

SERVANTS OF TWO MASTERS:
THE RISKS INHERENT IN IRAQ'S
HASHD AL-SHA'ABI LEGISLATION

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I. BACKGROUND AND DOMESTIC LEGAL STATUS	169	R
A. <i>Initial Formation and Legitimization of the Hashd al-Sha'abi Committee</i>	175	R
B. <i>The Convoluting Structure of the Hashd al-Sha'abi</i>	177	R
1. <i>Internal Factions and Power Structures</i>	177	R
2. <i>Foreign Funding, Training, and Equipping of the Hashd al-Sha'abi</i>	182	R
C. <i>Legalization and Baghdad's Attempts to Take Control</i>	184	R
1. <i>The 2016 Hashd al-Sha'abi Legislation and the Brigades' Entry into National Politics</i>	184	R
2. <i>Prime Minister Abadi's Attempts to Control the Hashd al-Sha'abi</i>	185	R

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3. <i>Renewed Efforts by Prime Minister Abdul-Mahdi</i>	187	R
D. <i>Human Rights Abuses</i>	188	R
E. <i>Deployment into Syria</i>	192	R
II. APPLICABLE INTERNATIONAL LAW AND IRAQI OWNERSHIP	193	R
A. <i>Relevant International Law</i>	194	R
1. <i>The Law on State Responsibility</i>	194	R
2. <i>Defining “Armed Forces” Under International Humanitarian Law</i>	198	R
B. <i>Iraq’s Responsibility for the Hashd al-Sha’abi Under International Law</i>	200	R
1. <i>The Hashd al-Sha’abi is an Iraqi Organ</i> ..	200	R
2. <i>The Hashd al-Sha’abi is a Part of Iraq’s Armed Forces as a Matter of International Humanitarian Law</i>	203	R
C. <i>Iranian Responsibility for the Hashd al-Sha’abi</i> . . .	204	R
1. <i>Iranian-Iraqi Joint Responsibility for the Actions of Specific Militias</i>	207	R
D. <i>U.S. Liability for the Actions of the Hashd al-Sha’abi</i>	209	R
III. IMPLICATIONS OF IRAQ’S OWNERSHIP OF THE HASHD AL-SHA’ABI	211	R
A. <i>Implications of Iraqi Incorporation Under International Humanitarian Law</i>	211	R
B. <i>Potential Claims Against States Supporting the Hashd al-Sha’abi by Third Party States</i>	214	R
C. <i>Implications for the United States</i>	216	R
1. <i>Strategic Challenges for the United States Following the Hashd al-Sha’abi’s Incorporation</i>	216	R
2. <i>The Leahy Laws and U.S. Domestic Legal Risk</i>	220	R
IV. CONCLUSION	222	R
APPENDIX A: LAW OF THE HASHD AL-SHA’ABI COMMITTEE	224	R
APPENDIX B: DIWANI ORDER DATED MARCH 8, 2018 ...	226	R

On November 26, 2016, Iraq incorporated the Hashd al-Sha’abi (also known as the “Popular Mobilization Forces” (PMF) or the “Popular Mobilization Units” (PMU)) into the Iraqi Security Forces (ISF). This legislative legitimization of unruly, previously unconstitutional militias has

subsequently exposed Iraq to legal and political risk. Under customary international law of state attribution and international humanitarian law, Iraq is responsible for the Hashd al-Sha'abi brigades' alleged violations of international human rights law and humanitarian law despite exercising only limited control over them. As recently as July 3, 2019, Iraq's Prime Minister Adil Abdul Mahdi attempted to reduce this risk by requiring the Hashd al-Sha'abi to either merge with the Iraqi Armed Forces or disband. But in many cases the brigades have refused.

Iraq's approach raises three questions: (1) What are the Hashd al-Sha'abi brigades as a matter of law?; (2) Which state or entities are responsible for their actions?; and (3) How can these responsible states insulate themselves from legal risks while ensuring compliance with the rule of law? Under international law, the answer to the first two questions is clear: As long as Iraq sanctions the actions of these militias through official state legislation, Iraq bears responsibility. Yet the solution to the third question remains elusive. If Iraq cedes control over these militias, the state runs the risk of enabling armed, hostile groups by giving them freedom from state oversight. Alternatively, if Baghdad remains connected to the Hashd al-Sha'abi, that connection may come at the expense of losing access to vital Western support, alienating Iraq's Sunni communities, and empowering the enemies of the U.S.-friendly elected government. Iraq's attempt to fully integrate or reject these militias is one way to solve this last dilemma. However, implementing these policies will not be easy.

I. BACKGROUND AND DOMESTIC LEGAL STATUS

In 2014, during the early days of Iraq's conflict with the Islamic State in Iraq and al-Sham (ISIS), the leading Iraqi Shi'ite cleric, Grand Ayatollah Ali al-Sistani, issued a *fatwa* calling on “[c]itizens to defend the country, its people, the honor of its citizens, and its sacred places [from ISIS].”¹ Tens of thousands of Iraqis, mostly Shi'ite, answered his call.² The resulting en masse mobilization led to the formation of the

1. Abbas Kadhim & Luay Al Khatteeb, *What Do You Know About Sistani's Fatwa?* HUFFINGTON POST (July 10, 2014), https://www.huffingtonpost.com/luay-al-khatteeb/what-do-you-know-about-si_b_5576244.html; see also RENAD MANSOUR & FALEH A. JABAR, CARNEGIE MIDDLE E. CTR., *THE POPULAR MOBILIZATION FORCES AND IRAQ'S FUTURE* 7 (2017) (discussing the effect of al-Sistani's *fatwa*). For a recording of the speech itself, see *Khutba Salat il-Jum'a il-Lati a'Lanat Fiha al-Marji'ya ad-Diniya al-a'Lia "al-Jihad al-Kifa'i"* [The Friday Prayers Address in Which the Grand Ayatollah Announced "Collective Jihad" Against ISIS], YOUTUBE (June 13, 2017) [hereinafter *Friday Prayers Address*], <https://www.youtube.com/watch?v=AFO5KonPlcE>.

2. See e.g., MANSOUR & JABAR, *supra* note 1, at 7 (“Paradoxically, the legitimization this fatwa furnished was an unintended consequence of Sistani's order, which had called on all Iraqi citizens to volunteer to join the ‘security

Hashd al-Sha'abi, also known as “Popular Mobilization Forces” (PMF) or “Popular Mobilization Units” (PMU).³ These forces consisted of a panoply of brigades and militias, each with its own loyalties and agenda.

The composition of the *Hashd al-Sha'abi* is often misunderstood in non-Iraqi discourse.⁴ The terms “Popular Mobilization Forces or Units” suggest a monolithic organization made up of Shi'ite militiamen. In fact, the formation comprises a large number of sub-units (brigades)⁵ with a plethora of allegiances and no single command structure.⁶ Roughly fifty

forces,’ a reference to the army and federal police, rather than the seven militias that had been operating alongside Maliki’s government.”).

3. The term “*al-Hashd al-Sha'abi*” (الحشد الشعبي) can be translated a number of ways. In a military context, “*hashd*” can mean a “to gather, concentrate, mass (esp. troops), call up, mobilize (an army).” HANS WEHR, A DICTIONARY OF MODERN WRITTEN ARABIC 210 (J. Milton Cowan ed., 4th ed. 1979).

4. See NANCY EZZEDDINE & ERWIN VAN VEEN, NETH. INST. OF INT’L RELATIONS CLINGENDAEL, POWER IN PERSPECTIVE: FOUR KEY INSIGHTS INTO IRAQ’S AL-HASHD AL-SHA’ABI 3 (2018), (noting “[m]any commentators use the Hashd as a general term, which makes sense when referring broadly to all Iraqi armed groups that (used to) fight [ISIS],” but that the term has “little meaning because it is too broad”); MICHAEL KNIGHTS, AL-BAYAN CTR. FOR PLANNING & STUDIES, THE FUTURE OF IRAQ’S ARMED FORCES 30–32 (2016) (noting the internal factions of the PMF and pointing out that although the PMU claim to be under government authority, they are in fact highly autonomous).

5. The term used to describe these different sub-militias varies; “brigade” is often used. However, it is important to note that “brigade” (or “*Kata’ib*” in Arabic) in this context is not as specific in terms of approximate size and functionality as in the context of North Atlantic Treaty Organization armed forces. Generally, these brigades have a degree of independence, which is based on light or motorized infantry sub-units, and may have some combat support and service support ability. Additional functionalities such as attached armor or artillery may be present, but depend on the equipment available. In terms of size, some brigades may number only a few hundred, while others claim to comprise tens of thousands of fighters and other personnel. See KNIGHTS, *supra* note 4, at 24–25 (discussing distribution of brigade strength). For some individual brigade capabilities as of 2016, see generally Amnesty Int’l, *Iraq: Turning a Blind Eye*, AI Index MDE 14/5386/2017 (Jan. 5, 2017) [hereinafter *Iraq: Turning a Blind Eye*].

6. See *Iraq: Turning a Blind Eye*, *supra* note 5, at 9 (“There are no official statistics available on the number of militias within the PMU. Media reports quote unspecified officials estimating that there are between 40 and 50 militias. The 2016 Federal Iraqi Budget indicated that there were 110,000 persons in the PMU. In December 2016, Ahmed al-Asadi, the spokesperson of the PMU, claimed that there were 141,000 fighters affiliated with the

brigades are included under the *Hashd al-Sha'abi* umbrella.⁷ The overwhelming majority of these brigades are Shi'ite,⁸ with “[r]oughly half . . . formed out of pre-existing Iraqi militias, some of which fought against coalition forces after the 2003 invasion.”⁹

Five years on from its first mobilization, the *Hashd al-Sha'abi*'s domestic legal status, conduct,¹⁰ and overt loyalties to

PMU.”). *But see* KNIGHTS, *supra* note 4, at 23–25 (suggesting lower overall numbers for the active PMUs). *See generally* EZZEDDINE & VAN VEEN, *supra* note 4, at 3–5 (discussing the “highly heterogeneous” nature of the Hashd). For a full account of the brigades, see Ferzad Kamyaran, *Who are Hashd al-Shaabi?*, ANF NEWS (May 31, 2017), <https://anfenglish.com/features/who-are-hashd-al-shaabi-20244> (providing a detailed description of each of the major PMF units, namely the Badr Brigade, Kata'ib Hezbollah, Kata'ib Sayyed al-Shuhada, Khorasan Brigades, Asa'ib Ahl al-Haq, and Saraya al-Salaam).

7. Renad Mansour, *More than Militias: Iraq's Popular Mobilization Forces are Here to Stay*, WAR ON THE ROCKS (Apr. 3, 2018), <https://warontherocks.com/2018/04/more-than-militias-iraqs-popular-mobilization-forces-are-here-to-stay>.

8. Garrett Nada & Mattisan Rowan, *Part 2: Pro-Iran Militias in Iraq*, U.S. INST. OF PEACE: IRAN PRIMER (Apr. 26, 2018), <https://iranprimer.usip.org/blog/2018/apr/26/part-2-pro-iran-militias-iraq>. *But see* Fanar Haddad, *Understanding Iraq's Hashd al-Sha'bi*, CENTURY FOUND. (Mar. 5, 2018), <https://tcf.org/content/report/understanding-iraqs-hashd-al-shabi> (“There is a tendency among observers to overlook the distinctions within the PMU, with many reports settling for the more-simplified (and value-laden) characterization that they are ‘Iran-backed Shia militias.’ In actuality, the PMU consists of units that have differing histories, affiliations, and loyalties.”).

9. Jack Watling, *The Shia Militias of Iraq*, ATLANTIC (Dec. 22, 2016), <https://www.theatlantic.com/international/archive/2016/12/shia-militias-iraq-isis/510938>.

10. *Iraq: Turning a Blind Eye*, *supra* note 5, at 11, 15 (“The PMU’s participation in the armed conflict to oust [ISIS] had been marred by war crimes and other violations of international humanitarian law and human rights law, mostly against members of the Sunni Arab community, including extrajudicial executions and other unlawful killings, torture and deliberate destruction of civilian homes and other property. Militias subjected thousands of men and boys to enforced disappearance. . . . PMU militias have carried out a systematic pattern of violations, including enforced disappearance, extrajudicial executions and other unlawful killings and torture of Sunni Arab men and boys, seemingly in revenge for [ISIS] attacks, and at times to extort money from the families of those they have abducted.”); *see also* MUSTAFA GURBUZ, CTR. FOR GLOB. POLICY, *THE ROLE OF IRAQ’S SHIITE MILITIAS IN THE 2018 ELECTIONS 2* (2018) (“Worse, Amnesty International and other independent agencies documented atrocities carried out by some PMF militias, drawing global attention to ‘war crimes’ and Baghdad’s ‘blind eye.’”);

Iran over Iraq¹¹ raise serious questions about their status under international law. Beginning in 2016, the Iraqi government took several steps to incorporate the *Hashd al-Sha'abi* militias into the Iraqi Security Forces (ISF). Most recently, on July 19, 2019, Iraqi Prime Minister Adil Abdul Mahdi issued a decree ordering these units to either fully integrate into the Iraqi military or disband. Despite this de jure incorporation, many of the militias remain outside Baghdad's control, continue to

Human Rights Watch, *Iraq: Investigate Abuses in Hawija Operation* (Sep. 28, 2017) [hereinafter *Iraq: Investigate Abuses in Hawija Operation*], <https://www.hrw.org/news/2017/09/28/iraq-investigate-abuses-hawija-operation> (“Units of the [PMF] affiliated with the Badr Organization detained and beat male villagers in a nearby village and took away four men without telling the men’s families where they were being taken or why, villagers told Human Rights Watch.”).

11. See Mustafa Kaymaz, *The Contested Loyalties of Popular Mobilization Forces in Iraq*, AL-SHARQ F.: BLOG (June 19, 2018), <https://www.sharqforum.org/2018/06/19/the-contested-loyalties-of-popular-mobilization-forces-in-iraq> (“In addition to difficulties in administrating its operations and incorporating it into the ISF, diverse loyalties within the PMF are seen as likely to create clashes in cases of conflicting interests among its powerful stakeholders. In short, despite its multipolar structure, much of the PMF is under the influence of Iran, since Iran is the strongest among the stakeholders in the PMF: the dominant groups under the PMF—the Badr Organization, Asa’ib Ahl al-Haq, and Kata’ib Hezbollah—are loyal to the Iranian Supreme Leader Ali Khamenei; and the PMF sometimes operates in defiance of the Iraqi Government.”); *THO Hosts Panel on KRG Independence Referendum and Regional Realities*, TURKISH HERITAGE ORG., <https://www.turkheritage.org/en/events/tho-hosts-panel-on-krq-independence-referendum-and-regional-realities-4753> (lasted visited Sept. 24, 2019) (“Amb. [James] Jeffrey called the [PMFs] on the ground in Iraq the ‘single biggest danger’ to the country’s independence. . . . Based on Iran’s ‘model’ with Hezbollah in Lebanon and the Houthis in Yemen, Amb. Jeffrey argued that Iran is angling for the same kind of influence in Iraq.”); Nada & Rowan, *supra* note 8 (“The PMF played an invaluable role in supplementing Iraq’s armed forces against ISIS, but it has become a source of tension among Iraqis, especially Sunnis and Kurds. ‘Iranian-backed components frequently seem to pursue their own agenda despite formally reporting to the prime minister,’ according to Sarhang Hamasaeed, director of Middle East Programs at the U.S. Institute of Peace.”).

violate the law,¹² and, in specific instances, operate on behalf of the Iranian Revolutionary Guard Corps (IRGC).¹³

Under the framework provided by international law, Iraq's incorporation of the *Hashd al-Sha'abi* into its armed forces raises three important questions: (1) What are the *Hashd al-Sha'abi* brigades as a matter of law?; (2) Which state or entities are responsible for their actions?; and (3) How can these responsible states insulate themselves from legal risks while ensuring compliance with the rule of law? By answering these three questions, this article outlines the legal liability that the Iraqi government bears, and highlights the potential responsibilities attributable to Iraq's allies following Baghdad's incorporation of the *Hashd al-Sha'abi*. The deep military ties between Iraq and the United States, in addition to Iran's role in *Hashd al-Sha'abi* operations, might make Iran, the United States, and Iraq all responsible for *Hashd al-Sha'abi* violations.

The above questions are not only relevant for understanding these specific Iraqi militia groups, but also for assessing the risks that Iraq's military suppliers and allies are facing after they indirectly supported units known to violate human rights and international law. This understanding can be extrapolated to additional scenarios wherein a fragile state adopts the conduct of non-state armed groups that violate international law or act against that state's interests.

Part I of this article discusses the history of the *Hashd al-Sha'abi* and focuses on its road to legalization. This section also examines the split loyalties of the brigades and the limited command structure, along with their violations of international law (documented extensively in open source media). Part II outlines the relevant principles of international humanitarian law and the customary international law of state attribu-

12. See Ben Taub, *Iraq's Post-ISIS Campaign of Revenge*, NEW YORKER (Dec. 17, 2018), <https://www.newyorker.com/magazine/2018/12/24/iraqs-post-isis-campaign-of-revenge> (noting that the militias have a reputation for carrying about abuses and acting as if they are above the law).

13. See, e.g., Ahmed Rasheed & John Davison, *U.S. Pressures Baghdad Over Iran-Backed Militias*, REUTERS, May 15, 2019, <https://www.reuters.com/article/us-usa-iran-iraq/u-s-pressures-baghdad-over-iran-backed-militias-idUSKCN1SLOF6> ("Secretary of State Mike Pompeo's surprise visit to Baghdad this month came after U.S. intelligence showed Iran-backed Shi'ite militias positioning rockets near bases housing U.S. forces, according to two Iraqi security sources.").

tion. Part III illustrates that as a matter of international law on state responsibility and international humanitarian law, the de jure incorporation of the *Hashd al-Sha'abi* into the Iraqi Security Forces from 2016 onward is sufficient for each militia to be considered an organ of the Iraqi government. A July 2019 Prime Ministerial decree integrating the militias makes this conclusion even more robust. This section will also consider Baghdad's failure to control certain brigades, along with the possibility that Iran and the IRGC exercise effective control over some of these units. The section also concludes that Iranian control of these units is irrelevant to determining their international legal status. As a result, we argue that Iraq is responsible for the *Hashd al-Sha'abi*'s actions under international law regardless of Iranian influence—a conclusion that requires Iraq to exercise more control over the militia groups or disavow the forces entirely. Finally, the last section will highlight the legal risks facing the United States as a result of its support of the ISF.

