It should also be noted that PUK has implemented a training program for those whose appointment as officers in the *Peshmerga* predates the advent of formal training *Peshmerga* training programs. These “Old *Peshmerga*” are expected to attend a 6-month officer course followed by a separate 4-month command course,³⁶ together designed to bring their skills up to contemporary standards. This program could serve the nucleus for a professional training program for officers of the 15th and 16th Divisions to meet the professional educational requirements stipulated by the Iraqi Ministry of Defense. Naturally, the KRG would be expected to open the doors of such a training program Iraqi officers from outside the KRG as well.

Peshmerga Funding: Since at least 2007 the Iraqi Parliament has accepted in principle the responsibility for funding some or all of the *Peshmerga*, but no funds have so far been allocated.³⁷ Baghdad’s failure to follow through with the money has in part been attributed to disagreement over the size and composition of the *Peshmerga*, but as the two sides long ago at least tacitly agreed on force structure of 60,000 *Peshmerga* Soldiers as a working figure,³⁸ this is unlikely to be the real cause for delay. The real cause is probably that, the pertinent constitutional provisions notwithstanding, some factions in Baghdad do not support the existence of the *Peshmerga* and do not wish to further legitimize them by funding them. The KRG, on the other hand, asserts that Article 121 Section 5 of the Iraqi Constitution explicitly authorizes them to form Regional Guards and that the *Peshmerga* are such. The KRG then goes further, however, asserting that because the *Peshmerga* are explicitly authorized in the Constitution, they constitute an integral part of the Iraq’s national defense system, and ought to be paid for by Baghdad, not infrequently citing the National Guard in the United States as a model.

³⁵ Some might accuse me of ignoring my own advice, offered earlier in this paper about refraining to evaluate Iraq through the prism of U.S. history, but that is not what is happening here. I do not offer the example of our Reserve Component (RC) school systems as an example for Iraqi Kurdistan to emulate as much as to expand the perspective of my American Regular Army brethren who, having grown up with a single, unified system of professional schools and professional training courses, might recoil at the idea of setting up a parallel military education system in Iraqi Kurdistan primarily for the benefit of Kurdish officers in the Iraqi Army. I offer up the example of the RC school system in the U.S. Army to remind my American colleagues that such a parallel system is working quite well right now within our very own Army.

³⁶ Interviews by author with PUK BG Hashem, Chief of Administration for the PUK *Peshmerga*, Sulaymaniyah, Iraq, November 19th, 2008; and PUK *Peshmerga* LTG Fazzell Mustafa Abdullah, November 19th, 2008, Sulaymaniyah Iraq.

³⁷ Rashaddin, Hawjin; *The Kurdish Globe*, November 26th, 2009.

³⁸ Based upon the author’s numerous interviews with Kurdish officials, and review of numerous translated Kurdish media reports, in 2008.

Both sides' arguments here are flawed. Baghdad's occasional assertions that the *Peshmerga* are unconstitutional³⁹ are patently absurd. Article 121 Section 5, cited above, empowers the Regional Government to establish and organize "the internal security forces for the region such as police, *security forces*, and *Guards of the Region*" (emphasis added). As it is axiomatic that no law should be interpreted in a manner that renders any of its language meaningless or superfluous, and since the cited provision specifically names police separately from "security forces" and "Guards of the Region," it can clearly be inferred that this provision envisions forces capable of more than mere law enforcement work. Nor can the provision be interpreted as merely providing the KRG with authority to form some sort of border guard constabulary, as the Government of Iraq has already preempted the KRG in the role of securing Iraq's international borders by organizing Federal Department of Border Enforcement (DBE) units inside the KRG to provide for border security. Thus the Constitutional text clearly provides the KRG ample authority to organize the *Peshmerga* along the lines of a regular military organization.

Unfortunately for the KRG, their own assertions here are flawed as well, particularly their position that funding the *Peshmerga* is an inherently federal responsibility. Article 121 Section 5 of the Constitution doesn't merely authorize the KRG to form police, security forces, and regional guards; it explicitly provides that:

"[t]he regional government shall be responsible for all the administrative requirements of the region, particularly the establishment and organization of the internal security forces for the region such as police, security forces, and Guards of the Region" (emphasis added)."

Thus the Region's security services of all types are clearly a Regional, not a federal responsibility. The Kurds counter that the Constitution charges them with the responsibility for "administrative requirements," not funding, and that this omission should be interpreted as making funding a Federal responsibility. Unfortunately for this line of reasoning, it does not automatically follow that just because the KRG's security services are a part of a national system that the KRG is automatically relieved of the responsibility of paying for them. Since the Kurds frequently cite the National Guard in the United States as a model for their own *Peshmerga*, the National Guard may be a useful foil by which to test the validity of the KRG's position on Federal funding of the *Peshmerga*.

