



A CHRONOLOGY TO THE CLAIMS AND RIGHT ON SELF-DETERMINATION BASED ON IRAQI KURDISTAN'S EXPERIENCE

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Abstract: The repression experienced by the Kurds has been prevalent for decades. Partly, it was due to decades-long domination and denial of their right to self-determination generally by the international community and specifically the government of Iraq. The Kurds have been struggling for their rights at the expense of severe repression which led to their increasing exodus as refugees. What started presumably as an internal affair has aggravated to a situation that posed threats for international peace and security. This provided the legal basis for United Nations Security Council to intervene and examine this situation against many aspects of repression namely from the denial of cultural rights to genocide. Also, despite the fact that in 1995, the International Court of Justice documented that self-determination is 'one of the essential principles of contemporary international law', it is imperative to examine and understand thoroughly the chronology of events of the struggle before any assumptions are drawn as to why self-determination is still being denied for the Kurds. This paper aims to provide a preliminary overview to understanding the historical chronology before a thorough and in-depth research is undertaken with regards to finding the status and stand of the Iraqi Federal Government on the Kurdistan's independence referendum from both the human rights and the international law and perspectives. The methodology used in this paper is a pure library research focusing mainly on primary and secondary sources. This article attempts to establish the bases for self-determination claims and right from both the perspectives of human rights as well as international law.

Keywords: Human Rights, Iraqi Kurdistan, Self-determination, Secession, Treaty Law and International Law.



INTRODUCTION

On September 25, 2017, the Kurds decided for an independence referendum through a resounding majority that the people wished to separate themselves from Iraq and, consequently form an independent state of Kurdistan (Kiblawi, 2017). This comes after a long-winded struggle over many years since the First World War which yet again, was received with a strong opposition from the central government of Iraq in which it has rejected the Kurds' claim for independence.

The Iraq Kurdistan's right to self-determination has been a debatable issue for many years specifically in public International law where many fronts have expressed the case in different legal stages. For example, Article 1 of the International Covenant on Civil and Political Right (ICCPR) in 1966 and International Covenant of Economic, Social and Civil Rights (ICESCR) in 1966 have both established the essential stages in the development of this right. (International Covenant on Civil and Political Rights and international convention on economic, civil and political rights, 1966).

This article provides a historical chronology to the claims for self-determination and secession based on Iraqi Kurdistan's experience. Understanding the historical evidence is important in order for the researcher to undertake a thorough and in-depth research with regards to finding the status and stand of the Iraqi Federal Government on the Kurdistan's independence referendum from both the human rights and the international law and perspectives.

SELF-DETERMINATION

The right to self-determination is an important standard of international law, which replicated into both treaty law and international law. Self-determination is defined as “gathered instruments that deal with the principle of right of peoples to govern their political status and how they want to be developed socially, economically and culturally.” (Cop and Dogan, 2018). In other words, it is the right of “all peoples” to decide on how they wish to be governed, who governs them and where they are governed. Also, the decision to self-determination represents an instance of political disintegration, when the citizens of a sub-group withdraw their political activities from the central government to focus on a centre of their own. However, several jurists referred to the principle of self-determination as relevant only in the context of decolonization and within the doctrine of territorial integrity and “*uti possidetis*.” (Bartkus, 1999).

The Kurds, as highlighted in history, have proven on various fronts their claims and right to self-determination as defined by the standard of international law and its providence.



OVERVIEW OF IRAQI KURDISTAN

The Kurdistan region of Iraq, known as 'southern Kurdistan', occupies the mountainous north part of modern day Iraq. The term Kurdistan first appeared in the twelfth century, meaning the land of the Kurds. The Kurds are a mountain dwelling Indo-European people, comprise the fourth largest ethnic group in the Middle East, but they have never obtained statehood. They are speared into four countries Turkey, Syria, Iran, and Iraq, in an area referred to as Kurdistan, which covers an area circa 83,000 square kilometers. (Rubin, 2003).