Even as the situation in Iraq changes, countries which support the ISF may bear some international legal responsibility for assisting a state-sanctioned group that is partially integrated into the official armed forces and commits wrongful and illegal acts. If customary international law and treaty law holds third-party states responsible for the actions of non-state groups with close ties to an allied military, the precedent has implications far beyond Iraq. When non-state armed militias become closely tied to a fragile state's armed forces, an emerging norm of third-party liability may dissuade stronger states from providing needed assistance to their more fragile allies. And without this assistance, these fragile states may remain unable to peacefully conclude internal conflicts.

This risk should incentivize Iraq, and other recipients of U.S. military aid, to create robust legal and political mechanisms designed to bring non-state armed actors under the total control of the owning state. At the same time, strong aid-giving states like the United States must take steps to help host nations build robust command and control systems, and should be willing to take credible measures (including cutting off military aid) where those host nations fail to comply.

A. *Initial Formation and Legitimization of the Hashd al-Sha'abi Committee*

Iraq's Constitution of 2005 formally banned non-state militias,¹⁴ when Iraq's armed forces were placed under civilian control.¹⁵ The legitimization of Shi'ite militias began near the end of Prime Minister Nouri al-Maliki's time in office. By his second term, "Maliki had begun working with and supporting seven paramilitaries, allowing them to officially operate in Iraq."¹⁶ As his policies became increasingly sectarian, Maliki grew suspicious of the ISF and actively used Shi'ite militias as an alternative to the country's organized armed forces.¹⁷

If militias were becoming more accepted under Maliki, the rise of ISIS turbo-charged their development. In the chaos following the fall of Mosul and the collapse of the ISF units

14. Article 9, Section 1–2, Duster Jumhuriyat al-'Iraq [The Constitution of the Republic of Iraq] of 2005 [hereinafter Constitution of Iraq] ("A. The Iraqi armed forces and security services will be composed of the components of the Iraqi people with due consideration given to their balance and representation without discrimination or exclusion. They shall be subject to the control of the civilian authority, shall defend Iraq, shall not be used as an instrument to oppress the Iraqi people, shall not interfere in the political affairs, and shall have no role in the transfer of authority. B. The formation of military militias outside the framework of the armed forces is prohibited. C. The Iraqi armed forces and their personnel, including military personnel working in the Ministry of Defense or any subordinate departments or organizations, may not stand for election to political office, campaign for candidates, or participate in other activities prohibited by Ministry of Defense regulations. This ban includes the activities of the personnel mentioned above acting in their personal or professional capacities, but shall not infringe upon the right of these personnel to cast their vote in the elections. . . . Military service shall be regulated by law."); *see also* U.S. DEP'T OF DEF. REP. TO CONGRESS MEASURING STABILITY & SECURITY IN IRAQ, Oct. 2005, at 1, 24 ("Even if they do not take up arms against the government, militias can pose a long-term challenge to the authority and sovereignty of the central government. This was the driving force behind the creation of Coalition Provisional Authority Order 91 and the Transition and Re-Integration Committee. For the same reason, Article 27 of the Transitional Administrative Law and Article 9 of the draft Iraqi Constitution prohibit armed forces or militias that are not part of the Iraqi Armed Forces.").

15. Constitution of Iraq, *supra* note 14, Article 9, Section 1.

16. MANSOUR & JABAR, *supra* note 1, at 6 (explaining that Maliki and his political party, the Dawa Party, had previously opposed non-state militias, but state building failures and mistrust of the official armed forces resulted in Maliki turning to militias).

17. *Id.*

north of Baghdad, Maliki turned to non-state militias to defend his government. On June 10, 2014, Maliki gave a televised address, in which he stated that his “cabinet ha[d] ‘created a special crisis cell to follow up on the process of volunteering and equipping and arming’” volunteers,¹⁸ and declared that “[t]he cabinet ‘praises the willingness of the citizens and the sons of the tribes to volunteer and carry weapons . . . to defend the homeland and defeat terrorism.’”¹⁹

But Grand Ayatollah Ali al-Sistani’s June 13, 2014 *fatwa* legitimized the *Hashd al-Sha’abi* and prompted tens of thousands of Iraqis to join these volunteer units.²⁰ Though its language demonstrates that al-Sistani was calling on Shi’ites to “support” the Republic of Iraq by joining legitimate security forces,²¹ the *fatwa* declared the fight against ISIS a jihad and called upon believers to volunteer for the security services.²² Shortly after the *fatwa* was issued, Maliki formally established the *Hay’at al-Hashd al-Sha’abi*, or Popular Mobilization Forces Committee (PMC), to “institutionalize and unite paramilitary groups that he had been relying on for the past few years of his

18. *Maliki Offers to Arm Citizens Willing to Fight ISIS*, AL-ARABIA (June 10, 2014), <http://english.alarabiya.net/en/News/middle-east/2014/06/10/Iraq-insurgents-overrun-Mosul-govt-HQ.html>.

19. *Id.*

20. Alexander Dziadosz & Raheem Salman, *After Years Off-Stage, Iraq’s Sistani Takes Charge*, REUTERS, June 29, 2014, <https://www.reuters.com/article/us-iraq-security-clerics-insight/after-years-off-stage-iraqs-sistani-takes-charge-idUSKBN0F30KX20140629>.

21. Kirk H. Sowell, *The Rise of Iraq’s Militia State*, CARNEGIE ENDOWMENT FOR INT’L PEACE, (Apr. 23, 2015), <https://carnegieendowment.org/sada/59888>. See *Friday Prayers Address*, *supra* note 1 (“Therefore, it is incumbent on citizens able to carry weapons and fight the terrorists, to defend their country, their people, and their holy sites, they should volunteer to serve in the security forces for this holy purpose.” (translation provided by author)).

22. See generally *Friday Prayers Address*, *supra* note 1 (labelling the fight against ISIS “jihad,” and further stating: “[T]he nature of the imminent danger to Iraq and its people now requires defending the nation, its people, and the lands of [its] citizens, and this is wajib kafai [collective duty], a duty incumbent on those capable of realizing the objective, which is preserving Iraq, its people and its holy sites. For example, if ten thousand take up the call and achieve the objective then the duty is not incumbent upon others, if the objective isn’t achieved then the duty remains. Therefore, it is incumbent on citizens able to carry weapons and fight the terrorists, to defend their country, their people, and their holy sites, they should volunteer to serve in the security forces for this holy purpose.” (translation provided by author)).

premiership.”²³ Maliki formed the non-state militia without his own parliament’s approval—an action which facially violated Article (9) (b) of Iraq’s 2005 constitution.

B. *The Convoluting Structure of the Hashd al-Sha’abi*

1. *Internal Factions and Power Structures*

The *Hashd al-Sha’abi* is politically and ideologically fragmented into three broad groups: the brigades loyal to the Supreme Leader of Iran, Ayatollah Ali Khamenei (known as the *Hashd al-Wala’i*); the brigades supporting the Shi’ite leader in Iraq, Grand Ayatollah Ali al-Sistani (known as the *Hashd al-Raji’i*); and the brigades following Iraq’s populist cleric, Muqtada al-Sadr.²⁴ In addition, a number of non-Shi’ite militia groups representing the interests of specific minority groups have also been absorbed into the *Hashd al-Sha’abi*’s formation.²⁵ Officially, all brigades are governed by the *Hay’at al-Hashd al-Sha’abi*. Since 2016, this commission has reported to the Iraqi Prime Minister²⁶ and is responsible for recruiting,

23. Renad Mansour, *The Popular Mobilisation Forces and the Balancing of Formal and Informal Power*, LONDON SCH. ECON. & POL. SCI.: MIDDLE E. CTR. BLOG (Mar. 15, 2018) <http://blogs.lse.ac.uk/mec/2018/03/15/the-popular-mobilisation-forces-and-the-balancing-of-formal-and-informal-power> (further noting that the PMC was formed to better organize preexisting militias in response to the collapse of the official armed forces at the hands of ISIS); see also Sowell, *supra* note 21 (evidencing Maliki’s reliance on the paramilitary groups, based on his recruiting efforts: “Maliki offered volunteers roughly \$750 per month, including amounts for salary, hazard pay, and food allowance, although few volunteers were paid for much of 2014”; Maliki issued these incentives despite lacking “legal basis” to grant them).

24. MANSOUR & JABAR, *supra* note 1, at 1; see also Haddad, *supra* note 8 (noting that the PMU consists of units with differing loyalties).

25. See, e.g., Kaymaz, *supra* note 11 (“Apart from the Shiite groups, there are Sunni groups such as Liwa Salah al-Din . . . and Yazidi groups such as Sinjar Resistance Units . . . , which is affiliated to the Kurdistan Workers Party Even though it is not a monolithic group, it is hard to deny Iran’s influence over many groups in the PMF.”).

26. See Article 1(1), Popular Mobilization Committee Law No. 40 of 2016, al-Waqa’i’ al-Iraqiyah [Iraqi Official Gazette] 4429 of Jan. 5, 2017 (Iraq) [hereinafter Popular Mobilization Committee Law] (“The *Hashd al-Sha’abi* Committee is formed in accordance with Diwani Order No. 91 of February 24, 2016, taking on legal personhood and is considered a part of the Iraqi Armed Forces, and is subordinate to the Commander-in-Chief of the Armed Forces [the Prime Minister].” (translation provided by author and attached *infra* Appendix A)); Diwani Order on the Structure of *Hashd al-Sha’abi* of

paying, and communicating with *Hashd al-Sha'abi* units.²⁷ Iranian-backed officials²⁸ holding key posts²⁹ in this structure include: National Security Advisor Falih al-Fayyad, a former Dawa Party official, as the PMC Chairman;³⁰ Abu Mahdi al-Muhandis, closely aligned with Iran, as the PMC Deputy Commander;³¹ and the *Munazzamat Badr* leader Hadi al-Amiri, who plays a central role in coordinating Iranian-backed brigades.³²

Officially, the *Hashd al-Sha'abi* chain of command runs from ordinary “fighters” and “volunteers,”³³ through a number

March 2018 [hereinafter Diwani Order of March 2018] (discussing the structure of *Hashd al-Sha'abi*) (translation provided by author and attached *infra* Appendix B).

27. See MANSOUR & JABAR, *supra* note 1, at 18–19 (outlining how Prime Minister Abadi began paying the salaries of the PMF after he fell out with senior PMF officials over pay and salaries).

28. See Michael Eisenstadt & Michael Knights, *Mini-Hizballahs, Revolutionary Guard Knock-Offs, and the Future of Iran's Militant Proxies in Iraq*, WAR ON THE ROCKS (May 9, 2017), <https://warontherocks.com/2017/05/mini-hizballahs-revolutionary-guard-knock-offs-and-the-future-of-irans-militant-proxies-in-iraq> (discussing the links and similarities between the PMF and the IRGC).

29. See HASSAN ABBAS, FRIEDRICH-EBERT-STIFTUNG, *THE MYTH AND REALITY OF IRAQ'S AL-HASHD AL-SHAABI (POPULAR MOBILIZATION FORCES): A WAY FORWARD* 5–6 (2017) (noting that although “on paper, the Hashd Commission reported directly to Prime Minister Haider al-Abadi,” key personnel were backed by or aligned with Iran); see also Ahmad Majidyar, *Iran-Backed Group Says Hashd al-Shaabi Will Not Merge into Iraq's Security Institutions*, MIDDLE E. INST. (Mar. 12, 2018), <https://www.mei.edu/publications/iran-backed-group-says-hashd-al-shaabi-will-not-merge-iraqs-security-institutions> (noting that “[s]ome PMF leaders still take their instructions and orders from Tehran [rather] than Baghdad”).

30. ABBAS, *supra* note 29, at 5.

31. See RANJ ALAALDIN, BROOKINGS DOHA CENTER, *CONTAINING SHIITE MILITIAS: THE BATTLE FOR STABILITY IN IRAQ I* (2017) (noting that major PMF units “report to [the PMC] de facto leader, Hadi al-Amiri (the head of the Badr Brigade) and his deputy, Abu Mahdi al-Muhandis (the head of Kataib Hezbollah)” and that both enjoy “considerable resources and patronage from sponsors in Tehran”); see also MANSOUR & JABAR, *supra* note 1, at 4, 16–19 (explaining criticism that Muhandis has faced based on his allegiances, as well as his influence in the PMC).

32. See ALAALDIN, *supra* note 31, at 1 (noting that major PMF units report to Hadi al-Amiri, who enjoys “considerable resources and patronage from sponsors in Tehran”).

33. See Diwani Order of March 2018 *supra* note 26, Article 2 (describing the organizational structure and titles of the *Hashd al-Sha'abi*) (translation provided by author).

of designated officers,³⁴ to the PMC Chairman and his two deputies,³⁵ and finally ends with Iraq's Prime Minister. But this official structure does not always reflect the command structure in reality.³⁶ Iraqi officials have expressed concern at Iran's significant influence over these militias, particularly as certain brigades have started to project their power onto internal Iraqi politics.³⁷

Iranian influence is so powerful within the *Hashd al-Sha'abi* that certain brigades likely function as Iranian proxies.³⁸ Specifically, the Iranian-backed brigades "consider themselves an important element of the Iran-led 'axis of resistance' and have taken on additional combat roles beyond Iraq's borders . . . [and] they do not necessarily follow the Iraqi com-

34. See *id.* (creating titles in the *Hashd al-Sha'abi* organizational structure).

35. *Id.* at Article 5.

36. See, e.g., Ranj Alaaldin, *Iran's Weak Grip How Much Control Does Tehran Have Over Shia Militias In Iraq?*, FOREIGN AFFAIRS (Feb. 11, 2016), <https://www.foreignaffairs.com/articles/iran/2016-02-11/irans-weak-grip> (discussing the nature of Iran's relationship with the groups that "constitute the core of the PMF"); see also Eisenstadt & Knights, *supra* note 28 (discussing the links and similarities between the PMF and the IRGC); MANSOUR & JABAR, *supra* note 1, at 16–19 ("According to multiple PMF sources, Muhandis has the final word on whom to pay. By being in charge of dividing the lump funds designated for the PMF from the PMO, then, pro-Khamenei leaders such as Ameri and Muhandis are in a position to control the flow of volunteers by allocating funds to their preferred groups. The prime minister has little knowledge of how precisely these financial resources are managed within the commission.").

37. See Saif Hameed, *Iraqi Parliament Passes Contested Law on Shi'ite Paramilitaries*, REUTERS, Nov. 26, 2016, <https://www.reuters.com/article/us-mideast-crisis-iraq-military/iraqi-parliament-passes-contested-law-on-shiite-paramilitaries-idUSKBN13L0IE> ("I don't understand why we need to have an alternative force to the army and the police," said Sunni member of parliament (MP) Raad al-Dahlaki. "As it stands now, it would constitute something that looks like Iran's Revolutionary Guard," he added."); see also Garrett Nada, *Part 1: Iran's Role in Iraq*, U.S. INST. OF PEACE: IRAN PRIMER (Apr. 26, 2018), <http://iranprimer.usip.org/blog/2018/apr/26/part-1-iran-s-role-iraq> (discussing Iranian influence in Iraq, including detail of Iran's role in supporting the *Hashd al-Sha'abi*).

38. See, e.g., David Daoud, *PMF Deputy Commander Muhandis Details Hezbollah Ops in Iraq*, FDD'S LONG WAR JOURNAL (Jan. 9, 2017), <https://www.longwarjournal.org/archives/2017/01/pmf-deputy-commander-muhandis-details-hezbollah-ops-in-iraq.php> (discussing the relationships between PMF leader Abu Mahdi al-Muhandis and the Iranian military and state).

mander-in-chief's orders."³⁹ In fact, these same militias have disobeyed Prime Minister Haider al-Abadi on several occasions.⁴⁰ The militias' loyalty to Iran stems from their belief, according to one strand of Shi'a teaching, that they are obliged to follow Ayatollah Khamenei given his status as the *Wali al-Faqih* (the Guardian of the Islamic Jurist) "regardless of their nationality."⁴¹

Almost all Iranian-backed Iraqi militias openly admit that they follow the Iranian Supreme Leader and consider his religious instructions to have primacy over Iraqi state law. Qais al-Khazali, the secretary-general of *'Asa'ib Ahl al-Haq*, a powerful Iranian-backed brigade, has emphasized that "[w]hen religious law is in contradiction with state law, the former prevails."⁴² Other brigade leaders reject subordination to the ISF merely as a matter of pride. One brigade commander claimed that the *Hashd al-Sha'abi* was "in some respects even more powerful than the Iraqi Army."⁴³ This same commander praised his militia's military capabilities and stated: "We have not come to replace the Army. . . . Quite the opposite, we are a parallel force to the Army. Therefore, I emphasize that the Hashd al-Sha'abi will continue to exist and all voices against it will be silenced."⁴⁴

A July 2019 Diwani Order issued by then Prime Minister Abdul-Mahdi has started to shift this structure, forcing all ele-

39. Hamdi Malik, *The Future of Iraq's Popular Mobilization Forces*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Sep. 21, 2017) [hereinafter Malik, *Future of Iraq's PMF*], <https://carnegieendowment.org/sada/73186>; see Hamdi Malik, *Is Iran Running Iraq's Popular Mobilization Units?*, AL-MONITOR (July 11, 2017), <https://www.al-monitor.com/pulse/fa/originals/2017/07/iraq-mosul-pmu-us-abadi.html> ("It seems that PMU leaders close to Iran don't back Abadi's non-escalation policy. This is why they don't comply with all of his orders. They openly criticize him, which contradicts military regulations. In his weekly press conference July 4, Abadi expressed further frustration with some PMU members who are not carrying out his commands.").

40. See, e.g., Malik, *Future of Iraq's PMF*, *supra* note 39 (providing a discussion of the poor relationship between the PMF and Prime Minister, and refusals of the former to comply with the latter).

41. *Id.*

42. *Id.*

43. Ahmad Majidiyar, *Iran's Militia Allies in Iraq Eye Election Victory to Consolidate Gains, Expel US*, MIDDLE E. INST. (May 11, 2017), <http://www.mei.edu/content/io/iran-s-militia-allies-eye-election-victory-consolidate-gains-expel-us>.

44. *Id.*

ments of the PMU formally under the command of the Iraqi Armed Forces or requiring them to disband.⁴⁵ However, these changes have yet to be fully implemented and almost all of these old command structures remain in place. Despite this order, it is likely that problematic militia leaders and Iranian backers will continue to avoid submitting to the ISF command structure.⁴⁶ Some integration occurred by September 2019, and the PMC leadership expressed support for Abdul-Mahdi's drive for integration.⁴⁷ Nevertheless, many brigades and unit commanders have yet to join the Iraqi Army,⁴⁸ and observers remain skeptical that Iran-backed militias will willingly join the Iraqi Army's command structure or follow Iraqi Government orders.⁴⁹

45. Jared Szuba, *Mahdi Orders Full Integration of Shia Militias Into Iraq's Armed Forces*, DEF. POST (July 3, 2019), <https://thedefensepost.com/2019/07/03/iraq-mahdi-orders-popular-mobilization-units-integration>.