Unlike the Iraqi Constitution, the United States Constitution contains a number of provisions that explicitly bind the militia (as the National Guard was previously known) to the national security system of the United States, as follows:

Article I, Section 8 empowers Congress to "provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions," to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States," and to prescribe the rules by which the militia will be trained, all while devolving upon the States the power to appoint the officers in the militia, to exercise

³⁹ Such as this comment by Iraqi Government spokesman Ali Dabagh, who told the Arab-language *daily as-Sharq al-Awsat* that "[a]ccording to the Constitution, two armed forces are not allowed in a country at the same time." See Hawjin Rashadaddin, *The Kurdish Globe*, November 26th, 2009, www.kurdishglobe.net, accessed May 1st, 2010.

discipline of that portion of the militia not in Federal service, and to execute the training program prescribed by Congress. The U.S. Constitution further provides at Article II, Section 2 that the

“President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States” (emphasis added).

These provisions⁴⁰ much more explicitly make the National Guard a component of the national security system of the United States than anything in the Iraqi Constitution does for the *Peshmerga*, and they explicitly make the National Guard available as a resource to the Federal Government in a way that nothing in the Iraqi Constitution does for any KRG security service. Yet, despite all this, under the Militia Act of 1792 – the first law passed by Congress for governing the militia – the militia “was ... *almost completely funded*, organized, and administered by the State governments” (emphasis added).⁴¹ The Federal share of funding the National Guard was not substantially increased until the Dick Act of 1903, but Congress did not permanently assume responsibility for providing the bulk of the National Guard’s funding until passage of the National Defense Act of 1916.⁴²

Thus, though clearly envisioned in our Constitution as a component of America’s national defense system, funding for the National Guard remained largely a State responsibility for the first 127 years of the Republic’s existence. I argue above that the United States should refrain from viewing Iraqi affairs through the prism of U.S. history, and I certainly do not wish to do so on this matter. My only point in drawing the analogy is to demonstrate that the KRG’s position on Federal funding of the *Peshmerga* is by no means the only possible correct one. That is not to say that there is no merit to such a funding arrangement. In fact, Federal funding could offer distinct advantages to both sides. From the KRG’s perspective, Federal funding of the *Peshmerga* would, like the organization of the 15th and 16th Divisions, relieve the KRG of an immense fiscal burden without resort to politically difficult layoffs, thus freeing up funds for other priorities. Though too suspicious of the Kurds to readily see it, the Iraqi Government would also benefit from the provision of such funds. The KRG will undoubtedly maintain the *Peshmerga* regardless of whether the Federal Government provides any funding or not, so withholding the funds accomplishes nothing, but subsidizing the *Peshmerga* would give the Iraqi Government a degree influence over the organization that Baghdad currently does not have. It is precisely on this point, however, that the KRG has difficult decisions to make. For as with the 15th and 16th Divisions, the Kurds cannot reasonably expect Baghdad to assume financial responsibility for 60,000 Soldiers without insisting upon some consideration in return. While certainly not a blueprint or roadmap for the future of the *Peshmerga*, here again U.S. experience may be instructive, if only as a cautionary tale for KRG officials who might be tempted to make too much of any parallels between their own forces and our National Guard. As noted above, in the early days of the American Republic Congress provided very little material or financial support to the militia of the several States when those forces were not in the actual service of the United States. The States themselves bore nearly total responsibility for the organization,

⁴⁰ U.S. Constitutional provisions found at <http://www.usconstitution.net/const.html>.

⁴¹ Donnelly. William M., “The Root Reforms and the National Guard”, <http://www.history.army.mil/documents/1901/Root-NG.htm>, accessed April 25th, 2010.

⁴² Ibid.

training, administering and disciplining of the militia, but in turn had complete autonomy over every aspect of their militias, from what types of units to form to how they were trained and equipped. This changed over time, as successive waves of reform by Congress provided for greater and greater levels of Federal funding for the National Guard. With each increase in Federal support, Congress asserted greater control over the organization, training, equipping and administration of the National Guard, with a corresponding loss of State autonomy over their militias. The culmination of this process is the situation that exists today, where the Federal Government provides nearly the entire National Guard budget (with comparatively tiny State contributions), and at the same time pervasively controls every nearly detail of administration, organization, training, and equipping, save those very specific functions reserved to the States in the Constitution: appointing the officers, disciplining the force when not in active Federal service, and executing training to the standards prescribed by Congress. Just as Americans should exercise caution in viewing Iraqi history through the filter of our own, the KRG must take care when invoking the U.S. National Guard as a model for their own *Peshmerga*. The current arrangement vis-à-vis the National Guard is quite acceptable to State governors and legislatures in the U.S. because it provides the States with a large, well-equipped military force of uniformly high quality that they can employ for domestic purposes (responding to disasters, maintaining public order, and other functions) at very little or even no cost to themselves. That the Federal Government dictates nearly every aspect of organization, equipping and training this force and can call it up and deploy it abroad at will is of no concern to the States, as they are virtually guaranteed that a force adequate to their needs will be available whenever required.⁴³ However, such an arrangement for the *Peshmerga* would most assuredly will not be acceptable to either the political leadership or the general public in the KRG, as has already been demonstrated by the KRG's rejection of proposals to reorganize their forces on a strictly infantry basis (that is, to turn in their tanks, artillery, and other heavy equipment), and by the strong public reaction against even deploying a Kurdish-manned *Iraqi Army* brigade from Sulaymaniyah to Baghdad in 2007⁴⁴. With regard to *Peshmerga* funding, the KRG has to come to grips with the fact that they will have to concede something to Baghdad in exchange for the actual release of funds as provided for in successive Iraqi budgets. Such consideration certainly won't be anything on the scale of what the States in the U.S. have conceded to Congress vis-à-vis the National Guard – but it will have to be something. The United States can play a role in facilitating an agreement on this point, if we are willing to accept what the Iraqi Constitution already provides – that the KRG has legal right to form its own security services, including the *Peshmerga*.

