



UK arms transfers to the Peshmerga in Iraqi Kurdistan

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What is the Peshmerga?

The Peshmerga (“those who face death”) militias are an important part of Kurdish society. In Iraq, it has in effect become the armed forces of the Kurdistan Regional Government (KRG). The main Iraqi Kurdish parties, Massoud Barzani’s Kurdish Democratic Party (KDP) and Jalal Talabani’s Patriotic Union of Kurdistan (PUK), have strong roots in the Peshmerga and there continue to be formations within the KRG’s armed forces with close links to each of these parties.¹

What is the legal status of the Peshmerga under Iraqi law?

It is widely accepted that the Peshmerga is a legal entity under Article 121(5) of the 2005 Iraqi Constitution, whose role is the safeguarding the internal security of Iraqi Kurdistan (although the Peshmerga is not referred to explicitly in the Article).

Article 121(5) stipulates that:

the Regional Government [of Kurdistan] 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.²

This does not mean that there is not some ambiguity and dispute about the precise status under Iraqi law of the Peshmerga. Indeed, elsewhere the Iraqi Constitution states that the central government has exclusive authority for:

Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq’s borders and to defend Iraq.³

Article 9(B) sets out that should be no armed militias in Iraq: “The formation of military militias outside the framework of the armed forces is prohibited.”⁴

According to some sources, only the Iraqi federal ministries of defence and interior have authority to import arms from abroad, under Iraqi law.⁵ However, the definition of ‘arms’ remains unclear.

¹ Massoud Barzani is the president of the Kurdistan Regional Government and Jalal Talabani was the President of Iraq until 24 July 2014, when he was succeeded by another Iraqi Kurd, the PUK’s Fuad Masum (real power in Baghdad belongs with the Prime Minister).

² Article 121(5), [Iraqi Constitution](#)

³ Article 110(2), Iraqi Constitution

⁴ Article 9(B), Iraqi Constitution

The status of the Peshmerga is one aspect of wider unresolved (and long-entrenched) problems in relations between the Iraqi federal government and the KRG. However, it seems clear that the force is constitutional under Iraqi law.⁶

Would it be legal for the UK to supply arms directly to the Peshmerga?

The UK Government can probably argue with confidence that it would be legal to supply arms direct to the Kurdish Regional Government – provided that doing so is consistent with the UK/EU [Consolidated Criteria](#).

There are still UN and EU [arms embargoes](#) in place with regard to Iraq. However, since 2004, the Iraqi Government has been exempted from these embargoes (so have multinational forces).

Because it is not clear that the Peshmerga is a federal security institution in Iraqi law, and given the international arms embargoes on Iraq, any UK arms supplied to it in the current situation are likely to be supplied at the request of or with the consent of the Iraqi federal government. The Iraqi central government gave its consent in the case of [France](#) on 13 August and the EU Foreign Affairs Council mentioned the consent of the Iraqi national authorities in its conclusions of 15 August (see below).

Since it can be considered a legal entity under the Iraqi Constitution (see earlier), the Peshmerga cannot be viewed as a ‘non-state actor’ under international law. In any case, the UK does not consider – as some states argued during negotiations on the Arms Trade Treaty – that there is a general prohibition under international law against supplying arms to non-state actors.⁷

It should also be noted that, if UK arms supplied to the Peshmerga was in the form of ‘gifts’ of government-owned equipment, the UK Government has [Crown Immunity](#) from the 2002 *Export Control Act* and is not required to obtain a licence (in effect, from itself). But past and present governments have said that they do in practice ensure that gifts are consistent with the *Consolidated Criteria* and provide publicly-available information about them, from the issuing of departmental minutes to parliament (for gifts of over £100,000, or which are of an unusual nature), that must lie for 14 sitting days to allow Parliament the opportunity to object and have any objections addressed, to their inclusion in its quarterly and annual reports and strategic export controls.