46. See Jonathan Spyer, *Behind the Lines: Militias Merge into Iraqi Security Forces?*, JERUSALEM POST (July 4, 2019), <https://www.jpost.com/Opinion/Behind-the-Lines-Militias-merge-into-Iraqi-security-forces-594661> (noting that previous orders have failed to integrate the militias); see also Michael Rubin, *Reining in Iraq's Militias Will Take More than an Executive Order*, WASH. EXAMINER (July 24, 2019), <https://www.washingtonexaminer.com/opinion/reining-in-iraqs-militias-will-take-more-than-an-executive-order> (“Symbolically, [the order] might be the right move but, in reality, it does little that Abdul-Mahdi's predecessor Haider al-Abadi did not also order.”).

47. See Lawk Ghafuri, *Iraqi PM Approves New PMF Structure in Step Towards Its Integration into Army*, RUDAW (Sept. 21, 2019) <https://www.rudaw.net/english/middleeast/iraq/210920192> (noting that Falih Fayyadh, the head of the PMC, issued an order requesting that “all PMF units begin work to conform to the new structure”).

48. See Doran Itzchakov, *The Al-Hashd al-Sha'abi Militias at a Crossroads*, BEGIN-SADAT CTR. FOR STRATEGIC STUD., (Sept. 27, 2019) <https://besacenter.org/perspectives-papers/al-hashd-shabi-militias> (noting that PMF commanders do not intend to implement the Prime Minister's order, and highlighting a recent case of a militia directly refusing orders to withdraw from an area of operation).

49. See Jonathan Spyer, *Iraqi Government Fails to Rein in Iran-Backed Militias in Nineveh Province: Implications for Israel*, JERUSALEM INST. FOR STRATEGY AND SECURITY, (Oct. 7, 2019), <https://jiss.org.il/en/spyer-iraqi-government-fails-to-rein-in-iran-backed-militias> (reporting on initial attempts to integrate the militias and concluding that “no change in the status quo has taken place”); Louisa Loveluck & Mustafa Salim, *As Tensions Boil in the Persian Gulf, Iraq Seeks to Rein in Iran-Aligned Militias*, WASH. POST, (Sept. 26, 2019) https://www.washingtonpost.com/world/middle_east/as-tensions-boil-in-the-persian-gulf-iraq-seeks-to-rein-in-iran-aligned-militias/2019/09/26/e363075a-d94c-11e9-adff-79254db7f766_story.html (observing that the militias con-

2. *Foreign Funding, Training, and Equipping of the Hashd al-Sha'abi*

The *Hashd al-Sha'abi* brigades “operating across Iraq are equipped with a wide variety of arms and ammunition manufactured in at least 16 countries.”⁵⁰ This equipment is similar to that supplied to the ISF, but the *Hashd al-Sha'abi* use Iranian weaponry⁵¹ in addition to American-made arms and equipment.⁵²

Iran supplies large quantities of arms and logistical support through the IRGC to its affiliated brigades.⁵³ One Iranian-backed *Hashd al-Sha'abi* leader noted that “[t]he support of the Islamic Republic [of Iran] has been essential, and the youth of [Lebanese-based] Hezbollah had an essential role in training, planning, and supporting [the PMF factions].”⁵⁴ Similarly, the same leader also praised Iranian and Iraqi Shi'ite clerics for supporting the PMF, stating: “[t]he Islamic Republic opened its treasury for us when weapons and ammunition were lacking With [Iranian] support, we were able to defeat [ISIS] militarily.”⁵⁵

Although it is very clear that the *Hashd al-Sha'abi* groups have enjoyed extensive Iranian support, since 2014, Western weaponry and equipment has also been used to supply the formation:

tinue to enjoy autonomy in Iraq, and highlighting various instances of attacks on the United States and Saudi Arabia that were linked to PMF militias).

50. *Iraq: Turning a Blind Eye*, *supra* note 5, at 22 (providing an extensive overview of PMF brigade arms, capabilities and human rights abuses).

51. *See generally id.* at 27–30 (documenting Iranian sources of supply for PMU militias).

52. *Id.* at 22.

53. Michael R. Gordon & Eric Schmitt, *Iran Secretly Sending Drones and Supplies Into Iraq, U.S. Officials Say*, N.Y. TIMES (June 25, 2014), https://www.nytimes.com/2014/06/26/world/middleeast/iran-iraq.html?_r=0; *see Iraq: Turning a Blind Eye*, *supra* note 5, at 27 (noting Iranian sources of supply for PMU militias).

54. Baxtiyar Goran, *Hashd al-Shaabi Reveals 'Essential' Role of Iran, Hezbollah in Iraq*, KURDISTAN 24 (Jan. 30, 2018), <http://www.kurdistan24.net/en/news/ced2b3cc-7c54-4fa2-8492-b8c3dac4c742>; *see also* Watling, *supra* note 9 (“‘We are allies of the U.S. and have good relations with Iran,’ [Faleh al-Fayad] said. ‘After the fall of Mosul, Iran supported us. It is in Iran’s interest to fight Daesh, which is why they support [the PMF]. We have American and NATO advisers. We accept everyone’s help.’”).

55. Goran, *supra* note 54.

Photographic evidence shows PMU militias deploying a range of armored fighting vehicles that are standard issue with Iraqi security forces including the US High Mobility Multipurpose Wheeled Vehicle (HMMWV aka Humvee) and M1117 armoured personnel carrier seen in service with Kata'ib Hizbullah in March 2016; Iraqi light armored vehicle (known as "The Badger"); the US Caiman tactical vehicle; [and] US M113 armoured personnel carriers in service with 'Asa'ib Ahl al-Haq in March 2016 . . .⁵⁶

A U.S. Department of Defense (DOD) Report on Operation Inherent Resolve also noted that "PMF units had obtained as many as nine M1 Abrams tanks" originally provided to the Iraqi Army by the U.S.⁵⁷ While imagery confirms extensive *Hashd al-Sha'abi* use of American arms and equipment, U.S. officials deny knowledge of equipment transfers from the ISF to *Hashd al-Sha'abi* groups. The U.S. State Department notes that it continues to remind Baghdad of its obligation to keep U.S.-provided equipment under ISF control, and ISF officials continue to claim that all such equipment remains within their control.⁵⁸ However, the State Department has acknowledged that tanks, along with other "U.S.-provided military equipment sent to support the [ISF] . . . had fallen into the hands of Iranian-backed [*Hashd al-Sha'abi*] militias."⁵⁹ American private industry began responding to this reality in 2018, when, for example, General Dynamics—which was contracted to maintain the ISF's American made tanks—withdrawed from Iraq amid claims that Baghdad "broke a contractual agreement that only the Iraqi army would use the vehicles."⁶⁰

56. *Iraq: Turning a Blind Eye*, *supra* note 5, at 26, 32–33.

57. U.S. DEP'T OF DEF. LEAD INSPECTOR GEN. REP. TO U.S. CONGRESS OPERATION INHERENT RESOLVE & OPERATION PAC. EAGLE, Oct.–Dec. 2017, at 1, 51 (2017).

58. *Id.*

59. *Id.* at 8.

60. Alex MacDonald, *US Arms Firm 'Quits Iraq' Over Use Of Abrams Tanks by Iran-Backed Militia*, MIDDLE E. EYE (Feb. 2, 2018), <https://www.middleeasteye.net/news/us-arms-firm-quits-iraq-over-use-abrams-tanks-iran-backed-militia>; see Baxtiyar Goran, *American Firm Suspends Abrams Tank Maintenance in Iraq, Threatens Final Withdraw*, KURDISTAN 24, (Jan. 28, 2018), <http://www.kurdistan24.net/en/news/c42aa6e8-115f-4585-83b9-4c84511195ad> (noting that General Dynamics had withdrawn "from its base in Baghdad's al-Muthanna airport after finding out that Iraq violated the terms of the contract which

C. *Legalization and Baghdad's Attempts to Take Control*

1. *The 2016 Hashd al-Sha'abi Legislation and the Brigades' Entry into National Politics*

For its first two years, the *Hashd al-Sha'abi* existed in a legal grey area. These units were illegal under the Iraqi constitution, but legitimized by the Prime Minister's orders and political support from the Shi'a clerical establishment. Then, in November 2016, "Iraq's parliament legalized the PMF, a move supported by Shiites but opposed by Sunnis, many of whom boycotted the vote. The law passed with 170 out of 328 possible votes."⁶¹ This legislation officially legalized the *Hashd al-Sha'abi* by initiating its incorporation into the ISF.⁶²

By 2018, the *Hashd al-Sha'abi* was fully incorporated into the Iraqi military due to the 2016 *Hashd al-Sha'abi* law,⁶³ two orders (in 2016 and 2018) issued by the Prime Minister,⁶⁴ and, by extension, Article 9 of the Constitution of Iraq.⁶⁵ While legalizing the *Hashd al-Sha'abi*, these documents prohibited all military personnel, including members of the militias, from engaging in political activity.⁶⁶ Despite this prohibition, several

only authorized the Iraqi army to use the US provided tanks"); David Axe, *Made in America, But Lost in Iraq*, FOREIGN POLICY (Mar. 2, 2018), <https://foreignpolicy.com/2018/03/02/u-s-made-tanks-that-fell-into-militia-hands-in-iraq-sparks-assistance-standoff> (explaining the departure of General Dynamics contractors from Iraq).

61. Nada & Rowan, *supra* note 8; see *Alsoal-Sumariya Niyuws Tanshuru Nass Qanun il-Hashd il-Sha'abi* [*Alsumaria News Publishes the Text of the Popular Mobilization Law*], ALSUMARIA (Nov. 26, 2016), <https://www.alsumaria.tv/news/187029/الحشدالشع-قانون-نص-تنشر-نيوز-السومرية> (publishing the exact text of the Popular Mobilization Committee Law).

62. Popular Mobilization Committee Law, *supra* note 26, Article 1, Section 1. See generally Mansour, *supra* note 23 (detailing the rise of the PMF, including its legalization).

63. See Popular Mobilization Committee Law, *supra* note 26, Article 1. *But see* NAME REDACTED (SPECIALIST IN MIDDLE EASTERN AFFAIRS), CONG. RESEARCH SERV., R45025, IRAQ: BACKGROUND & U.S. POLICY 7 (2017) (noting that in July 2017, "the U.N. Secretary-General reported to the Security Council that 'no tangible progress' had been made in the implementation of the PMF law").

64. Diwani Order No. 91 of 2016; Diwani Order of March 2018, *supra* note 26.

65. Constitution of Iraq, *supra* note 14, Article 9, Section 1.

66. In the 2016 law, PMF members were expressly prohibited from engaging in political activity: "Members of the *Hashd al-Sha'abi* Committee who join this formation shall be disassociated from all political, partisan, or col-

senior members of *Hashd al-Sha'abi* units ran for public office during Iraq's 2018 elections, with the assistance of the PMFs.⁶⁷ After the polls closed, the two largest political coalitions⁶⁸—*Saairun*, led by Moqtada al-Sadr, and *Fatah*, led by Hadi al-Ameri—had originated from *Hashd al-Sha'abi* units. *Hashd al-Sha'abi* would go on to use this political power to protect their autonomy, and the new Prime Minister, Adil Abdul Mahdi, was chosen as a consensus candidate to appease the new PMF-backed parliamentary coalitions.⁶⁹ While these coalitions are rivals, they have recently agreed to work together on a parliamentary resolution demanding that the United States withdraw from Iraq.

2. Prime Minister Abadi's Attempts to Control the Hashd al-Sha'abi

When Haider Abadi took over from Nouri al-Maliki as Prime Minister in late 2014, he worked to create a legal framework for the *Hashd al-Sha'abi*. In April 2015, Abadi held a cabinet vote⁷⁰ “that formally put [the *Hashd al-Sha'abi*] under his

lective organizations, and political activity shall not be permitted in its ranks.” Participation in elections through the casting of ballots is not prohibited. Popular Mobilization Committee Law, *supra* note 26, Article 1, Section 2.

67. See NANCY EZZEDDINE, MATTHIAS SULZ & ERWIN VAN VEEN, NETH. INST. OF INT'L RELATIONS CLINGENDAEL, FROM SOLDIERS TO POLITICIANS? IRAQ'S AL-HASHD AL-SHA'ABI 'ON THE MARCH' 2 (2018) (noting that Hadi al-Ameri's Al-Fatah had a “block of 48 seats” following the May 2018 election).

68. Notably, overall, Ameri's coalition held 48 (out of 329) seats, with Moqtada al-Sadr's coalition claiming 54. The coalition then-Prime Minister Abadi's coalition, came third with 42 seats. CHRISTOPHER M. BLANCHARD, CONG. RESEARCH SERV., R45633, IRAQ: ISSUES IN THE 116TH CONGRESS 7 (2019).

69. See Renad Mansour, *Reining in Iraq's Paramilitaries Will Just Make Them Stronger*, FOREIGN POL'Y, (July 9, 2019), <https://foreignpolicy.com/2019/07/09/reining-in-iraqs-paramilitaries-will-just-make-them-stronger> (“However, the single most important reason why the senior PMF leadership at this point supports the prime minister's new decree is because of the prime minister himself. Unlike former Prime Minister Haider al-Abadi, who at times worked against the PMF, Mahdi owes his power to the paramilitary groups that backed his candidacy. He does not have a political party to back him.”)

70. *al-Qararat Majlis il-Wuzara' Lil-Jalsa Raqm 14 fi 4/7/2015 [Decisions of the Council of Ministers of the 14th Meeting on 4/7/2015]*, REPUBLIC OF IRAQ: GENERAL SECRETARIAT FOR COUNCIL MINISTERS (Apr. 7, 2015), <http://web-cache.googleusercontent.com/search?q=cache:6Cp53-s08KYJ:cabinet.iq/articleshow.aspx%3Fid%3D6040+%&cd=1&hl=en&ct=clnk&gl=US> (“The Cabi-

authority as commander-in-chief.”⁷¹ In March 2018, Abadi issued a Diwani Order⁷² designed to dilute the power of influential Iranian-backed officials and militia leaders⁷³ by “appoint[ing] a second deputy to the chairman of the PMF commission.”⁷⁴ This order “dilut[ed] the influence of the current deputy chairman,” who was “at odds with PMF groups loyal to Grand Ayatollah Ali al-Sistani.”⁷⁵ Crucially, the order also codified the *Hashd al-Sha’abi*’s rank structure and explicitly brought it under Iraqi laws governing the armed forces.⁷⁶ Additionally, the order codified the *Hashd al-Sha’abi*’s promotions and financial benefits to mirror those of the ISF.⁷⁷

Despite the 2016 and 2018 legal incorporation, Iran-linked officials maintained their positions within the *Hashd al-Sha’abi*’s chain of command, and an open rift appeared between Abadi and the PMC’s leaders after the 2018 elections.⁷⁸ Following the elections, Abadi removed Falih al-Fayyad from his position as PMC Chairman, and appointed himself in-

net held its fourteenth regular session in 2015 in Baghdad . . . under the chairmanship of the Prime Minister Dr. Haider al-Abadi. The Cabinet issued the following decisions: 1- the Cabinet decided to direct all ministries and State institutions dealing with the Hashd al-Sha’abi Commission to treat with it as an official commission linked to the Prime Minister, and the Commander in Chief of the armed forces is assuming command and control over Hashd al-Sha’abi operations.” (translation provided by author).

71. Sowell, *supra* note 21.

72. Diwani Order of March 2018, *supra* note 26.

73. See Mansour, *supra* note 7 (“Prime Minister Haider al-Abadi issued a decree to rein in the militias through an integration process. This has traditionally meant incorporating fighters into the command chain of the traditional state armed forces (*al-quwwat al-musalaha*), which legally fall under the Ministry of Defence or the Ministry of Interior.”).

74. Ihsan Noori, *Abadi Reins in the Popular Mobilization Forces*, 1001 IRAQI THOUGHTS (Mar. 12, 2018), <http://1001iraqithoughts.com/2018/03/12/abadi-reins-in-the-popular-mobilization-forces>.

75. *Id.*

76. Diwani Order of March 2018, *supra* note 26, Article 6.

77. See *id.* (stating that “the Law of Civil Service No. 24 of 1960 (amended), the Unified Retirement Law No. 9 of 2014, and the Law of State and Public Sector Salaries No. 22 of 2008 (amended) shall apply” to the *Hashd al-Sha’abi* (translation provided by author)).

78. Hayder al-Khafaji, *Rifts over Control of the Hashd al-Shaabi: Implications for Government Formation*, LONDON SCH. ECON. & POL. SCI.: MIDDLE E. CTR. BLOG (Oct. 17, 2018), <http://blogs.lse.ac.uk/mec/2018/10/17/rifts-over-control-of-the-hashd-al-shaabi-implications-for-government-formation>.

stead.⁷⁹ The Prime Minister stated that he did this because Fayyad's partisanship and political activities violated Iraq's constitution and laws.⁸⁰ However, in October 2018, an Iraqi court overturned Abadi's decision and reinstated al-Fayyad.⁸¹ Despite his efforts, Abadi failed to correct *Hashd al-Sha'abi's* split loyalties.

3. *Renewed Efforts by Prime Minister Abdul-Mahdi*

After Abadi left office at the end of 2018, Iranian-backed leaders still remained in power, and the IRGC still backed the most influential brigades. The new Prime Minister, Adil Abdul-Mahdi, issued a Diwani Order on July 1, 2019 addressing the *Hashd al-Sha'abi*. Issued at least in part in response to *Hashd al-Sha'abi* brigade involvement in attacks on U.S. facilities,⁸² the order gave a deadline of July 31 for the militias to integrate into the ISF, and declared that “[a]ll *Hashd al-Sha'abi* forces will work as an inseparable part of the armed forces.”⁸³ All

79. Kosar Nawzad, *Iran-Backed Militias Slam Iraqi PM's Sacking of Security Adviser, Call the Decision 'Illegal'*, KURDISTAN 24 (Aug. 31, 2018), <http://www.kurdistan24.net/en/news/77f0b91f-8443-4bf5-bcbd-9a1f04a2112d>.

80. *al-'Abadi Yu'afi al-Fayyad min Mahammihî ka-Mustashar il-amin il-Watni w ri'asat il-Hashd il-Sha'abi* [Abadi Relieves al-Fayyad of His Duties as National Security Advisor and Head of the Popular Mobilization], ALSUMARIA (Aug. 30, 2018), <https://www.alsumaria.tv/news/245898/> مهمامه-من-الفياض-يعفي-العبادي-الوطني-للامن-كمنششار-ار?utm_campaign=magnet&utm_source=article_page&utm_medium=related_articles.