Unification and Depoliticization of the KRG Security Services: As a matter of law, the KRG unified the *Peshmerga* in 1992 when the Kurdistan National Assembly enacted Law No. 5 of 1992, *Law of the Ministry of Peshmerga Affairs*. The *Asayish* began its existence as unified entity in 1992 and received legal sanction with the passage of Law No. 9 of 1993, *Law of the Ministry of the Interior*. Though unified at law, in practice each have been divided into two separate organizations – one dominated by KDP and one by PUK – since the *Shari Bra Khuzi*

⁴³ Even the high OPTEMPO for RC forces since 9/11 has not changed this, as National Guard Bureau has adopted a policy of ensuring that Governors have at least half of their National Guard forces available to them for State missions at any one time; this effort is further enhanced by the network of Emergency Management Assistance Compacts (EMAC) between and among the States by which they pledge to provide one another with assistance should any State's available National Guard forces not be sufficient to cope with a particular crisis.

⁴⁴ Despite the exaggerated fears of many, the brigade did deploy, spent over four months in Baghdad, performed well and won the respect and trust of the Arab residents in their area of operations.

beginning in May 1994. The two competing KRG administrations were reunified in 2006, but the *Peshmerga* and Interior Ministries were not reunified until April 2009. Work has begun on unifying the *Peshmerga* at echelons below the ministry level, albeit at a very slow pace (and with some modest U.S. advice and assistance). While the KRG administration of Barham Salih maintains “unifying institutions” as a principal plank in its program⁴⁵ and specifically mentions *Asayish* as one of the institutions to be unified, little if anything has been done to make *Asayish* unification a reality. Even more glaring is the matter of the clandestine intelligence services of the two political parties – KDP’s *Parastin* (“Protection,” also known more recently as “the Agency”) and PUK’s *Dazgay Zanyari* (“Information Apparatus”). Both of these organizations operate without any legal sanction whatsoever and, while they readily cooperate with *Asayish*, nonetheless are purely organs of the two political parties and do not even nominally serve the Kurdistan Regional Government as a whole.

The failure to unify and depoliticize the *Peshmerga* and *Asayish* and to regularize the *Parastin* and *Dazgay Zanyari* on a proper statutory basis has seriously damaged the credibility of all of these organizations and has served as a major point of contention between Baghdad and Erbil. The U.S. attitude toward these institutions has only aggravated the situation. By shunning them, the United States only reinforces Baghdad’s perception of these lawful⁴⁶ entities as illegitimate, providing Baghdad an excuse and an incentive for foot-dragging in negotiations with the KRG on all the outstanding issues remaining between the Kurds and Arabs. Our attitude also impacts the Kurdish side by giving them reason to doubt our loyalty, exacerbating their sense of isolation and insecurity and encouraging them to take a hard line in their relations with Baghdad. In short, our failure to engage *Peshmerga* and *Asayish* reinforces the worst tendencies on both sides of the Arab-Kurd divide and, by forfeiting our opportunity to prod the Kurds toward full unification and depoliticization of these entities, only contributes to further delay in the ultimate resolution of these issues.