From a religious perspective, Kurdistan comprised Muslims Sunni, Christians, and Yazidis. The majority of Kurds are Sunni Muslim. There are many smaller ethno-linguistic communities found in Iraqi Kurdistan like the Assyrian-Chaldeans, Turcoman, Arabs, and Armenians. They do not have a single common language but speak a number of different dialects. The Kurds, with a population about 6 million, constitute between one-fourth and one-fifth of Iraq's population. The Kurds have a distinct culture that is not at all like their Persian, Turkish and Arabic neighbors. Despite much repression, they have always been recognized by the State as a separate ethnic group. (Katzman, 2010)

THE CHRONOLOGY TO THE CLAIMS AND RIGHT ON SELF-DETERMINATION

Throughout history, the Kurds have faced many political and military upheavals and struggles in their pursuit for self-determination. The Kurds of Iraq came under British colonial rule after the defeat of the Ottoman Empire in 1918. (Kashi, 1994). Denied of the assurance of undoubted security of life and an unmolested opportunity of an autonomous development despite the Treaty of Sevres (Peace Treaty of Sevres, 1920) signed by the defeated Ottoman government that provided for a Kurdish state in 1920, the Kurds have since launched a series of rebellions against British and subsequently the Iraqi rule. The uprising of the Kurds escalated when the Treaty was not honoured and had never been ratified. Three years later, with the rise of Turkey's Kemal Ataturk, another Treaty was negotiated. The 1923 Treaty of Lausanne recognized a new Turkish republic, and made no mention of the Kurds or of a State of their own. It rather paved the way for the new British Mandate of Iraq to acquire the oil-rich Kurdish province of Mosul. The Treaty of Lausanne completely ignored the Kurdish claim to any form of independent State and carved up Kurdistan. As a result, the Kurds have found themselves divided between four countries (Turkey, Iraq, Iran, and Syria). (McDowall, 2007)

In 1932 an uprising in the Barzan region started to protest at Iraq's admittance to the League of Nations, while the Kurdis' demands for autonomy are ignored. Many more other uprising gathered steam including the one led by Mullah Mustafa Barzani in 1943, and another led by Iranian Kurds, Qazi Mohamed following the bombing by British RAF that forced the Kurds' rebels to cross into Iran. In 1946, Mustafa Barzani founded the Kurdish Democratic Party (KDP)



which adopted a nationalist programme, dedicated to the creation of an independent Kurdish State from Iraq. In 1960 The relations between the Iraqi government and Kurdish groups become strained. The KDP complains of increasing repression. Subsequently in 1961, KDP was dissolved by the Iraqi government after the Kurds' rebellion in northern Iraq. (Naamani, 1966).

1970 to 1974 promised a glimpse of hope to the struggle when autonomy was granted. A peace agreement signed between the Kurds and the Iraqi government that called for Kurdish self-determination. A census was supposed to be held in 1974 to determine the borders of the Kurdistan region. It was argued that, the government seemed to commit itself to recognizing Kurdish rights that far exceeded anything that had been conceded before. Amongst others, the distinct national identity of the Kurds was recognised, as was their language, and they were promised participation in government and predominance in the local administration. (Tripp, 2002).

However, in 1974, fighting resumed when the Iraqi government refused to implement the manifesto's elements, and refused to give the Kurds control over their traditional territory including control over oil-rich province of Kirkuk. The Kurds, however, failed to resist this development and the revolt collapsed within weeks. (Tripp, 2002)

From 1979 to the late 1980s Saddam Hussein put down the Kurds ruthlessly through what was known as the Anfal Operations. In 1979, when Saddam Hussain took power in Iraq, the relations broke down irretrievably with the Kurds. In 1986, the main Kurdish political parties the KDP and PUK formed a military coalition against Saddam. This unity threatened the Iraqi government which resulted in Hussain hitting back with unspeakable brutality. During the Iraq-Iran war, the Kurds were sent to the frontlines by both Iraq and Iran, and more than two million died there. Hussain tried to use the war as an opportunity to exterminate the Kurds and systematically redraw the map of Iraqi Kurdistan. (Abdulla, 2012)