81. *Qarar Qada'i B-Ilgha'i i'fa' il-Fayyad min Jami' Munasibihi w yu'iduhu* [A Judicial Decision Annuls the Removal of Al-Fayyad From His Positions and Reinstates Him] ALSUMARIA (Oct. 15, 2018), <https://www.alsumaria.tv/news/250024/> م-جميع-من-الفياض-إعفاء-قرار-تلغى-الاتحادية-المحكمة-ار.

82. See Ahmed Aboulenein, *Iraq PM Orders Iran-Allied Militias to be Reined In*, REUTERS, July 1, 2019, <https://www.reuters.com/article/us-usa-iran-iraq/iraq-pm-orders-iran-allied-militias-to-be-reined-in-idUSKCN1TW3EM> (noting the order likely is intended to placate the United States after several unclaimed but likely PMF attacks on “bases in Iraq hosting U.S. forces and on a site used by a U.S. energy firm”); see also Lawk Ghafuri, *Iraq's Abdul-Mahdi: Hashd al-Shaabi Integration Not Easy, Will Take Time*, RUDAW (July 24, 2019), <https://www.rudaw.net/english/middleeast/iraq/240720191> (noting that “Abdul-Mahdi has been under pressure to curb the actions of Iran-affiliated groups after a spate of rocket attacks against US military and economic targets in Iraq”).

83. *Ra'is Majlis al-Wuzara' al-Qa'id al-'Am Lil-Quwat al-Musaliha as-Sayed Adil Abdul-Mahdi Yusadir al-Amr al-Diwani al-Muraqam 237 al-Khas Bil-Hashd al-Sha'abi* [Prime Minister and Commander in Chief Adil Abdul-Mahdi Issues Diwani Order Number 237 on the Subject of the Hashd Al-Sha'abi], PRIME MINISTER

rules applied to the armed forces will be applied to the former *Hashd al-Sha'abi* units, although units can instead become political parties—which would mean they cannot carry weapons except for the purpose of protecting their offices.

The ultimatum can be seen as a final action by the Iraqi government to bring the *Hashd al-Sha'abi* fully under its control and weaken rogue units to the point of irrelevance. However, some commentators have questioned the likely effectiveness of the order.⁸⁴ Even Abdul-Mahdi has cautioned that “[t]he implementation of the decree will take a long time.”⁸⁵ Though the latest order is a step towards placing the militias under a command responsible to the government, it seems unlikely that it will resolve the difficulties arising from Iraq’s lack of control over certain units. As of October 2019, many PMF brigades had yet to integrate.⁸⁶

D. Human Rights Abuses

Hashd al-Sha'abi brigades have perpetrated violations of international human rights law and international humanitarian law (IHL) during various operations to liberate and reoccupy ISIS-controlled territory.⁸⁷ These violations include beating

REPUBLIC OF IRAQ (July 1, 2019), <http://pmo.iq/press2019/1-7-201903.htm> (translation provided by author).

84. See, e.g., Rubin, *supra* note 46 (noting that the move was symbolically correct but in reality did little); Spyer, *supra* note 46 (arguing that the latest decree resembled earlier attempts that failed).

85. Ghafari, *supra* note 82.

86. See Spyer, *supra* note 49 (concluding that efforts to integrate the militias have not yet changed the status quo); Loveluck & Mustafa Salim *supra* note 49 (observing that militias continue to enjoy autonomy in Iraq).

87. See e.g., Human Rights Watch, *Iraq: Fallujah Abuses Inquiry Mired in Secrecy* (July 7, 2016) [hereinafter *Iraq: Fallujah Abuses Inquiry Mired in Secrecy*], <https://www.hrw.org/news/2016/07/07/iraq-fallujah-abuses-inquiry-mired-secrecy> (reporting on “alleged abuses against civilians during military operations to retake Fallujah”); Human Rights Watch, *Iraq: Fallujah Abuses Test Control of Militias* (June 9, 2016) [hereinafter *Iraq: Fallujah Abuses Test Control of Militias*], <https://www.hrw.org/news/2016/06/09/iraq-fallujah-abuses-test-control-militias> (reporting on the Iraqi government investigation in the “allegations of abuse of civilians around Fallujah by Iraqi government forces”); *Iraq: Investigate Abuses in Hawija Operation*, *supra* note 10 (reporting that Iraqi villagers had accused PMF units of abuses in the ongoing battle to take the city of Hawija).

and detaining civilians,⁸⁸ “burning houses and shops,”⁸⁹ looting,⁹⁰ and abducting and killing civilians en masse.⁹¹ In particular, these brigades have targeted minority ethnic groups such as Sunni and Kurdish civilians. If the *Hashd al-Sha’abi* brigades truly are part of Iraq’s armed forces, then under international law, Iraq is liable for these violations and certainly has an obligation to prevent future abuses.

From the perspective of these militias, Sunni communities in northern and western Iraq assisted Saddam Hussain’s regime, al-Qaeda in Iraq, and ultimately ISIS. By engaging in ethnic cleansing, extrajudicial executions, and intimidation, the *Hashd al-Sha’abi* believe they are punishing Sunni populations for their past support and removing a potential threat to the Shi’a-dominated Iraqi state. As the Iraqi government incorporates *Hashd al-Sha’abi* brigades into the ISF, these continued violations risk alienating Sunnis, who may believe that Baghdad is supporting these actions.

In 2017, the human rights nongovernmental organization Amnesty International documented repeated violations by four major *Hashd al-Sha’abi* brigades: the *Munazzamat Badr*, *‘Asa’ib Ahl al-Haq*, *Kata’ib Hizbullah*, and *Saraya al-Salam* brigades.⁹² The organization stated that these brigades were responsible for “[w]idespread enforced disappearances, abductions, killings and torture, targeting Sunni men and boys.”⁹³ The most sectarian *Hashd al-Sha’abi* brigades continue this activity in the Governorate of Diyala, a province located northeast of Baghdad.⁹⁴ The Shi’a-dominated *Munazzamat Badr* and *‘Asa’ib Ahl al-Haq* brigades continue to prevent Sunni internally displaced persons from returning to their homes.⁹⁵

On June 9, 2016, Human Rights Watch reported that a video was uploaded to YouTube on May 23, “in which a commander tells a room filled with fighters that Fallujah had been

88. See, e.g., *Iraq: Fallujah Abuses Inquiry Mired in Secrecy*, *supra* note 87 (noting “allegations of summary executions, beatings of men in custody, enforced disappearances, and mutilation of corpses by government forces”).

89. *Id.*

90. *Id.*

91. *Iraq: Turning a Blind Eye*, *supra* note 5, at 16.

92. *Id.* at 10.

93. *Id.* at 16.

94. *Id.*

95. *Id.*

a bastion of terrorism since 2004 and that no civilians or true Muslims were left inside the city.”⁹⁶ Similarly, on May 27, “Iraqi activists sent Human Rights Watch two videos they said were filmed on the outskirts of Fallujah,” which depict the torture and extrajudicial killings of local residents by government forces: “[O]ne showed armed men in a mix of civilian and military dress driving two pickup trucks, each dragging a corpse behind them; the second showed armed men surrounding a pile of corpses and severed heads.”⁹⁷

These incidents match other reported patterns of abuses. Before the operation to retake Mosul, Qais al-Khazali, the leader of the *‘Asa’ib Ahl al-Haq*, told media that “recapturing the city represents ‘revenge and vendetta’ for the killing of Imam Hussein, one of the most revered figures by Shi’as in the seventh century.”⁹⁸ He also said that “revenge would be directed at the descendants of Imam Hussein’s killers,” indicating that this revenge would target the Sunni community in Mosul.⁹⁹ Kurdish civilians have also been victims of *Hashd al-Sha’abi* human rights violations. The *Hashd al-Sha’abi* are part of the key military forces occupying Iraq’s disputed territories in the vicinity of Kirkuk,¹⁰⁰ Sinjar,¹⁰¹ and Tuz Khurmatu.¹⁰² In all of these areas, segments of the local populations continue to allege abuses and human rights violations.

The Kurdish press frequently highlights kidnappings, extrajudicial killings, and other human rights abuses that the *Hashd al-Sha’abi* militias commit against Kurdish forces and ci-

96. *Iraq: Fallujah Abuses Test Control of Militias*, *supra* note 87.

97. *Id.*

98. *Iraq: Turning a Blind Eye*, *supra* note 5, at 12.

99. *Id.*

100. *Hashd al-Shaabi Taxes People in Kirkuk, Abuses Public Land: Official*, BAS NEWS (Oct. 7, 2018), <http://www.basnews.com/index.php/en/news/kurdistan/471386>; see Ranj Alaaldin, *How Will Iraq Contain Iran’s Proxies?*, BROOKINGS INSTITUTION (Feb. 22, 2018), <https://www.brookings.edu/opinions/how-will-iraq-contain-irans-proxies> (discussing the control that Iran’s proxies have over Kirkuk).

101. *Winning the Post-ISIS Battle for Iraq in Sinjar*, INT’L CRISIS GROUP (Feb. 20, 2018), <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/183-winning-post-isis-battle-iraq-sinjar>.

102. Nadia Riva, *Iranian-Backed Shia Militias Continue to Target Kurdish Houses in Khurmatu*, KURDISTAN 24 (Jan. 7, 2018), <http://www.kurdistan24.net/en/news/21d2d88f-efc4-48b3-9517-ff13df1b6650>.

vilians.¹⁰³ These groups played a prominent role in the Iraqi operation to retake disputed territories from the Kurdish Peshmerga following the Kurdistan Region of Iraq's 2017 independence referendum. "Satellite images, videos, photos and dozens of testimonies" released by Amnesty International on October 27, 2017 "show that thousands of civilians were forced to flee their homes after fierce clashes erupted between Iraqi government forces, supported by [Shi'a *Hashd al-Sha'abi* brigades], and Kurdish Peshmerga forces in Iraq's multi-ethnic city of Tuz Khurmatu south of Kirkuk."¹⁰⁴ Additionally, "[r]esidents who [were] still in the city, as well as others who fled and then attempted to return, have described how . . . members of the [*Hashd al-Sha'abi* militias] . . . engaged in rampant arson, looting and demolition of civilian homes."¹⁰⁵ Kurdish authorities also sent news outlets images that "show homes looted and burned in Kirkuk after the Iraqi army and the Shia-dominated [*Hashd al-Sha'abi* brigades] retook the city from Kurdish peshmerga."¹⁰⁶ Other photographs show the Kurdistan Regional Government's Ministry of Martyrs and Anfal Affairs in Kirkuk completely destroyed.¹⁰⁷ If the semi-autonomous Kurdish government believes the Iraqi government is supporting these activities, it will make long term rapprochement between the autonomous Kurdish territories and the rest of Iraq considerably more difficult.

103. See, e.g., Nadia Riva, *Evidence of Abuse, Human Rights Violation Targeting Kurds in Tuz Khurmatu: Amnesty Report*, KURDISTAN 24 (Oct. 24, 2017), <https://www.kurdistan24.net/en/news/a2c3c5cc-52a2-4034-9000-3bf66aa89bdd> (reporting that civilians were "killed in indiscriminate attacks" in the Kurdistan region, which also called many more to flee); *US State Dept. Says Iraq's Takeover of Disputed Areas Caused 'Abuse, Atrocities'*, RUDAW (Mar. 14, 2019), <https://www.rudaw.net/english/kurdistan/14032019> (noting reports of abuses including "forced disappearances; torture; arbitrary detention; harsh and life-threatening prison and detention center conditions," among other abuses).

104. Press Release, Amnesty Int'l, Iraq: Kurdish Homes Targeted in Wave of Attacks by Government-Backed Militias (Oct. 24, 2017), <https://www.amnesty.org.uk/press-releases/iraq-kurdish-homes-targeted-wave-attacks-government-backed-militias>.

105. *Id.*

106. Alex MacDonald, *Iraqi Forces Accused of Burning Kurdish Homes and Ministries in Kirkuk*, MIDDLE E. EYE (Oct. 18, 2017), <https://www.middleeasteye.net/news/kirkuk-photos-215927162>.

107. *Id.*

E. *Deployment into Syria*

It has also been documented that *Hashd al-Sha'abi* brigades have been operating inside of Syria.¹⁰⁸ Such brigades, most of which Iran supports, contributed to operations to clear ISIS from southeast Syria, and continue to support President Bashar al-Assad's forces. This is significant for two reasons. First, the brigades may be deployed abroad without orders to do so from Baghdad. Second, if the brigades are part of ISF, this means Iraqi armed forces are operating on Syrian soil. This participation "undermine[s] the regional state order, nakedly extend[s] Iranian interests, challenge[s] the sovereignty of both Syria and Iraq, and threaten[s] Iraq with further embroilment in regional conflict."¹⁰⁹

Perhaps even more significantly, the deployments have also brought *Hashd al-Sha'abi* units into contact with other nations' armed forces. For example, in June 2018, more than twenty fighters from the *Kata'ib Hezbollah* brigade were killed in an airstrike in Syria.¹¹⁰ Upon further investigation, the strike was assessed to have been Israeli.¹¹¹ A *Kata'ib Hezbollah* spokesman in Baghdad issued a statement warning that "[w]hen it becomes known who was responsible then there will be an appropriate response and the hand of the resistance will strike anywhere."¹¹² Similarly, in 2017, the Iranian-linked

108. See, e.g., Paul Iddon, *Why the Iraqi Hashd al-Shaabi Presence in Syria Matters*, RUDAW (June 25, 2018), <http://www.rudaw.net/english/analysis/25062018> ("Kyle Orton, an independent Middle East researcher, argues that the Iraqi Hashd presence in Syria 'underlines where their instructions come from—namely Tehran. Prime Minister Abadi has specifically said Iraqi troops are not involved in Syria, yet the Hashd is formally part of the Iraqi state under his command'"); *Iraqi Forces Reinforce Syrian Border City Amid Iranian-US Turmoil*, AL-MASDAR NEWS (May 30, 2019), <https://www.almasdarnews.com/article/iraqi-forces-reinforce-syrian-border-city-amid-iranian-us-turmoil> (noting that PMU forces "have entered eastern Syria and reinforced the border city of Albukamal").

109. Haddad, *supra* note 8.

110. Iddon, *supra* note 108.

111. *Syria Strike Blamed on Israel Kills 22 Iraqi fighters*, RUDAW (June 19, 2018), <http://www.rudaw.net/english/middleeast/syria/19062018> (noting that while the U.S. coalition was initially blamed, U.S. officials subsequently claimed Israeli involvement).

112. *Iraqi Hashd al-Sha'abi Pledges 'Suitable' Response to Deadly Syria Strike*, PRESSTV (June 21, 2018), <https://www.presstv.com/Detail/2018/06/21/565683/Iraq-Hashd-alShaabi-Syria-strike>.

Harakat al-Nujaba unit formed the Golan Liberation Brigade, with the militia's spokesperson claiming that the unit could assist the Syrian regime in taking the Israeli-controlled Golan Heights if the Syrian government so requested.¹¹³ If the *Harakat al-Nujaba* unit can be properly understood as a legal part of Iraq's armed forces through the *Hashd al-Sha'abi* umbrella, then a conflict between its fighters and Israel could rise to the level of an international armed conflict between Iraq and Israel.

Since forming in 2014, the *Hashd al-Sha'abi* has become a complex and multifaceted semi-state actor. Its split loyalties and tenuous command structure would be of concern to the Iraqi government and its allies even without the existence of extensive evidence of IHL and international human rights law violations. That certain *Hashd al-Sha'abi* brigades also now operate outside of Iraq's borders in Syria means that Iraq and its allies must ensure that those *Hashd al-Sha'abi* units considered part of the ISF respect and abide by the rule of law.

II. APPLICABLE INTERNATIONAL LAW AND IRAQI OWNERSHIP

If the recent pair of *Hashd al-Sha'abi* laws and the Prime Minister's orders have made the *Hashd al-Sha'abi* an organ of the Iraqi state, *Hashd al-Sha'abi*'s actions are directly attributable to Iraq under international law.¹¹⁴ Thus, Iraq remains liable before the International Court of Justice (ICJ) for any *Hashd al-Sha'abi* actions that violate IHL and international human rights law. It should be noted that under the International Criminal Tribunal for the former Yugoslavia's reasoning in *Prosecutor v. Tadic*, specific Iraqi government officials, ISF leadership, and even supporting foreign commanders, could

113. See *Julaan Suriya azadsazi Amadegi Nujaiba baraaye [Harakat al-Nujaiba Prepares for the Liberation of Syrian Golan]*, FARS NEWS AGENCY (Mar. 8, 2017), <https://www.farsnews.com/news/13951218001601>; see also Amir Toumaj, *IRGC-Controlled Iraqi Militia Forms 'Golan Liberation Brigade'*, FDD'S LONG WAR J. (Mar. 12, 2017), <https://www.longwarjournal.org/archives/2017/03/irgc-controlled-iraqi-militia-forms-golan-liberation-brigade.php> (reporting on the formation of the Harakat al Nujaba militia's Golan Liberation Brigade).

114. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS OF THE UNITED STATES § 102 (AM. LAW. INST. 1987) (laying out three requirements for a rule or document to qualify as customary international law: general state practice; consistent state practice; and practice supported by a sense of legal obligation).

in theory be liable for *Hashd al-Sha'abi* actions. Meanwhile, because the *Hashd al-Sha'abi* are part of Iraq's armed forces, under the Geneva Conventions I-IV and Additional Protocols, *Hashd al-Sha'abi* militiamen must be treated as members of Iraq's armed forces during an international armed conflict. This treatment would include, for example, immunity from prosecution by a foreign state, and, if captured, prisoner of war status.

A. *Relevant International Law*

To understand the legal status of the *Hashd al-Sha'abi*, the group's structure and actions must be analyzed according to the International Law Commission (ILC)'s Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), the Third Geneva Convention (GCIII), the First Additional Protocol to the Geneva Conventions (API), and the Hague Regulations. ARSIWA is relevant for determining Iraqi responsibility under international law, while GCIII and API are relevant for questions arising under IHL, specifically, whether the *Hashd al-Sha'abi* militias are part of the Iraqi armed forces.