The United States should act decisively to bring about full unification and depoliticization of the KRG security services as rapidly as possible – the key word here being *act*. Press releases and public statements by American leaders filled with empty pieties applauding this or that modest step forward in Erbil and Sulaymaniyah accomplish little. They will be seen for what they are – polite, proforma pleasantries signifying nothing. What is required instead is a comprehensive, large-scale engagement strategy that would include at least the following elements: a robust, well-resourced advisory effort embedded directly within the *Peshmerga* and *Asayish* with the primary objective of effectuating true, permanent unification and depoliticization; a strong U.S. delegation embedded within Masrur Barzani’s General Security Committee at Erbil and at PUK party headquarters at Qalachulwan, charged with negotiating the legalization of *Parastin* and *Dazgay Zanyari*, and their eventual merger or incorporation into *Asayish*; a cadre of political and legal advisors embedded within the Offices of the KRG Presidency and Prime Minister to oversee and coordinate the entire unification effort; and finally

⁴⁵ From the KRG’s official website: “The KRG plans to unify the Erbil/Dohuk and Suleimaniah institutions of the *Asayish* (intelligence and security), *Peshmerga* forces and finance, to completed [sic] the process of unification started in 2006, and to end once and for all the legacy of the era of dual administrations.” <http://www.krg.org/articles/detail.asp?anr=32349&lngnr=12&rnr=93&smap=04020000>, accessed May 1st, 2010.

⁴⁶ Except *Parastin* and *Dazgay Zanyari*.

robust detachments of U.S., KRG, and Iraqi Government liaison officers at the appropriate headquarters of all three governments as a confidence-building measure, to provide for the proper exchange of information between all the parties, and to facilitate renewed progress on the remaining points of contention between the KRG and the Iraqi Government.

Conclusion

The United States should end its policy of ambiguity toward Iraqi Kurdistan and should adopt instead a policy consisting of these main components:

- Full recognition of the legal and moral legitimacy of the Kurdistan Regional Government and its security services as provided for in the plain language of the Iraqi Constitution and as viewed through the context of Iraqi history;
- Mediation, on the basis of pragmatic mutual accommodation, of outstanding Arab-Kurdish disputes, such as to the presence and activities of KRG security services outside the currently-recognized boundaries of the Region; access to the territory of the Kurdistan Region by the security services of the Iraqi Government; successful activation of the 15th and 16th Iraqi Army Divisions; and the level of funding, if any, to be contributed by the Iraqi Government toward the maintenance of the *Peshmerga*; and finally,
- A vigorous program of direct, sustained engagement by well-resourced advisory and liaison personnel embedded within *Peshmerga*, *Asayish*, and certain political institutions of the KRG with the aim of expediting full unification, depoliticization and (where applicable) legalization of *Peshmerga*, *Asayish*, *Parastin*, and *Dazgay Zanyari*.

There are naturally many obstacles to implementing a program like this, not least the pending September 1st, 2010 deadline to bring U.S. forces in Iraq down to 50,000. Given the difficult work likely on-going within U.S. Forces – Iraq headquarters to effect this reduction, finding the resources to man a new requirement for additional advisory personnel in the north would certainly require a good deal of creative thinking and tough decisions. By far the biggest obstacle though would be strong opposition by Baghdad, who would likely be very suspicious of stronger U.S. – Kurdish ties and who would be loathe to further legitimize the institutions of the KRG. The United States should not be deterred by such opposition however, but in fact should work hard to overcome it: The prejudices of politicians notwithstanding, a robust physical American presence in the KRG would benefit all sides. Everyone – Arab, Kurd, and American alike – would benefit immensely from what would, in effect, be an American buffer between the two parties. A strong U.S. engagement program in the KRG would engender a greater sense of security because the Kurds would feel that any aggression or overreach by Baghdad would be much less likely as long as the U.S. maintained an open and substantial presence among them. Arab misgivings aside, Baghdad would benefit from the Kurds' greater sense of security because it would allow the Kurds to come off their guard somewhat and perhaps be less defensive and more flexible in their negotiations with Baghdad. Furthermore, such an American role would serve as a restraint upon the Kurds, discouraging any provocative actions in the disputed territories or any rash moves to unilaterally impose a one-way settlement of any of the remaining points of disagreement.

In sum, an American policy of strong engagement with the KRG would serve many interests: It would serve to constrain Baghdad and restrain Erbil, compelling each to act with due deliberation in their relations with the other; it would reinforce America's role as an honest broker between the two parties and thereby facilitate final resolution – or at least acceptable interim compromise – on the remaining controversies that continue to inflame relations between the Government of Iraq and the KRG; and finally, it would position the United States to strongly press Erbil to resolve some of the many remaining problems within the KRG, not least the matter of the status and organization of *Asayish*, *Peshmerga*, and the two parties' intelligence services.

Colonel Dennis P. Chapman commanded a U.S. Military Transition Team embedded within an all-Kurdish Iraqi Army Brigade based in Sulaymaniyah in the Kurdistan Region. He deployed with the brigade during their participation in the Baghdad Security Plan (at the time of the U.S. surge). Colonel Chapman completed a one-year military fellowship with Center for Strategic and International Studies (CSIS) where his principal research focus was the security services of the Kurdistan Regional Government, Iraq. He is the author of a book on Iraqi Kurdistan, Security Forces of the Kurdistan Regional Government, forthcoming soon from Mazda Publishers.

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