It is argued that the US, the USSR, and France provided substantial assistance to Saddam for fear that, the Islamic Republic would win the war and destabilise the oil producing States in the gulf region. Consequently, fighting erupted between the Kurds' liberation movements and Iraqi government. The period from 1987 to 1990 was marked by gradual territorial devastation of Iraqi Kurdistan and massacre of innocent civilian Kurds. (McDowall, 2007)

In March 1991, following the Gulf War in which US-led forces Iraq put down the Kurdish rebellion, around 1.5 million Kurds flee before the Iraqi onslaught. However, Turkey closed the border forcing the exodus to seek refuge in the mountains. (McDowall, 2007)

After the repression, and the mass exodus of Kurds from Northern Iraq, the US and UK decided to protect them. On 5 April 1991, the UNSC passed Resolution 688 in order to restrain



Baghdad. “The Resolution condemned the repression of the Iraqi civilian population in many parts of Iraq, including most recently in a Kurdish populated area and demanded that Iraq, as a contribution to removing the threat to international peace and security in the region immediately end this repression, and that Iraq allow immediate access to international humanitarian organizations to all those in need of assistance in all parts of Iraq.” The resolution was historic and raised a number of important issues in international law. It was the first international document since the League’s arbitration. (McDowall, 2007)

In 1992, the Kurds established their own Parliament and local authorities that ruled the region in complete independence of the central government consequently the Iraqi State’s control over northern Iraq has completely disappeared. Meanwhile, the Kurds in Kurdistan of Iraq have been in control of their own region, and they have been able to institutionalize self-rule in northern Iraq through the “Kurdistan Regional Government” (KRG). As a result, Iraqi Kurdistan became a 'de facto' Kurdish State from 1991-2003. (Gunez, 2018).

In 2003, the Second Gulf War removed Saddam’s regime from the power. The Kurds became key allies of the United States in overthrowing Saddam’s regime, by joining American forces in capturing the cities of Kirkuk and Mosul, and this paved the way for even greater Kurdish autonomy. The Kurds generally have participated, as a strong ally in the central government, in two national elections in 2005 when Talabini, the PUK leader, became President of Iraq. (Gunez, 2018).

Until the summer 2014, the Kurds enjoyed relative stability, compared to the rest of the country; violence in the Kurdish region had drastically disappeared. The relative stability in the Kurdistan region has allowed the Iraqi Kurds to enjoy the country’s highest living standard and highest level of foreign investment. The region is stable enough to allow the Iraqi Kurds to engage in foreign relations with other countries, and even hosts travelers and businessmen from Europe and around the world. Most importantly, the Kurds have succeeded in achieving a federal form of government within the State of Iraq. As a federal entity of Iraq, the Kurdish language has been recognised as an official national language of Iraq alongside Arabic. Moreover, the Kurdish provinces have united into a single, largely autonomous region capable in maintaining its own internal security, armed forces; impose taxes and overruling federal rules. (Plebani, 2017).

In March 2014, turmoil resurfaced. The Iraqi government under Prime Minister Nuri al-Maliki blocked the transfer of revenues to the Kurds' authorities, leaving regional leaders unable to pay the salaries of officials. In December the same year the Iraqi government and the Kurds' leadership signed a deal on sharing Iraq's oil wealth and military resources, amid hopes that the agreement would facilitate in reuniting the countries.



Constitutional reforms was triggered in 2015 when Barzani declared that Sykes-Picot agreement and the Treaty of Lusanne that divided the Middle East had ended and the international community needed to redraw borders to include a Kurdish state. (Rudaw, 2018).

On September 25, 2017, the Kurds, led by President Barzani decided for an independence referendum to separate themselves from Iraq and, consequently form an independent state of Kurdistan despite international opposition and internal resistance demanding the referendum to be withheld given the current security and economic conditions. (Kiblawi, 2017).

CONCLUSION

From the historical chronology of the Kurds' struggle in achieving independence and self-determination, trailing from as far back as since the First World War right to the submission of the independence referendum in 2017, there were hard and strong bases from both the perspectives of human rights as well as international law.