1. *The Law on State Responsibility*

The ARSIWA is the ILC's codification of principles relating to the legal accountability of states. Both the ICJ and other international legal bodies have applied these rules as customary international law, even before their formal codification in ARSIWA.¹¹⁵ ARSIWA Article 4 states that “[t]he conduct of any State organ shall be considered an act of that State under

115. Even before ARSIWA was drafted in 2001, the ICJ and the International Criminal Tribunal for the former Yugoslavia have applied certain principles codified in ARSIWA as customary international law, i.e. binding international law that states create by refusing to deviate or challenge uncodified norms. *Id.*; *see, e.g.*, Prosecutor v. Tadic, Case No. IT-94-1-I, Judgment, ¶ 120 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995) (holding that the actions of a militia group can be attributable to a state if the supplying state exerted “overall control” over the group, reflecting ARSIWA principles regarding state responsibility for non-state actors); Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 115 (June 27) (holding that for a non-state actor's actions to be attributable to a state, that state needs to have exerted “effective control” over the group's “operations in the course of which the alleged violations were committed,” reflecting ARSIWA principles regarding state responsibility for non-state actors).

international law, whether the organ exercises legislative, executive, judicial or any other functions.”¹¹⁶ ARSIWA generally allows a state to decide which entities qualify as its organs.¹¹⁷ However, in certain instances, an entity can qualify as an organ under international law even if a state’s domestic laws do not fully recognize it.¹¹⁸ Article 4 dictates that an “organ includes any person or entity which has that status in accordance with the internal law of the State.”¹¹⁹ This means that although certain types of paramilitary or police forces may not be legally acknowledged as official state organs, they may still qualify as organs under international law in light of powers and functions delegated to the organization.¹²⁰ Thus, a state can still be responsible for the actions of a unit even if that unit is unrecognized by the state, or if it is acting outside of the powers permitted to it by the state.¹²¹

Under ARSIWA Article 6, even if these “organs” are placed under the control of another state, their actions are still attributable to the providing state unless the organs act only under the explicit orders of the receiving state.¹²² A “functional link between the organ in question and the structure or authority of the receiving State” is “crucial” to determining responsibility.¹²³ In order for Article 6 to absolve the donating state from responsibility, the donating state’s organ

116. Int’l Law Comm’n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, U.N. Doc. A/56/10, at 40 (2001) [hereinafter Draft Articles on Responsibility of States]; see also Int’l Law Comm’n, Draft Articles on the Responsibility of International Organizations, with Commentaries, U.N. Doc. A/66/10, at 53 (2011) (describing an “internationally wrongful act of an international organization” as including conduct “attributable to that organization under international law”).

117. Draft Articles on Responsibility of States, *supra* note 116, at 39.

118. *Id.* at 42.

119. *Id.* at 40.

120. *Id.* at 42.

121. *Id.*

122. *Id.* at 43–44, 44 n.130 (“Thus, the conduct of Italy in policing illegal immigration at sea pursuant to an agreement with Albania was not attributable to Albania: *Khavara and Others v. Italy and Albania*, application No. 39473/98, *Eur. Court H.R.*, decision of 11 January 2001. Conversely, the conduct of Turkey taken in the context of the Turkey-European Communities customs union was still attributable to Turkey: see WTO, Report of the Panel, Turkey: Restrictions on Imports of Textile and Clothing Products (WT/DS34/R), 31 May 1999, paras. 9.33–9.44.”).

123. *Id.* at 44.

must “exercise elements of the governmental authority of [the receiving] State.”¹²⁴

Additionally, ARSIWA Article 5 ensures that a state remains responsible for non-state entities or actors empowered by a state’s domestic law. Article 5 ensures that the actions of empowered “person[s] or entit[ies] . . . [are] considered an act of the State under international law.”¹²⁵ This article was drafted to apply to “parastatal entities, which exercise elements of governmental authority in place of State organs, as well as situations where former State corporations have been privatized but retain certain public or regulatory functions.”¹²⁶ While Article 4 covers entities that are absent from a state’s domestic laws, a state is only responsible for non-state actors under Article 5 if its laws officially imbue them with state authority or immunity.

“[E]ven if [an organ or empowered entity] exceeds its authority or contravenes instructions,” ARSIWA Article 7 ensures that the parent or empowering state is still liable for the entity’s actions.¹²⁷ This rule prevents states from arguing its organs or agents exceeded their authority.¹²⁸ Article 7 evolved in response to a need to ensure clarity in state relations. Rather than allowing states to avoid responsibility by simply disavowing an organ or empowered entity’s actions, international law supports the proposition that “all Governments should always be held responsible for all acts committed by their agents by virtue of their official capacity.”¹²⁹

While the status of organs or empowered entities is already established at the time of an attributable action under Articles 4 and 5, ARSIWA Article 11 also allows a state to immediately adopt the actions of any entity as its own.¹³⁰ Under

124. *Id.*

125. *Id.* at 42; *see, e.g.*, Hyatt International Corp. v. Islamic Republic of Iran, Interlocutory Award, Award No. ITL 54-134-1, 9 Iran-U.S. Cl. Trib. Rep. 72, ¶ 66 (1985) (concluding that one party to the arbitration is properly considered to be controlled by the government of Iran due to the domestic laws applied to the party).

126. Draft Articles on Responsibility of States, *supra* note 116, at 42.

127. *Id.* at 45 (emphasis added).

128. *Id.*

129. *Id.* (citing *Archivio del Ministero degli Affari esteri italiano*, serie politica P, No. 43).

130. Draft Articles on Responsibility of States, *supra* note 111, at 52.

Article 11, “[c]onduct which is not attributable to a State . . . shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.”¹³¹ Several years prior to the drafting of ARSIWA, the ICJ held in *U.S. v. Iran, United States Diplomatic and Consular Staff in Tehran*, that Iran’s mere approval of the takeover of the American Consulate in Tehran was sufficient to make Iran responsible for the protestors’ actions.¹³² However, the principle reflected in this ruling was significantly narrowed when codified in Article 11. Generally, a state is unequivocally responsible for a non-state actor’s conduct under Article 11 only when it explicitly recognizes and adopts the non-state actor’s conduct as its own.¹³³

Liability can also extend beyond a single parent country to supporting nations under ARSIWA Articles 16 and 47.¹³⁴ A state that “aids or assists another State in the commission of an internationally wrongful act” is liable under Article 16 when the supporting state knows: 1) that the supported state engaged in the wrongful act; and 2) that the supporting state would be liable under international law if it directly committed that act.¹³⁵ Article 47 also allows for dual attribution when “several States are responsible for the same internationally wrongful act.”¹³⁶

The ILC commentary to Articles 16 notes “[v]arious specific substantive rules exist [that] prohibit[] one State from providing assistance in the commission of certain wrongful acts by other States.”¹³⁷ Article 16 is supported by a widely rec-

131. Draft Articles on Responsibility of States, *supra* note 111, at 52.

132. *United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, Judgement, 1980 I.C.J. Rep. 1, ? 74 (May 24).

133. *See* Draft Articles on Responsibility of States, *supra* note 116, at 53 (“[A]s a general matter, conduct will not be attributable to a State under article 11 where a State merely acknowledges the factual existence of conduct or expresses its verbal approval of it. In international controversies, States often take positions which amount to ‘approval’ or ‘endorsement’ of conduct in some general sense but do not involve any assumption of responsibility.”).

134. *Id.* at 65, 124.

135. *Id.* at 65.

136. *Id.* at 124.

137. *Id.* at 66; *see e.g.*, G.A. Res. 26/25 (XXV), annex, Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (Oct.

ognized state practice that assigns “international responsibility to a State which deliberately participates in the internationally wrongful conduct of another through provision of aid or assistance.”¹³⁸ For example, in 1984, Iran protested the United Kingdom supplying Iraq with financial and military aid that allegedly included chemical weapons, which Iraqi forces later used in attacks against Iranian troops on the ground.¹³⁹ However, the ILC commentary is also clear that Article 16 only applies to situations where “one State provides aid or assistance to another with a view to facilitating the commission of an internationally wrongful act.”¹⁴⁰

Similarly, the commentary to Article 47 presents numerous examples of when dual attribution may be appropriate, including occasions where two states act through a “common organ which carries out the conduct in question, e.g. a joint authority responsible for the management of a boundary river,” or occasions where “one State may direct and control another State in the commission of the same internationally wrongful act by the latter, such that both are responsible for the act.”¹⁴¹

2. *Defining “Armed Forces” Under International Humanitarian Law*

Since 2014, Iraq and its allies, Iran, and non-state armed groups, have been party to a non-international armed conflict (NIAC) with ISIS. The ICJ has confirmed that IHL governs conduct during armed conflict.¹⁴² While most of the treaty law

24, 1970) (prohibiting states from “threat or use of force” against other states); G.A. Res. 3314 (XXIX), annex, Definition of Aggression (Dec. 14, 1974) (noting that use of non-state actors at the disposal of the state to “perpetrat[e] an act of aggression against a third State” qualifies as an act of aggression).

138. Draft Articles on Responsibility of States, *supra* note 116, at 66.

139. Bernard Gwertzman, *U.S. Says Iraqis Used Poison Gas Against Iranians in Latest Battles*, N.Y. TIMES, Mar. 6, 1984, at A1.

140. Draft Articles on Responsibility of States, *supra* note 116, at 66.

141. *Id.* at 124.

142. See *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgement, 1986 I.C.J. Rep. 14, ¶¶ 216–18 (June 27) (explaining that, while Nicaragua has not complained of violations of IHL, the ICJ may still find them applicable because the rules “constitute a minimum yardstick” when discussing crimes during international armed conflict).

underpinning IHL focuses on international armed conflict,¹⁴³ large portions of the Geneva Conventions, in addition to API, are applicable to NIACs as customary international law.¹⁴⁴

Iraq has ratified API. Article 43 of this treaty defines a nation's military as:

[Consisting] of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict.¹⁴⁵

The International Committee of the Red Cross (ICRC), which regularly codifies current and emerging doctrines in the law of armed conflict, considers this definition to be customary international law and applicable in NIACs.¹⁴⁶ Article 43 of API is now generally applied to all armed groups in a conflict to determine whether they constitute a party's armed forces.¹⁴⁷ Thus, it is "no longer necessary to distinguish between [a state's] regular and irregular armed forces" for purposes of at-

143. International armed conflict is defined as a conflict between two "High Contracting Parties" to the Geneva Conventions; in other words, between two states. Geneva Conventions, *infra* note 193, art. 3.

144. A NIAC occurs when a sustained confrontation between a state and a non-state reaches the level of an "armed attack." *See* *Abella v. Argentina*, Case 11.137, Inter-Am. Comm'n H.R., Report No. 55/97, OEA/Ser.L./V/II.98, doc. 6, rev. ¶¶ 155-61 (1997) (holding that the level and nature of an operation can trigger a NIAC, and applying significant portions of the Geneva Conventions and the Additional Protocols to NIAC).

145. Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 43(1), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I].

146. Int'l Comm. of the Red Cross, *Rule 4. Definition of Armed Forces*, CUSTOMARY IHL DATABASE, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule4 (last visited Sept. 29, 2019) ("State practice establishes this rule as a norm of customary international law applicable in international armed conflicts.").

147. *See id.* (noting that the rule set forth in Article 43(1) of Additional Protocol I is followed in many military manuals, and "supported by official statements and reported [state] practice").

tribution.¹⁴⁸ If a group fulfils the conditions of Article 43 of API, it is considered part of a state's armed forces. Members of such a group acquire the protections the Geneva Conventions grant to all members of a state's armed forces. Additionally, any captured militia fighters from such a group are entitled to prisoner of war status and the accompanying protections.

B. *Iraq's Responsibility for the Hashd al-Sha'abi Under International Law*

1. *The Hashd al-Sha'abi is an Iraqi Organ*

Based on the customary international law summarized in the ARSIWA, the *Hashd al-Sha'abi* brigades are organs of the Iraqi state. While it is highly likely the militias were illegal non-state organized armed groups when first formed in 2014,¹⁴⁹ from 2016 onwards, the *Hashd al-Sha'abi* has been incorporated into the Iraqi armed forces.¹⁵⁰ Most significantly, the 2016 *Hashd al-Sha'abi* law explicitly affirmed this.¹⁵¹ Since then, the Office of the Prime Minister's Diwani Orders have further affirmed the incorporation of the *Hashd al-Sha'abi*, culminating in a June 2019 order incorporating the militias into the armed forces. Thus, under Articles 4, 5, and 11 of the ARSIWA, Iraq has claimed the *Hashd al-Sha'abi*'s actions as its own and has likely transformed it into an Iraqi state organ.

Beginning in 2017, Prime Minister al-Abadi sanctioned the *Hashd al-Sha'abi* to conduct operations against ISIS and retake Iraqi territory from the Kurdish Peshmerga.¹⁵² In this capacity, the *Hashd al-Sha'abi* worked in close coordination with the ISF during a series of major combat operations in northern Iraq.¹⁵³ The 2016 law and Prime Minister al-Abadi's 2018 de-

148. *Id.*

149. See Constitution of Iraq, *supra* note 14, Article 9, Section 1 (prohibiting all non-state armed groups).

150. See *infra* Part I.

151. Popular Mobilization Committee Law, *supra* note 26, Article 1, Section 1–2.

152. See e.g., Jennifer Cafarella et al., *The "War After ISIS" Begins in Iraq*, INST. FOR THE STUDY OF WAR (Oct. 15, 2017), <http://iswresearch.blogspot.com/2017/10/the-war-after-isis-begins-in-iraq.html> (describing one example of Iraqi efforts to retake Kurdish territory using the PMF).

153. See, e.g., Thomas Joscelyn & Alexandra Gutowski, *Iraqi Government Announces Liberation of Tal Afar from Islamic State*, FDD'S LONG WAR J. (Aug. 31, 2017), <https://www.longwarjournal.org/archives/2017/08/iraqi-govern>

cree provided the *Hashd al-Sha'abi* with another set of legal authorities to conduct military operations on behalf of the Iraqi government.¹⁵⁴ While the law does not list specific units included under the *Hashd al-Sha'abi* “umbrella”, the law does explicitly state:

(i) The Hashd al-Sha'abi shall be an independent military formation, and shall be a part of the Iraqi Armed Forces, and shall be linked to the Commander in Chief of the Armed Forces.

(ii) The formation shall consist of a leadership, and a General Staff, and branches/corps, and combat units.

(iii) This formation shall be subject to the military laws in force in all respects, with the exceptions of conditions relating to age and education level [for service personnel].

(iv) The members, officials, and commanders of this formation shall be adapted in accordance with military standards for rank structure, salaries, allowances, and general rights and duties.¹⁵⁵

The decision to include not only language referring to combat units, but also language intended to explicitly regulate members of the formation in accordance with laws and structures applicable to other Iraqi combat units, suggests that the law was intended to incorporate more than just an administrative body into Iraq's armed forces. The most reasonable reading of the law is that (1) legislators intended to incorporate existing *Hashd al-Sha'abi* combat units into the armed forces,

ment-announces-liberation-of-tal-afar-from-islamic-state.php (reporting that Iraqi forces, including militias backed by Iran, ‘liberated’ Tal Afar); Bill Roggio, *Iraqi Troops, Iranian-Backed Militias Eject Islamic State From Hawija*, FDD's LONG WAR J. (Oct. 5, 2017), <https://www.longwarjournal.org/archives/2017/10/iraqi-troops-iranian-backed-militias-eject-islamic-state-from-hawija.php> (“The Iraqi military and Iranian-supported Shia militias have retaken the town of Hawija from the Islamic State”); Bill Roggio, *US Military Credits Iraqi Militias for Helping Liberate Mosul*, FDD's LONG WAR J. (July 11, 2017), <https://www.longwarjournal.org/archives/2017/07/us-military-credits-iraqi-militias-for-helping-liberate-mosul.php> (“The US military commended ‘Iraqi Militia Forces’ for their role in helping liberate the city of Mosul from the Islamic State”).

154. See *infra* Appendix A; *infra* Appendix B.

155. Popular Mobilization Committee Law, *supra* note 26, Article 1, Section 2.

and (2) by not specifying specific units, the intent was either to incorporate all *Hashd al-Sha'abi* affiliated units, or at least to leave the question to the discretion of the PMC. As a result, Iraq's 2016 and 2018 domestic laws made these militias part of Iraq's security forces, and established a chain of command led by Iraq's Prime Minister. The law and accompanying orders give the *Hashd al-Sha'abi* "status in accordance with the internal law of the State," and transform the brigades into Iraqi state organs under ARSIWA Article 4 and the principles enshrined therein.¹⁵⁶

Even if the *Hashd al-Sha'abi* brigades fail to meet Article 4's more stringent definition, they still fall within ARSIWA Article 5's definition of an empowered entity. In addition to legally incorporating the *Hashd al-Sha'abi* into the Iraqi armed forces, Baghdad's legislation and the Prime Minister's orders also make Iraq liable for these militias and their actions under ARSIWA Article 11.¹⁵⁷ Almost every government action related to the *Hashd al-Sha'abi* brigades since 2016 has explicitly recognized the group's conduct as its own.¹⁵⁸ In its 2016 budget, the Iraqi parliament recognized 110,000 of the 140,000 existing *Hashd al-Sha'abi* fighters as part of the Iraqi military.¹⁵⁹ During this time, the ISF also allowed the *Hashd al-Sha'abi* to take equal lead in military operations.¹⁶⁰ These actions place Iraq squarely within the scope Article 11's mandate that a state is responsible for an entity's actions if it "acknowledges and adopts the [entity's] conduct . . . as its own."¹⁶¹

156. Draft Articles on Responsibility of States, *supra* note 116, at 40.

157. *Id.* at 52; *see* United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgment, 1980 I.C.J. Rep. 1, ¶ 74 (May 24) (exemplifying the principle that actions of a non-state actor can be attributed to its state if it is afforded legal status and recognition).

158. *See* Draft Articles on Responsibility of States, *supra* note 116, at 52 (providing that under Article 11, States can be liable for actions of other entities if they recognize the conduct of these entities as their own).

159. MANSOUR & JABAR, *supra* note 1, at 12.

160. This has been evident in skirmishes between the ISF and Peshmerga around Kirkuk. *See e.g.*, Cafarella, *supra* note 152 (reporting one such skirmish and giving equal credit to the ISF and PMF).

161. Draft Articles on Responsibility of States, *supra* note 116, at 51.

2. *The Hashd al-Sha'abi is a Part of Iraq's Armed Forces as a Matter of International Humanitarian Law*

Under IHL, Iraq's military should be understood as consisting of all organized armed forces, groups, and units under its command.¹⁶² This definition, from API, is sufficient to classify the *Hashd al-Sha'abi* as a part of Iraq's armed forces under international law. The 2016 *Hashd al-Sha'abi* law places the formation under the control of the commander-in-chief of the Iraqi armed forces, the Prime Minister,¹⁶³ and creates a command structure and rank system that nominally ensures internal discipline.¹⁶⁴ Iraqi law has also made the formation "subject to the military laws in force in all respects, with the exceptions of conditions relating to age and education level."¹⁶⁵

Prime Minister Abadi's March 2018 Diwani Order further defined the rank structure and the delegation of his powers to formation commanders,¹⁶⁶ and declared that "[i]n the absence of a specific provision in these regulations, the provisions of the Law of Military Service and Retirement No. 3 of 2010 (amended), the Law of Military Punishments No. 19 of 2007 (amended), the Law of Military Criminal Procedure No. 22 of 2016 . . . shall apply."¹⁶⁷ These provisions alone are sufficient to satisfy the API definition of armed forces.