Campaigners and parliamentarians have [argued](#) that the UK’s institutional and legal framework for providing such gifts is not as strong as it could be. But it can be viewed as stronger than the provisions of the Arms Trade Treaty, which [does not specify gifts, loans or](#)

⁵ J. Devigne, “[Iraqoncilable differences: The political nature of the Peshmerga](#)”, NIMEP Insights, 2011. See also, ‘[Kurds in N. Iraq Receive Arms From Bulgaria](#)’, *Washington Post*, 23 November 2008

⁶ See Brendan O’Leary, ‘[It is politically and morally right for European states to support Kurdish forces in Iraq](#)’, London School of Economics European Politics and Policy blog

⁷ The UN Arms Trade Treaty, adopted by the General Assembly in April 2013 and ratified by the UK in June 2014, is not yet in force. It does not explicitly prohibit the transfer of arms to non-state actors. However, States parties agree not to authorize any transfer of conventional weapons — or their ammunition/munitions, parts or components — if the transfer will violate their chapter VII obligations of the UN Charter or those under international agreements, or if they have knowledge that arms will be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions, attacks against civilians or other war crimes. If the export is not prohibited under article 6, each exporting State party, under article 7, agrees that, prior to authorization of exports, they will assess the potential that conventional arms or related items will undermine peace and security or be used to commit or facilitate a serious violation of international humanitarian or human rights law, or acts constituting terrorism or transnational organized crimes.

leases as being within its scope – to the disappointment of many campaigners, who worried that some states might seek to circumvent their treaty commitments by designating a larger proportion of arms exports as such.

Present situation

On 14 August, Downing Street sources were quoted in the press as saying that the UK would “favourably consider” any request for arms from the Kurdish Regional Government for arms. No request had been received so far. The EU Foreign Affairs Council was due to hold an extraordinary meeting on Friday 15 August in Brussels to discuss the situation in Iraq; UK Foreign Secretary Philip Hammond was due to attend.⁸

The UK had already posted Tornado fast jets to Cyprus to help with reconnaissance and it was reported on 18 August that these had been used for military, not just humanitarian, reconnaissance.⁹ But on 11 August, Philip Hammond had said that the UK did not plan to enter combat: “we don’t envisage a combat role at this time.”¹⁰

The EU Council meeting welcomed member states’ efforts to send military assistance to the Kurdish Regional Government:

The Council also welcomes the decision by individual Member States to respond positively to the call by the Kurdish regional authorities to provide urgently military material. Such responses will be done according to the capabilities and national laws of the Member States, and with the consent of the Iraqi national authorities.¹¹

US and France

The US and France have already started sending weapons to the Kurdish Regional Government.

The US said on 11 August that it was sending weapons urgently. A State Department spokesperson said:

We’re working with the government of Iraq to increasingly and very quickly get urgently needed arms to the Kurds. This includes the Iraqis providing their own weapons from their own stocks, and we’re working to do the same thing from our stocks of weapons that we have.¹²

The office of the French President announced on 13 August that weapons to ‘support the operational capacity’ of front-line forces on the ground’.¹³ French Foreign Minister Laurent Fabius said that sophisticated weaponry was being sent, but more details were not forthcoming, other than to underline that the present consignment would not necessarily be the last.

Further reading

[Military and humanitarian assistance to Iraq](#), SN06960, 13 August 2014;

Shashank Joshi, ‘[British Options in Iraq: Capabilities, Strategies, and Risks](#)’, Royal United Services Institute, 13 August 2014

⁸ ‘[Iraq crisis: UK 'would consider' arming Kurds](#)’, *BBC News Online*, 15 August 2014

⁹ ‘[Cameron: UK will not deploy 'boots on the ground' in Iraq](#)’, *Financial Times*, 18 August 2014

¹⁰ ‘[Iraq crisis: RAF aborts air drop amid safety fears](#)’, *BBC News Online*, 11 August 2014

¹¹ [Council conclusions on Iraq](#), Foreign Affairs Council meeting, 15 August 2014

¹² ‘[U.S. directly arming Kurds in Iraq](#)’, *CNN*, 11 August 2014

¹³ ‘[Paris à la pointe de la réponse européenne face à l'urgence irakienne](#)’, *Agence France Presse*, 13 August 2014

The Kurds: new perspectives?, SN06708, 14 August 2013;

“Last man standing: US security cooperation and Kurdistan’s Peshmerga”, The Washington Institute for Near East Policy, 24 July 2014;

Worsening humanitarian crisis in Syria and Iraq, SN06926, 8 July 2014

Gareth Stansfield, ‘Iraq falls apart’, *The World Today*, July 2014