From the perspectives of human rights, the chronology had supported that the Kurds have indeed proven a strong case for self-determination right. Decades of repression, from the denial of cultural rights like taking pride in having a common culture, language, and religion; to genocide violated the basic provision in human rights.

The Kurds have also been denied territorial integrity with the freedom to exercise independent governance on the political system. In international law, self-determination for peoples or a group within an independent State is achieved by participation in the political system of the State, based on respect for its territorial integrity. In other words, in the case of non-colonized peoples, the right to self-determination does not grant them directly the right to secede since their identity as a distinct group is recognized within the parent State. But such was not true for the Kurds.

The enlightenment gauged from understanding the chronological events provided strong foundation in facilitating the researcher before he takes a thorough and in-depth research in finding the status and stand of the Iraqi Federal Government on the Kurdistan's independence referendum from both the human rights and the international law and perspectives. The chronological events have established such bases.

Despite the difficulties and turmoil faced by the Kurds, based on the historical evidence and chronology, it would be possible to develop a strategy or a theory, which will enable the Kurds in Iraq to claim a sustainable solution and prevent any potential ethnic and territorial conflict in future. Also, from this evidence, further analysis could be explored and undertaken in applying the principle of the self-determination right together with a through evaluation and comparison



of the referendum with other nations, to include and implement strategies that may contribute to the sustainable solution.

REFERENCES

Bartkus, Viva Ona. (1999). *The dynamic of secession*. Cambridge University Press.

Burak, Cop and Eymirlioglu, Dogan. (2018). "The right of self-determination in international law towards the 40 the anniversary of the adoption of ICCPR and ICESCR," *Perceptions Journal of International Affairs* 10(4), 116, Retrieved from <http://sam.gov.tr/wp-content/uploads/2012/02/BurakCopAndDoganEymirlioglu.pdf>.

Gunes, Cengiz. (2016). The Kurdish liberation movement in Iraq: from insurgency to statehood by YanivVoller," *Bustan: The Middle East Book Review* 7(1), 62-65. Retrieved from <http://sci-hub.tw/10.5325/bustan.7.1.0062>.

Jamal Jalal Abdulla. (2012). *The Kurds, a nation on the way to statehood*. Author House.

Katzman, Kenneth. (2010). The Kurds in post-Saddam Iraq. CRS Report for Congress Prepared for Members and Committees of Congress, October 1, 2010. Retrieved from <https://fas.org/sgp/crs/mideast/RS22079.pdf>.

Ed,Kashi. (Ed.). (1994). *When the Borders Bleed: The Struggle of the Kurds*, (1st ed).New York, Pantheon Books.

Kiblawi, Tamara. (2017). Kurds vote overwhelmingly in favor of independence from Iraq. *CNN*, Retrieved from <https://edition.cnn.com/2017/09/27/middleeast/kurdish-referendum-results/index.html> .

McDowall, David. (2007). *A modern history of the Kurds*. London :I.B.Tauris& Co Ltd.

Naamani, Israel T. (2018). The Kurdish drive for self-determination. *The Middle East Journal* 20(3),288. Retrieved from <http://sci-hub.tw/https://www.jstor.org/stable/4324022> .

Plebani, Andrea. (2017). *After Mosul re-inventing Iraq*. ISIP.

Rubin, Michael. (2003). "Are Kurds a pariah minority?" *Social Research* 70(1), 295. Retrieved from <http://sci-hub.tw/10.2307/40971614> .



Rudaw.(2014). Kirkuk under Kurdish Peshmerga control.Retrieved from
<http://www.rudaw.net/english/middleeast/iraq/120620142> .

The Peace Treaty of Sèvres, August 20, 1920, Part III (Political Clauses), Retrieved from
<http://www.hri.org/docs/sevres/part3.html>.

Tripp, Charles. (2002). *A history of Iraq*. Cambridge University Press.

The International Covenant on Civil and Political Rights and international convention on economic, civil and political rights, December 16, 1966.Retrieved from
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> and
<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> .