It is worth briefly addressing the possibility that up to 2019 the absence of actual Iraqi control over certain brigades might mean that these units are not "under a command responsible to [Iraq] for the conduct of its subordinates."¹⁶⁸ Iraq

162. See Additional Protocol I, *supra* note 141, art. 43(1) ("[T]he armed forces of [a country] consist of all organized armed forces, groups, and units under a command responsible [to that country] for the conduct of its subordinates. These armed forces [are] subject to an internal disciplinary system [that] enforce[s] compliance with the rules of international law applicable in armed conflict.").

163. Popular Mobilization Committee Law, *supra* note 26, Article 1, Section 1.

164. *Id.* at Article 1, Section 2.

165. *Id.* (translation provided by author).

166. See Diwani Order of March 2018, *supra* note 26, Article 5, Section 1 (stating that "[t]he Prime Minister may delegate to the Chairman of the Committee a number of powers necessary to fulfil the missions of the Committee in a manner not inconsistent with the law" (translation provided by author)).

167. *Id.* at Article 6 (translation provided by author).

168. Additional Protocol I, *supra* note 145, art. 43(1).

is still responsible for these units because de jure control trumps a de facto absence of control. The recent Iraqi statutes and Orders explicitly codify the *Hashd al-Sha'abi*'s command structures, disciplinary system, and formally place the *Hashd al-Sha'abi* within the Iraqi armed forces. The fact that some *Hashd al-Sha'abi* brigades operate outside of the Iraqi armed forces and its command structures is not relevant to the analysis.¹⁶⁹ The ICRC's Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law (Interpretive Guidance) states that when civilians and private contractors

have been incorporated into the armed forces of a party to the conflict, whether through a formal procedure under national law or *de facto* by being given a continuous combat function . . . , such personnel would become members of an organized armed force, group, or unit under a command responsible to a party to the conflict¹⁷⁰

Because Iraq's domestic laws allow the *Hashd al-Sha'abi* to legally operate within the Iraqi armed forces, these units are technically part of the ISF, regardless of their actual actions and chains of command.

C. Iranian Responsibility for the *Hashd al-Sha'abi*

The close ties between Iran and certain *Hashd al-Sha'abi* units—particularly the *Kata'ib Hizbullah*, *Munazzamat Badr*, *'Asa'ib Ahl al-Haq*, and *Harakat al-Nujaba* brigades—means Iran could be liable for specific *Hashd al-Sha'abi* actions conducted with its support or at its behest. When these militias fall under Iranian control in specific circumstances, the actions of certain brigades might be attributable to both Iran and Iraq, but Iraq's liability for a *Hashd al-Sha'abi* militia's action is never severed.

169. The ICJ has rejected the “complete dependence” test in favor of the “effective control” test. *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro)*, Judgment, 2007 I.C.J. Rep. 40, ¶ 400 (Feb. 26).

170. Nils Melzer, Int'l Comm. of the Red Cross, *Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law*, at 39, 39 n.71 (May 2009) (explaining that this rule was the “prevailing view expressed during the expert meetings.”).

ARSIWA Articles 6 and 7 make this patently clear. Because Iraq has adopted *Hashd al-Sha'abi* actions, made the militias organs part of the Iraqi state, and empowered these groups, *Hashd al-Sha'abi*'s actions are still attributable to Baghdad. Iran is solely responsible for specific units only when (1) Iraq passes legislation or takes executive action that places these units under Iranian control, and (2) these units are carrying out orders issued by an Iranian state organ.¹⁷¹ If one of these conditions is not met, then Iraq remains liable, even if the brigades exceed their authority or contravene instructions.¹⁷²

The *Hashd al-Sha'abi* has been formally adopted as an organ of the Iraqi state, and Iran has issued no similar legislation or statements. Furthermore, Iraq has yet to formally place any *Hashd al-Sha'abi* brigade at the disposal of Iran. Any *Hashd al-Sha'abi* brigade that is loyal to the IRGC command structure is merely exceeding its authority.¹⁷³ Therefore, under Article 7, Iraq is still responsible for these units despite Baghdad's inability to control them.

This reasoning closely tracks the ICJ's opinion in its 1986 judgment concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. In that

171. See Draft Articles on Responsibility of States, *supra* note 116, at 43–44 (providing that under Article 6, “[t]he conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed”).

172. See *id.* at 45 (providing that under Article 7, “[t]he conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions”); see also *id.* at 46 (“[The modern rule] is confirmed, for example, in article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), which provides that: ‘A Party to the conflict . . . shall be responsible for all acts committed by persons forming part of its armed forces’: this clearly covers acts committed contrary to orders or instructions. The commentary notes that article 91 was adopted by consensus and ‘correspond[s] to the general principles of law on international responsibility.’”).

173. Notably, however, Iraq has also not disaffiliated itself from those brigades that act in conjunction with Iranian forces and commanders, or outside of the Iraqi chain of command.

case, the ICJ rejected the argument that an armed group could be equated with organs of the United States simply because evidence of assistance was “insufficient to demonstrate [the units’] complete dependence on the state,” and thus “could not determine that the [units] may be equated for legal purposes with the forces of the United States.”¹⁷⁴ Despite the fact that the United States provided the armed group with assistance crucial to its activities, the ICJ still found that the evidence was “insufficient to demonstrate [*the contras*] complete dependence on United States aid.”¹⁷⁵ The ICJ’s reasoning is directly applicable to the situation in Iraq. Iran has provided extensive support to certain *Hashd al-Sha’abi* units, but there can be no doubt that the *Hashd al-Sha’abi* lacks “complete dependence” on Iran.¹⁷⁶ Since 2017, the formation’s salaries have been paid by the Iraqi government, and (across the PMF as a whole) their equipment is not predominantly provided by Iran. Further, despite close ties between Iran and certain units, other PMF units, such as *Saraya al-Salam*, reject Iranian influ-

174. See *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 110 (June 27). *But see* Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. Rep. 40, ¶ 399 (Feb. 26) (introducing a new test, explaining that the ICJ previously stated that “the responsibility of the Respondent could still arise if it were proved that it had itself ‘directed or enforced the perpetration of the acts contrary to human rights and humanitarian law alleged by the applicant State’” (quoting *Nicar. v. U.S.*, 1986 I.C.J. ¶ 115)).

175. *Bosn. & Herz. v. Serb. & Montenegro*, 2007 I.C.J. ¶ 391.

176. In *Military and Paramilitary Activities in and Against Nicaragua*, the court considered various elements which together established partial dependency. These included “the selection, installation and payment of the leaders of the *contra* force,” as well as “the organization, training and equipping of the force, the planning of operations, the choosing of targets and the operational support provided.” *Nicar. v. U.S.*, 1986 I.C.J. ¶ 112. However, even in light of these many factors, the court could only establish “partial dependency on the United States authorities,” and could not determine the exact extent of that dependency. *Nicar. v. U.S.*, 1986 I.C.J. ¶ 112. It may be alleged that all of these factors also apply to the Iran-PMF relationship, but unlike the case of the United States and the *contras*, the PMF is a legal organ of another state. Moreover, all of these factors apply to some extent to the Iraq-PMF relationship, either to an equal or greater degree than to the PMF relationship with Iran. Thus, it is near impossible to argue that there is a stronger case for elements of the PMF to be considered organs of Iran’s armed forces than there was for the *contras* to be considered part of the U.S. armed forces in 1986.

ence.¹⁷⁷ Thus, the *Hashd al-Sha'abi's* conduct is not attributable to Iran.¹⁷⁸

1. *Iranian-Iraqi Joint Responsibility for the Actions of Specific Militias*

The *Hashd al-Sha'abi* is not a joint organ of Iran and Iraq, but ARSIWA Articles 16 and 47 raise the possibility that in specific circumstances, both Iraq and Iran could be responsible for a specific brigade's actions. Under Article 8, Tehran could be partially responsible for a *Hashd al-Sha'abi* brigade's actions if that unit is supplied by Iran and is following orders issued by Iranian agents.¹⁷⁹ However, proving this would be difficult¹⁸⁰ because states often try to mask their involvement with military

177. Nada & Rowan, *supra* note 8 (“[T]he Peace Brigades, unlike some other Shiite militias, does not view Khamenei as its spiritual leader. Sadr and his followers have criticized other groups, such as Asaib Ahl al Haq, for prioritizing Iranian interests. The group opposes foreign intervention in Iraq and Iraqi involvement in other countries, such as Syria. This is a major point of disagreement with Iran and other Shiite militias.”); *see also* Ahmed Aboulenein, *Iraqi Cleric Sadr Announces Disarmament Initiative*, REUTERS, June 8, 2018, <https://www.reuters.com/article/us-iraq-election/iraqi-cleric-sadr-announces-disarmament-initiative-idUSKCN1J42Z4> (discussing Sadr's call for a nationwide disarmament campaign and his opposition to involvement by Iran); *Targeting Saraya al-Salam HQs Unveils Iran's Satanic Plot in Kirkuk*, BAGHDAD POST (Nov. 6, 2017), <https://www.thebaghdadpost.com/en/Story/19273/Targeting-Saraya-al-Salam-HQs-unveils-Iran-s-satanic-plot-in-Kirkuk> (implying Iranian involvement in attacks on Sadrist militias).

178. *See* Draft Articles on Responsibility of States, *supra* note 116, at 47–48 (stating that “a general situation of dependence and support would be insufficient to justify attribution of the conduct to the State”).

179. *See id.* at 47 (providing that under Article 8, “[t]he conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct”). *Compare* Prosecutor v. Tadic, Case No. IT-94-1-I, Judgment, ¶ 120 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995) (holding that the actions of a militia group can be attributable to a state if the supplying state exerted “overall control” over the group), *with* Nicar. v. U.S., 1986 I.C.J. ¶ 115 (stating that for a non-state actor's actions to be attributable to a state, that state needs to have exerted “effective control” over the non-state actor).

180. *See* Draft Articles on Responsibility of States, *supra* note 116, at 48 (“In the text of article 8, the three terms ‘instructions’, ‘direction’ and ‘control’ are disjunctive; it is sufficient to establish any one of them. At the same time it is made clear that the instructions, direction or control must relate to the conduct which is said to have amounted to an internationally wrongful act.”).

proxies.¹⁸¹ But there is considerable evidence that ties specific brigades to Iran, including public reports detailing *Hashd al-Sha'abi* leaders regularly meeting with IRGC Quds Force Commander Qassem Soleimani, and explicit statements by *Hashd al-Sha'abi* leaders discussing Iranian support.¹⁸²

The recent 2019 Diwani Order can be viewed as an Iraqi attempt to reduce legal responsibility by formally disowning militias that refuse to fall within the ISF chain of command and continue to be backed by Iran. But Iranian and Iraqi liability for certain *Hashd al-Sha'abi* units were inextricably intertwined through ARSIWA Article 16 between 2016 and 2019.

181. See Andrew Mumford, *Proxy Warfare and the Future of Conflict*, 158 *RUSI J.* 40, 40 (Apr. 28, 2013) (noting that proxies can disguise the true nature and participants of a conflict); Daniel L. Byman, *Why Engage in Proxy War? A State's Perspective*, BROOKINGS INSTITUTION (May 21, 2018), <https://www.brookings.edu/blog/order-from-chaos/2018/05/21/why-engage-in-proxy-war-a-states-perspective> (discussing the use of proxies in conflicts). *But cf.* Assaf Moghadam & Michel Wyss, *Five Myths about Sponsor-Proxy Relationships*, *LAWFARE* (Dec. 16, 2018), <https://www.lawfareblog.com/five-myths-about-sponsor-proxy-relationships> (“[W]hile plausible deniability certainly plays a role in some cases, it hardly holds true for all proxy relationships. . . . [E]ven in the case of aiding insurgents, plausible deniability may not necessarily be desirable. The United States, for example, barely made any effort to hide its support for Syrian rebels in the early stages of the conflict. In fact, such proclamations may have been intended as a deterrent vis-à-vis the Assad-regime.”).

182. See, e.g., Baxtiyar Goran, *Hashd al-Shaabi to US: We Will Not Hesitate to Mention Iranian Support*, *KURDISTAN* 24 (Mar. 17, 2018), <http://www.kurdistan24.net/en/news/e12202f1-7b0b-4f8b-a259-263f4c7331c7> (reporting that *Hashd al-Sha'abi* commander Abu Mahdi al-Muhandis stated: “I will not shy away from mentioning the support of the Islamic Republic of Iran in terms of weapons, advising, and planning. . . . It was Iran who organized the plan to regain control and secure the Samara road [from IS extremists], including providing us with drones and air cover with Sukhoi fighter jets[.]”); Struan Stevenson, *Iraq: Disturbing Confession by Hashd Al-Shaabi Commander Confirms It is a Proxy of Iran*, *NAT'L COUNCIL OF RESISTANCE OF IRAN* (Apr. 7, 2017), <https://www.ncr-iran.org/en/news/terrorism-fundamentalism/22492-iraq-disturbing-confession-by-hashd-al-shaabi-commander-confirms-it-is-a-proxy-of-iran> (Mohandes said that “We have a very close relationship with Iran and the Islamic Republic, which we should be proud of,” and when asked if he fights for Iran or Iraq, answered: “Iran and Iraq, there is no contradiction between the two. Iran is our epicenter. We have no reservations in saying so[.]”); Goran, *supra* note 51 (“Muhandis noted . . . [t]he support of the Islamic Republic [of Iran] has been essential, and the youth of Hezbollah had an essential role in training, planning, and supporting [the PMF factions] . . .”).

Under Article 16, both Iraq and Iran are liable for such units because the former already adopted them as its organs or empowered entities, and the latter has supported them by providing logistics, intelligence, arms, and training. If Iraq placed these units at Iran's disposal, Baghdad would remain responsible since it should still know about these unit's operations and is still paying their salaries and operating costs.¹⁸³ Alternatively, by continuing to support, train, and, in certain instances, exercise direct influence over certain *Hashd al-Sha'abi* units, Iran is providing "[a]id or assistance in [Iraq's] commission of . . . internationally wrongful act[s]."¹⁸⁴

D. *U.S. Liability for the Actions of the Hashd al-Sha'abi*

Iraq's piecemeal incorporation of the *Hashd al-Sha'abi* into the ISF, culminating in the 2019 law, also raises the possibility that Iraq's Western allies might bear some liability for the militia's actions under ARSIWA Article 16, particularly if those allies are helping Iraq reform its security sector.

Following ISIS's capture of Mosul in June 2014, the United States significantly increased its training and equipping mission in Iraq, and began targeting ISIS through widespread airstrikes and limited kinetic operations in northern and western Iraq.¹⁸⁵ In 2012, Iraq received approximately \$850 million from the State Department's Foreign Military Financing Program, which is managed by the DOD.¹⁸⁶ But since the U.S. initiated Operation Inherent Resolve to liberate Mosul in December 2014,¹⁸⁷ the DOD's budget to train and equip the

183. See Draft Articles on Responsibility of States, *supra* note 116, at 65 (indicating that, under Article 16, if the units were at Iran's disposal, Iraq would still be liable for assisting Iran if it "does so with knowledge of the circumstances of the internationally wrongful act; and [if] the act would be internationally wrongful if committed by [Iran]").

184. *Id.* at 65.

185. See, e.g., *Timeline: the Rise, Spread, and Fall of the Islamic State*, WILSON CTR. (Apr. 20, 2019), <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state> (describing the U.S. efforts against ISIS following the June 2014 attack).

186. *Foreign Military Financing Account Summary*, U.S. DEP'T OF STATE, <https://2009-2017.state.gov/t/pm/ppa/sat/c14560.htm> (last visited Sept. 29, 2019).

187. See Tim Ripley, *US Sets Up New Headquarters for Operation 'Inherent Resolve'*, JANE'S DEF. WKLY. (Dec. 9, 2014), <https://web.archive.org/web/20150601230929/http://www.janes.com/article/46877/us-sets-up-new-head>

Iraqi military was separated from the State Department's program and increased to over \$1 billion.¹⁸⁸ The DOD's budget request for 2019 is \$850 million for Iraq.¹⁸⁹ This budget has paid for combat and logistics training and has supplied the ISF with a substantial arsenal.¹⁹⁰ Publicly, the United States is adamant that its weapons and equipment are not provided to units that do not adhere to international human rights standards, but tracking the distribution of this equipment in Iraq is a significant challenge,¹⁹¹ and the U.S. government has acknowledged past discrepancies between the DOD's records and the reality on the ground.¹⁹²

This influx of aid and the difficulties associated with tracking it means that the United States, by supporting the Iraqi army, is indirectly supplying *Hashd al-Sha'abi* units that con-

quarters-for-operation-inherent-resolve (reporting on the new headquarters for Operation Inherent Resolve).

188. See OFFICE OF THE SEC'Y OF DEF., JUSTIFICATION FOR FY 2018 OVERSEAS CONTINGENCY OPERATIONS (OCO): COUNTER-ISLAMIC STATE OF IRAQ AND SYRIA (ISIS) TRAIN AND EQUIP FUND (CTEF) 5 (2017) (requesting over \$1 billion dollars for both FY 2017 and 2018); OFFICE OF THE SEC'Y OF DEF., FY 2016 OVERSEAS CONTINGENCY OPERATIONS (OCO) IRAQ TRAIN AND EQUIP FUND (ITEF) 3 (2015) (requesting over \$1 billion dollars for FY 2015, but just only just over \$715 million for 2016).

189. OFFICE OF THE SEC'Y OF DEF., JUSTIFICATION FOR FY 2019 OVERSEAS CONTINGENCY OPERATIONS (OCO): COUNTER-ISLAMIC STATE OF IRAQ AND SYRIA (ISIS) TRAIN AND EQUIP FUND (CTEF) 3 (2018).

190. *Id.* at 3, 7, 18.

191. See U.S. GOV'T ACCOUNTABILITY OFFICE, GOA-17-433, IRAQ: DOD NEEDS TO IMPROVE VISIBILITY AND ACCOUNTABILITY OVER EQUIPMENT PROVIDED TO IRAQ'S SECURITY FORCES (2017) ("The Department of Defense (DOD) maintains limited visibility and accountability over equipment funded by the Iraq Train and Equip Fund (ITEF). Specifically, DOD is not ensuring that the Security Cooperation Information Portal (SCIP) is consistently capturing key transportation dates of ITEF-funded equipment."); see also C. J. Chivers, *How Many Guns Did the U.S. Lose Track of in Iraq and Afghanistan? Hundreds of Thousands*, N.Y. TIMES MAG. (Aug. 24, 2016), <https://www.nytimes.com/2016/08/23/magazine/how-many-guns-did-the-us-lose-track-of-in-iraq-and-afghanistan-hundreds-of-thousands.html> (reporting on the "vast but persistently uncountable quantity of military firearms" the United States has given "to its many battlefield partners in Afghanistan and Iraq").

192. See, e.g., U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-711, STABILIZING IRAQ: DOD CANNOT ENSURE THAT U.S.-FUNDED EQUIPMENT HAS REACHED IRAQI SECURITY FORCES 2, 11 (2007) (reporting that in 2007 there was a "discrepancy of at least 190,000 weapons" between what U.S.-led coalition forces reported issuing to Iraqi forces and what was on the property books, including 110,000 AK-47 rifles).

tinue to violate international law. If the United States is aware that some of its aid is being supplied to *Hashd al-Sha'abi* units that have committed such violations, this awareness satisfies ARSIWA Article 16's knowledge requirement, making the United States prima facie liable for supporting these units. In this situation, the United States then bears the burden of showing that it did not supply this aid in order to further *Hashd al-Sha'abi*'s violations.

But even if the United States were able to keep its equipment out of *Hashd al-Sha'abi* hands, it could still encounter Article 16 liability due to the fact that it is widely known both that these units are committing atrocities and that they meet the definition of Iraqi organs or empowered entities, especially after the full integration of these militias in 2019. Finally, although the United States may be supplying arms, training, intelligence, and kinetic support to the ISF only, this aid is releasing otherwise unavailable Iraqi resources for the benefit of the *Hashd al-Sha'abi*. Thus, by supporting Iraq, the U.S. is indirectly supporting the *Hashd al-Sha'abi*.

III. IMPLICATIONS OF IRAQ'S OWNERSHIP OF THE *HASHD AL-SHA'ABI*

A. *Implications of Iraqi Incorporation Under International Humanitarian Law*

States with a stake in Iraq's defense infrastructure may face obligations under Common Article 1 of the Geneva Conventions. Common Article 1 requires states to always uphold the Geneva Conventions articles,¹⁹³ and "not to encourage violations of the law of armed conflict."¹⁹⁴ Iraq has the clearest responsibility under international human rights law and IHL

193. Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 1, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Convention (II) for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea art. 1, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Convention (III) Relative to the Treatment of Prisoners of War art. 1, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Convention (IV) Relative to the Protection of Civilian Persons in Time of War art. 1, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. "Common Article 1" refers to the first article common to the four Geneva Conventions [hereinafter Geneva Conventions].

194. Oona A. Hathaway et al., *Ensuring Responsibility: Common Article 1 and State Responsibility for Non-State Actors*, 95 TEX. L. REV. 539, 543 (2017).

to ensure the *Hashd al-Sha'abi* do not violate these bodies of law.¹⁹⁵ At an absolute minimum, this means Iraq must ensure that all *Hashd al-Sha'abi* brigades abide by the provisions of Common Article 3 of the Geneva Conventions.¹⁹⁶ By permitting one of its state organs to violate IHL, Iraq is not only responsible for those specific violations, but may also be held responsible for breaching its standalone Common Article 1 responsibilities. Iraq's civilian and military commanders must also act to control, "prevent and, where necessary, suppress and report" violations of IHL.¹⁹⁷ Where Iraqi commanders and political leaders are aware that *Hashd al-Sha'abi* units will commit, or have committed, a breach of IHL, they are required to try to prevent these violations or discipline actors who have failed to follow the law.¹⁹⁸

Some may question the significance of finding Iraq responsible for IHL violations to the victims of those violations. Because Iraq is a signatory to API, such victims have the poten-

195. See Knut Dörmann & Jose Serralvo, *Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations*, 96 INT'L REV. RED CROSS 707, 708 (2014) ("[T]he obligation to respect the Geneva Conventions means that a State must do everything it can to guarantee that its own organs abide by the rules in question.").

196. Geneva Conventions, *supra* note 193, art. 3 (requiring the humane treatment of "[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria"; and prohibiting "(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples").

197. Additional Protocol I, *supra* note 145, art. 87(1); see also Int'l Comm. of the Red Cross, *Practice Relating to Rule 153. Command Responsibility for Failure to Prevent, Punish or Report War Crimes*, CUSTOMARY IHL DATABASE, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule153 (last visited Sept. 29, 2019) (listing the other sources of this obligation, including Additional Protocol I and Iraq domestic law).

198. See Additional Protocol I, *supra* note 145, art 87(3) (requiring parties to "initiate such steps as are necessary to prevent . . . violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators").

tial to bring claims against Iraq for violations that *Hashd al-Sha'abi* committed. Article 91 of API provides that “[a] Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.”¹⁹⁹ The substance of Article 91 is also “generally accepted as customary international law.”²⁰⁰

Third-party states may also have Common Article 1 obligations regarding the *Hashd al-Sha'abi*. The ICRC’s 2016 Commentaries on the Geneva Convention concludes that Common Article 1 imposes upon third-party states a negative obligation to “neither encourage, nor aid or assist in violations of the Conventions by Parties to a conflict”²⁰¹ and a positive obligation to “do everything reasonably in their power to prevent and bring such violations to an end.”²⁰² Further, “[t]ogether with the ICJ, both the Security Council and the General Assembly have issued a myriad of resolutions reaffirming the existence of a legal obligation for third States to ensure respect for IHL in conflicts to which they are not a party.”²⁰³

As discussed above,²⁰⁴ the United States and Iran may bear some legal responsibility for the actions of the *Hashd al-Sha'abi*. It has also been established that these states support the *Hashd al-Sha'abi* in material terms, even if only as a consequence of supporting the Iraqi armed forces. As the *Hashd al-Sha'abi* have committed IHL violations and are not sufficiently controlled by Iraq, Common Article 1 obliges third-party states like the United States and Iran to act so that they are no

199. *Id.* art. 91.

200. Liesbeth Zegveld, *Remedies for Victims of Violations of International Humanitarian Law*, 85 INT’L REV. RED CROSS 497, 506 (2003).

201. INT’L COMM. OF THE RED CROSS, COMMENTARY ON THE FIRST GENEVA CONVENTION: CONVENTION (I) FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD ¶ 154 (2d ed. 2016). See generally Hathaway et al., *supra* note 191 (explaining the obligations of states and non-state actors under Common Article I of the Geneva Conventions).

202. INT’L COMM. OF THE RED CROSS, *supra* note 201, ¶ 154.

203. Dörmann & Serralvo, *supra* note 195, at 717.

204. For these conclusions, see *infra* Part II.

longer encouraging,²⁰⁵ aiding, or assisting these violations. Even if they were not so closely involved with Iraq's defense sector, the legal obligation of third-party states to ensure respect for IHL obliges both states to leverage their close relationship with Iraq to find a resolution to the problem: "State support that facilitates non-state groups' ability to commit violations of international humanitarian law constitutes an independent violation of the state's Common Article 1 duties, even if such actions may not pass the attribution bar under state-responsibility doctrine."²⁰⁶

B. *Potential Claims Against States Supporting the Hashd al-Sha'abi by Third Party States*

Third-party states could bring action in the ICJ against Iraq and other countries that support the *Hashd al-Sha'abi's* violations of IHL and international human rights law.²⁰⁷ Under ARSIWA Article 48, a State is entitled to invoke responsibility because, for example, the obligation breached is "owed to the international community as a whole," and so may demand the "cessation of the internationally wrongful act," "assurances . . . of non-repetition," and reparations to the injured parties.²⁰⁸

Obligations owed to the international community as a whole and not only individual states are known as *erga omnes* obligations. The ILC commentary to ARSIWA Article 48 states that this provision was "intend[ed] to give effect to the statement by the ICJ in the *Barcelona Traction* case [(*Belgium v. Spain*)]" regarding *erga omnes* obligations.²⁰⁹ That case describes *erga omnes* obligations as derived "for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, includ-

205. See generally Hathaway et al., *supra* note 194, at 567–69 (discussing the "not to encourage" standard and its applicability as "an alternative source of legal obligation").

206. Hathaway et al., *supra* note 194, at 576.

207. See Draft Articles on Responsibility of States, *supra* note 116, at 126 ("Any state other than an injured state is entitled to invoke the responsibility of another State . . . if: . . . the obligation breached is owed to the international community as a whole.").

208. *Id.*

209. *Id.* at 127.

ing protection from slavery and racial discrimination.”²¹⁰ “As evidenced by common Article 1, the rules of international humanitarian law belong to such obligations *erga omnes*.”²¹¹ Thus, in the case of IHL violations, a plaintiff state must claim that the responsible state violated the obligation and show that the reparation is in the interest of the injured state or parties.²¹² Certain human rights violations might also form the basis of a claim by third-party states, should such violations be deemed violations of *erga omnes* obligations. States, therefore, could potentially pursue claims against Iraq, demanding it take action to end *Hashd al-Sha’abi*’s international law violations, and, arguably, demanding reparations. Based on ARSIWA Article 16, these claims might also be raised against countries supporting Iraq. Lastly, states deemed responsible for *erga omnes* violations could become subject to countermeasures based on other provisions in the ARSIWA,²¹³ should the responsible states fail to bring the militias’ violations to a halt.²¹⁴

Should the ICJ attempt to hold Iraq or other states accountable for violations by the *Hashd al-Sha’abi*, it is likely that there would be similar implications for other countries that use militias and loosely controlled armed groups—of which there are several²¹⁵—in order to enforce government policy.

210. *Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain)*, Judgment, 1970 I.C.J. Rep. 32, ¶ 34 (Feb. 5).

211. Marco Sasso’li, *State Responsibility for Violations of International Humanitarian Law*, 84 INT’L REV. RED CROSS 401, 426 (2002). Earlier in his ICRC article, Sasso’li discusses the applicability of the ILC’s ARSIWA to IHL violations, concluding that it can be applied. Sasso’li, *supra*, at 403; see also Dörmann & Serralvo, *supra* note 195, at 722 (“Article 48 of [ARSIWA] provides that any State other than an injured State is entitled to invoke the responsibility of another State if the obligation in question is ‘owed to the international community as a whole’—this is indeed the case with the Geneva Conventions, which lay down legal obligations of an *erga omnes* nature.”).

212. Sasso’li, *supra* note 211, at 426–27 (“‘Any State’ may (and—under common Article 1—must) . . . claim cessation from the responsible State as well as ‘reparation (. . .) in the interest of the injured State or of the beneficiaries of the obligation breached.’”).

213. See generally Draft Articles on Responsibility of States, *supra* note 116, at 128–43 (providing for the use of countermeasures).

214. See *id.* at 134 (discussing the relationship between available countermeasures and the nature of the violation).

215. For examples of other countries that make use of militias and other such groups, see, e.g., Vanda Felbab-Brown, “*In Nigeria, We Don’t Want Them Back*”: Amnesty, Defectors’ Programs, Leniency Measures, Informal Reconciliation,

C. *Implications for the United States*

While the United States is likely not liable for the actions of the *Hashd al-Sha'abi* brigades, Iraq's incorporations of these groups into its armed forces presents several critical policy issues, and may directly implicate U.S. aid to Iraq as a matter of U.S. domestic law.²¹⁶

1. *Strategic Challenges for the United States Following the Hashd al-Sha'abi's Incorporation*

The United States has two strategic objectives in Iraq: (1) support allies that deny safe harbor to terrorist groups, and (2) ensure that the region is not dominated by any power hostile to U.S. interests.²¹⁷ Certain *Hashd al-Sha'abi* brigades pose a direct threat to U.S. strategic interests in Iraq if they are considered part of the ISF's battle force and are widely understood to be supplied by the United States.²¹⁸ The media branches of both al-Qaeda and ISIS already use *Hashd al-Sha'abi* atrocities as recruiting propaganda to encourage potential fighters in Iraq and around the world to join their causes.²¹⁹ If *Hashd al-Sha'abi* publications and social media posts show Shi'ite militiamen using American weapons, atrocities committed by the *Hashd al-Sha'abi* could be attributed to

and *Punitive Responses to Boko Haram*, BROOKINGS INSTITUTION (May 2018), <https://www.brookings.edu/research/in-nigeria-we-dont-want-them-back>; Andrew Lebovich, *Mali's Impunity Problem and Growing Security Crisis*, EUR. COUNCIL ON FOREIGN REL. (June 28, 2018), https://www.ecfr.eu/article/commentary_malis_impunity_problem_security_crisis.

216. The PMFs include U.S.-designated terrorist organizations, known human rights violators, groups opposed to the rule of the Iraqi government, and known Iranian proxy forces. *See infra* Part II. Any one of these problems clearly raises legal and policy difficulties for the United States.

217. *See* U.S. DEP'T OF DEF., SUMMARY OF THE 2018 NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA 9 (2018) (describing U.S. strategy in the Middle East, focusing in particular on strengthening friendly coalitions in Afghanistan, Iraq, and Syria, while countering Iran).

218. *See, e.g.*, David Axe, *In Iraq, Hezbollah's Got U.S. Tanks, and Washington Wants Them Back*, DAILY BEAST (Feb. 20, 2018), <https://www.thedailybeast.com/in-iraq-hezbollahs-got-us-tanks-and-washington-wants-them-back> (describing how pro-Iranian militias in Iraq had secured U.S.-made tanks, and why that threatens U.S. interests).

219. *See* ALAALDIN, *supra* note 31, at 1 (“[T]hese militias have exacerbated sectarian tensions between Iraq’s Arab Sunnis and Shiites, which militant groups like ISIS have exploited to swell their ranks.”).

the United States for propaganda purposes.²²⁰ Sunni extremist groups like Al-Qaeda and ISIS may use this link to direct sectarian anger stemming from *Hashd al-Sha'abi* atrocities towards the Iraqi government and the United States.

Furthermore, as the *Hashd al-Sha'abi* continues to receive support and training from Iran, U.S. allies in the around the Persian Gulf might also be threatened by the amount of U.S. support that is funneled from the ISF to the *Hashd al-Sha'abi*. Policymakers in Saudi Arabia, the United Arab Emirates (UAE), Bahrain, and Qatar have expressed concern²²¹ that the Iran-aligned government of Iraq is funneling U.S. aid to the Iranian-backed *Hashd al-Sha'abi* brigades in order to create another sectarian non-state actor similar to Hezbollah.²²² Senior members of the IRGC's elite Qods Force have already indicated that this is an Iranian objective.²²³ To counteract this threat, and more broadly to hedge against the Iraqi government's strategic alignment with Iran, Saudi Arabia, the UAE, Bahrain, and Qatar, might start providing substantial support and funding to Iraqi Sunni militias or other Sunni extremist groups in order to counterbalance the Iranian-backed *Hashd al-Sha'abi* brigades.²²⁴

220. See, e.g., Baxtiyar Goran, *PHOTOS: Kurds Angered by US Inaction Following Iranian-Backed Iraqi Attacks*, KURDISTAN 24 (Nov. 4, 2017), <http://www.kurdistan24.net/en/news/1f55792c-d38c-4a25-bcb1-2241680e2bec>.

221. "Though the PMUs are a diverse force, and not all units are allied with Tehran, policymakers in [Saudi Arabia, UAE, Bahrain, and Qatar] have described them as an Iranian front and their entrenchment as a roadblock in the way of closer ties." *Saudi Arabia: Back to Baghdad*, INT'L CRISIS GROUP 5 (May 22, 2018), <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/186-saudi-arabia-back-baghdad>.

222. See e.g., CTR. FOR STRATEGIC & INT'L STUDIES, *WAR BY PROXY: IRAN'S GROWING FOOTPRINT IN THE MIDDLE EAST* WAR J. (2019) (explaining the IRGC's strategy of supporting sectarian non-state forces, including the *Hashd al-Sha'abi* and Hezbollah).

223. See e.g., Bill Roggio & Amir Toumaj, *Iraq's PMF is IRGC's "Next Step," Senior Qods Force Commander Says*, FDD'S LONG WAR J. (Dec. 17, 2016), <https://www.longwarjournal.org/archives/2016/12/iraqs-pmf-is-irgcs-next-step-senior-qods-force-commander-says.php> (reporting that the senior advisor to the commander of the Qods Force stated that the "establishment of Iraq's [PMF] is an extension of Iran's plan to export the revolution").

224. See *Saudi Arabia: Back to Baghdad*, *supra* note 219 (explaining that these countries have strategic interest in forming ties with Iraqi groups that are against Iranian influences).

At a more granular level, Iraq's incorporation of the *Hashd al-Sha'abi* legitimizes the formation within Iraq and provides its fighters with international legal protections only given to a country's armed forces. The *Hashd al-Sha'abi* brigades have leveraged their legalization to create political parties and enter mainstream Iraqi politics. After the 2018 elections, these newly formed parties won at least a third of Iraq's parliamentary seats, and individuals who support Iranian interests—like Hadi al-Ameri, Abu Mahdi al-Muhandis, and Qais al-Khazali—are now firmly entrenched in the Iraqi political establishment. Two rival political coalitions with close *Hashd al-Sha'abi* ties—the Fatah Alliance and the Sairoon Alliance—have agreed to denounce U.S. forces, and have tried to encourage parliamentary action on ejecting U.S. troops from the country since March 2019.²²⁵ These developments should concern Iraq—since armed groups engaging in politics has been normalized by the PMF units entering parliament, in direct violation of constitution—and should also concern foreign backers like the U.S. which have invested significant blood and treasure in Iraqi security and rule of law.

If the political process fails, these factions also appear willing to pursue the removal of U.S. forces through violent means. The U.S. Directorate of National Intelligence's 2019 Worldwide Threat Assessment observed that “[i]n Iraq, Iran-supported Popular Mobilization Committee-affiliated Shia militias remain the primary threat to US personnel, and we expect that threat to increase as the threat ISIS poses to the militias recedes, . . . and tension between Iran and the United States grows.”²²⁶ Qais Al-Khazali, the head of Kata'ib Hezbollah (KH), stated that he believes that “more than half of [Iraq's] parliament reject the presence of American military

225. See Barbara A. Leaf & Bilal Wahab, *A U.S.-Iraq Security Partnership: Avoiding the Pitfalls Just Ahead*, WASH. INST. FOR NEAR EAST POLICY (Mar. 13, 2019) <https://www.washingtoninstitute.org/policy-analysis/view/a-u.s.-iraq-security-partnership-avoiding-the-pitfalls-just-ahead> (describing a 2018 parliamentary resolution to set a timetable for withdrawal of foreign troops); see also Kirk H. Sowell, *The Stalled Effort to Expel U.S. Troops from Iraq*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Apr. 4, 2019), <https://carnegieendowment.org/sada/78782> (noting that the Fatah Alliance and Sairoon Alliance have found “common ground” in denouncing U.S. troops).

226. 2019 OFFICE OF THE DIR. OF NAT'L INTELLIGENCE, STATEMENT FOR REC.: WORLDWIDE THREAT ASSESSMENT U.S. INTELLIGENCE COMMUNITY 1, 29.

forces,” and suggested that U.S. troops may eventually be driven out “by force” if they do not yield to the will of the Iraqi people.²²⁷ Similarly, in February 2018, a spokesman for KH “described the American military in Iraq as an ‘occupation force’ and called for their immediate exit.”²²⁸

Because it falls under the umbrella of *Hashd al-Sha’abi*, under international law, KH is also an Iraqi organ, empowered entity, or an adopted group linked to the ISF. This means that all *Hashd al-Sha’abi* militias benefit from the protections that IHL affords armed combatants. As a result, any unilateral *Hashd al-Sha’abi* action taken against the United States or any other state is governed by the laws of international armed conflict, and any captured *Hashd al-Sha’abi* fighter may have to be treated as a prisoner of war.

This saddles the United States with an additional dilemma. U.S. forces could not treat these units as rogue non-state actors on the battlefield, prosecute captured combatants, or engage in prolonged interrogation, and would have to ensure that these “soldiers” were released at the “close of hostilities.”²²⁹ These risks are compounded by the fact that during any conflagration, Iraq and the United States would technically be engaged in an international armed conflict.

During a sustained engagement with *Hashd al-Sha’abi* militiamen, the U.S. forces would almost certainly not target non-PMF elements of the ISF, nor would the ISF mobilize against U.S. forces to come to *Hashd al-Sha’abi*’s assistance. However, because neither the United States nor Iraq would treat such confrontations as a war, hostilities would technically end as soon as the engagement concluded. As a result, the United States could not legally detain any captured *Hashd al-Sha’abi* fighter. This kind of non-trivial legal and political conundrum generates liability for the United States, strengthens Iran’s position, and continues to present incentives for elements within

227. Qassim Abdul-Zahra & Zeina Karam, *AP Interview: Iraqi Militia Leader Wants US Troops to Leave*, ASSOCIATED PRESS, Jan. 28, 2019, www.apnews.com/109a9aabe987430cbe63e4a668711833.

228. Ahmad Majidyar, *Iran-Backed Iraqi Militias Step Up Threat of Violence Against US Forces in Iraq*, MIDDLE E. INST. (Feb. 7, 2018), <https://www.mei.edu/publications/iran-backed-iraqi-militias-step-threat-violence-against-us-forces-iraq>.

229. Convention (III) Relative to the Treatment of Prisoners of War art. 17, 99, 118, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

Hashd al-Sha'abi to destabilize Iraq, despite having significant influence in the Iraqi parliament.

2. *The Leahy Laws and U.S. Domestic Legal Risk*

The United States could also face a legal challenge under domestic law. Given *Hashd al-Sha'abi's* integration into the ISF, State Department and DOD funding to the ISF may now be in violation of limitations on assistance to security forces codified in 22 U.S.C. § 2378d, as well as the DOD appropriations rules found in 10 U.S.C. § 2249e.²³⁰ Both these statutes, commonly referred to as the Leahy Laws, prevent the DOD and State Department from providing assistance to any unit of the security forces of a foreign country “if the Secretary of [State or Defense] has credible information that [such a] unit has committed a gross violation of human rights.”²³¹ While the DOD and State Department provide military aid to Iraq’s Ministry of Defense, these agencies could be in violation of 22 U.S.C. § 2378d(a) and 10 U.S.C. § 2249e(a)(1) if they do not exercise due care to restrict how the Ministry of Defense distributes its assistance.

However, the case law surrounding these statutes is exceptionally spartan. Only two cases have discussed either 22 U.S.C. § 2378d(a) and 10 U.S.C. § 2249e(a)(1) since their enactment.²³² This precedent has established two clear rules: first, the State Department must periodically review individual units receiving U.S. aid to ensure that these units do not commit gross violations human rights²³³; and second, a private individ-

230. These are two separate versions of the same law; the two versions exist because the funding for U.S. assistance to armed forces comes from both the State Department and DOD budgets. 22 U.S.C. § 2378d (2012); 10 U.S.C. § 2249e (2015).

231. 22 U.S.C. § 2378d(a); 10 U.S.C. § 2249e(a)(1).

232. WESTLAW, <https://www.westlaw.com> (database last visited Sept. 29, 2019). The author compiled this information by narrowing down data searches in the Westlaw database. The author came to this figure by searching “22 U.S.C. § 2378d(a)” and “10 U.S.C. § 2249e(a)(1)” together in all state and federal court cases and counting the results.

233. See *Cameranesi v. United States Department of Defense*, 856 F.3d 626, 631 (9th Cir. 2017) (stating that the Secretary of State must “establish, and periodically update, procedures to . . . ensure that when an individual is designated to receive United States training, equipment, or other types of assistance the individual’s unit is vetted as well as the individual” (quoting 22 U.S.C. § 2378d(d)(5))).

ual does not have a cause of action under either statute.²³⁴ Beyond these two cases, one of which was only a District Court opinion, there has been no judicial application of these statutes.

The dearth of case law here means that it is unclear how these two statutes actually restrain the senior leadership of either U.S. agency. The structure of the Leahy Laws seems to indicate that Congress would bear the burden of proving that the State Department or the DOD was aware that the ISF used U.S. aid to supply *Hashd al-Sha'abi* brigades. An investigation could accomplish this, but neither statute makes clear how a violating agency should be sanctioned.²³⁵ As a result, Congress's only recourse would be to cut the program's funding, an action already squarely within its constitutional power, although the statutes give Congress additional legitimacy to take such actions.

Furthermore, in some situations, U.S. national security interests may be seen by the U.S. government as outweighing the human rights abuses perpetrated by these groups in these cases. The Leahy Laws' facially stringent requirements could place Congress and the executive branch directly at odds with no clear mechanism for resolving the dispute. To avoid this type of impasse, both 22 U.S.C. § 2378d and 10 U.S.C. § 2249e provide the State Department and the DOD with a safety valve. 22 U.S.C. § 2378d(b) states:

The prohibition in subsection (a) shall not apply if the Secretary determines and reports to the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, and the Committees on Appropriations that the government of such country is taking effective steps to bring the responsible members of the security forces unit to justice.²³⁶

10 U.S.C. § 2249e(c) similarly states: "The Secretary of Defense, after consultation with the Secretary of State, may

234. See *Abusharar v. Hagel*, 77 F. Supp. 3d 1005, 1006 (C.D. Cal. 2014) (finding "no private right of action under the Leahy Amendment").

235. See 22 U.S.C. § 2378d (failing to define a punishment for violating the statute); 10 U.S.C. § 2249e (similarly failing to define a punishment for violating the statute).

236. 22 U.S.C. § 2378d(b).

waive the prohibition in subsection (a)(1) if the Secretary determines that the waiver is required by extraordinary circumstances.”²³⁷

As a result, while providing aid to Iraq’s Ministry of Defense may lead to funding the *Hashd al-Sha’abi*, and thus violate the Leahy Laws, such a violation is easily remedied. However, if this violation is seen as a direct affront to Congress’s legislative power, a wholesale cut or significant reduction in funding would be disastrous for the ISF and Operation Inherent Resolve. It is highly unlikely that such a budgetary cut would occur, but if the State Department or DOD programs appeared to be a prolonged and willful violation of the Leahy Laws, Congress has the option to take this action.

IV. CONCLUSION

By enacting the November 2016 Law Of The Hashd Al-Sha’abi Committee, the March 2018 Diwani Order, and the July 2019 Prime Ministerial decree, the Iraqi government has assumed legal responsibility for the actions of the *Hashd al-Sha’abi*—a militia group that harbors ideologies, goals, and capabilities drastically divergent from its own. Through this bestowal of legitimacy, Iraq has empowered these militia to make a compelling bid for influence in a new post-ISIS political landscape. However, Iraq still exercises only ostensible control over the *Hashd al-Sha’abi*, and in many cases, the strongest units are so closely tied to Iran and its IRGC that they effectively constitute Iranian proxy forces.

The legal consequences stemming from the *Hashd al-Sha’abi*’s integration into the ISF are considerable. The *Hashd al-Sha’abi* are known to be behind scores of egregious human rights violations, and under settled international law, Iraq now bears responsibility for these violations. In order to mitigate this, Baghdad must work urgently to improve its command and control structures of these militias. Should this prove politically or practically infeasible, it must divest quickly and publicly from the *Hashd al-Sha’abi* or, at a minimum, those specific brigades unwilling to accept Baghdad’s authority or respect the rule of international and domestic law.

237. 10 U.S.C. § 2249e(c).

As one of Iraq's primary defense partners, the United States must also work to improve the legal framework underpinning the *Hashd al-Sha'abi*. Under its own domestic law, the United States has a responsibility to avoid providing assistance to units known to violate human rights. However, the legal incorporation of the militias into the wider Iraqi armed forces has made it difficult to ensure that the resources provided to the ISF do not fall into *Hashd al-Sha'abi* hands. Since these brigades are associated with designated foreign terrorist organizations and enemy states, the United States faces an urgent policy dilemma; at a time when the Trump administration aims to counter violent extremism and Iranian ambitions, indirect support to uncontrolled militias could prove counterproductive and politically precarious. The United States can mitigate this policy predicament by assisting Iraq in bringing the *Hashd al-Sha'abi* under more effective control, or alternatively, consider alternate means of supporting Iraq apart from supplying the ISF with military resources.

As Iraq rebuilds after the territorial defeat of ISIS, Baghdad faces a new and equally daunting challenge—managing the previously supportive militias as they attempt to assert their newfound political and military power. The militias are free from the fight against ISIS, and many of them have started doggedly pursuing a sectarian agenda that places a significant amount of both legal and political liability on Iraq and its allies. Iraq and its allies must continue to restructure and reform the current legal status of the *Hashd al-Sha'abi* to ensure compliance with international law. Such a policy will facilitate the future government in its attempt to stabilize the country and will help Iraqis to re-establish a peaceful, stable, and independent state.

APPENDIX A: LAW OF THE *HASHD AL-SHA'ABI* COMMITTEE

Law of the *Hashd al-Sha'abi* Committee²³⁸

November 26, 2016

The following law was issued based on what was passed in the Council of Representatives and approved by the President of the Republic, in accordance with the provisions of Articles (61)(1) and (73)(3) of the Constitution.

No. (40) of the year 2016

The Law of the *Hashd al-Sha'abi* Committee

Article (1)

(1) The *Hashd al-Sha'abi* Committee is formed in accordance with Diwani Order No. 91 of February 24, 2016, taking on legal personhood and is considered a part of the Iraqi Armed Forces, and is subordinate to the Commander-in-Chief of the Armed Forces.

(2) The provisions issued in Diwani Order No. 91 shall be a part of this law:

(i) The *Hashd al-Sha'abi* shall be an independent military formation, and shall be a part of the Iraqi Armed Forces, and shall be linked to the Commander-in-Chief of the Armed Forces.

(ii) The formation shall consist of a leadership, and a General Staff, and non-commissioned officers, and combat brigades.

(iii) This formation and its affiliates shall be subject to the military laws in force in all respects, with the exceptions of conditions relating to age and education level [for service personnel].

(iv) The members, officials, and commanders of this formation shall be made to conform with military standards for rank structure, salaries, allowances, and general rights and duties.

(v) Members of the *Hashd al-Sha'abi* Committee who join this formation shall be disassociated from all political, partisan, or collective organizations, and political activity shall not be permitted in its ranks.

238.

(vi) The organization of the military formation shall be completed by the *Hashd al-Sha'abi* Committee within three (3) months by its Staff, its brigades, and its affiliates, who are bound by the provisions laid out above.

(vii) The relevant authorities shall implement regulations.

(3) The *Hashd al-Sha'abi* force is made up of [diverse] elements of the Iraqi People, in accordance with Article (9) of the Constitution.

(4) The deployment and redeployment of forces within the Governorates shall be exclusive powers of the Commander-in-Chief of the Armed Forces.

Article (2)

The Division Commander shall be appointed with the approval of the Council of Representatives in accordance with Article (61)(5)(c) of the Constitution.

Article (3)

The provisions of this law shall apply to members of the formation effective from the date of Decision (307) of the Council of Ministers, dated June 11, 2014.

Explanatory Statement

In honor of all the sons of the [many different] people of Iraq who volunteered to defend Iraq and preserved the Iraqi State from the onslaught of ISIS and all the enemies of Iraq and its new regime. And in honor of all those volunteers, and popular mobilizations, and tribal mobilizations, which contributed their blood in defence of Iraq.

The law was so enacted.

APPENDIX B: DIWANI ORDER DATED MARCH 8, 2018²³⁹

Prime Minister and Commander-in-Chief of the Armed Forces Dr. Haider Al-Abadi issues regulations for adapting the status of the *Hashd al-Sha'abi* fighters

March 8 2018

The Prime Minister and Commander-in-Chief of the Armed Forces, Dr. Haider Abadi, issues the following regulations for adapting the status of the fighters of the *Hashd al-Sha'abi*:

Recalling and respecting the *Fatwa "al-Jihad al-Kafa'i"* which was issued by the Supreme Religious Authority vested in Grand Ayatollah Ali al-Sistani in a Friday sermon dated June 13, 2018, and supported by the provisions of Article (1) (2) (iv) of the "Law of the *Hashd al-Sha'abi* Committee" (Law no. 40 of the year 2016), along with Diwani Order no. 91 of the year 2016, we have decided to issue the following regulations:

Article (1)

The following terms shall be defined:

- (1) "Committee": the *Hashd al-Sha'abi* Committee
- (2) "Chairman of the Committee": the Supreme Chairman of the Committee
- (3) "Fighter": a person who enjoys the rights of a rank equivalent to the rank of 2nd Lieutenant or higher, which enables him to perform duties and exercise powers approved by the laws in force and by Council of Ministers resolution (177) of the year 2010.
- (4) "Volunteer": a person who enjoys the rights of a rank equivalent to ranks of enlisted soldiers up to the rank of sergeant major, which enables him to perform duties and exercise powers approved by the laws in force and by Council of Ministers resolution (177) of the year 2010.

Article (2)

- (1) The organizational structure shall have the following titles:
 - (a) Deputy Chairman of the Committee
 - (b) Regional Leaders

- (c) Formation Commanders
- (d) Commanders of Combat Forces
- (e) Commanders of Combat Groups
- (f) Commanders of Combat Units
- (g) Commanders of Combat Sub-Units
- (h) Volunteers, civil servants, and chaplains [*muballighun ad-diniyyun*]

(2) The ranks described in Article (2)(1) shall be indicated by adopting distinctive colored patches which indicate the rank, and shall be affixed to the right side of the [rank holder's] chest. The Chairman of the Committee shall designate the colors and forms with the approval of the Commander in Chief of the Armed Forces.

(3) (a) Staff of the *Hashd al-Sha'abi* shall be accommodated appropriately for their positions as laid out in Article (2)(1) and in accordance with the organizational hierarchy, and those entitled to a pension are to be assigned a pension in accordance with the laws in force.

(b) Staff of the Committee shall be confirmed by a decree issued by the commander in chief of the Armed Forces, with the exception of fighters who have participated in fighting ISIS for a period of not less than one year.

(4) In order to serve in the *Hashd al-Sha'abi* the Volunteer accepts the following conditions:

(a) [The Volunteer is] an Iraqi citizen.

(b) The Volunteer is at least 18 years of age, and not more than 25 years of age in the technical branches, and not more than 30 years of age in the other branches.

(c) [The Volunteer] shall possess good character, reputation, and behavior.

(d) [The Volunteer] shall have good fitness and sound health.

(e) shall not have been convicted of a felony, or a misdemeanor of moral turpitude, or crimes of terrorism, or crimes contrary to the internal or external security of the State.

(f) shall have obtained a minimum of a certificate of primary education.

Article (3)

Those not meeting the conditions [to qualify as] Fighters or Volunteers shall be transferred to the civilian cadres of the

Hashd al-Sha'abi with their rights governed by Civil Service Law No. (24) of the year 1960 (amended), the State and Public Sector Employees Law No. 22 of 2008 (amended), and the State Employees Discipline Law No. 14 of 1991 (amended).

Article (4)

(1) Fighters and Volunteers shall be promoted in accordance with the provisions of the Military Service and Retirement Law No. 3 of the year 2010 (amended).

(2) Members of the *Hashd al-Sha'abi* outlined in Article (1) shall be granted financial benefits equivalent to their counterparts in the Ministry of Defense and in accordance with the laws in force.

(3) Members of the *Hashd al-Sha'abi* shall be accepted into military colleges and institutions in accordance with adopted regulations in those colleges. The rate of acceptance shall be determined in coordination with [those colleges] and the Ministry of Defense, in accordance with the needs of the Committee.

(4) Any person holding a position of Formation Commander or higher must be a graduate of courses of the Military Academy or the Ministry of Defense Joint Staff College. [Appointments to] these positions shall not be approved without the approval of the Commander in Chief of the Armed Forces, who shall also have the right to exempt those who do not meet the aforementioned conditions, in the cases of those who possess experience and proven competency in the field, and who have been proposed by the Chairman of the Committee.

Article (5)

(1) The Prime Minister may delegate to the Chairman of the Committee a number of powers necessary to fulfil the missions of the Committee in a manner not inconsistent with the law.

(2) The Chairman of the Committee may delegate some of his powers outlined in the law to one or both of his Deputies, with the exception of exclusive powers and in accordance with military laws in force.

(3) The Chairman of the Committee may issue additional supplementary regulations to facilitate the execution of provi-

sions of enacted laws, after obtaining the approval of the Commander in Chief of the Armed Forces, and in a manner not inconsistent with existing law.

Article (6)

In the absence of a specific provision in these regulations, the provisions of the Law of Military Service and Retirement No. 3 of 2010 (amended), the Law of Military Punishments No. 19 of 2007 (amended), the Law of Military Criminal Procedure No. 22 of 2016, the Law of Civil Service No. 24 of 1960 (amended), the Unified Retirement Law No. 9 of 2014, and the Law of State and Public Sector Salaries No. 22 of 2008 (amended) shall apply.

Article (7)

These regulations shall be in effect from the date of their issuing.

