

The Legal Status of Kurdistan Regional Government (KRG) in International Law

Loqman Radpey

Faculty Member, International Law Department, Allameh Tabatabai University,
Law and political sciences Faculty, Tehran, Iran

Abstract: Kurds in Iraq have always been suppressed by the governments ruling the country and have been through many hard stages over the past century. They have struggled for a state of their own but never fulfilled that dream. Kurds have experienced autonomous and independent states but it did not last for a long. In the Treaty of Sèvres (1920), they had the right to self-determination statehood but it was never ratified and was then replaced by the Treaty of Lausanne (1923) which made no mention of Kurdish statehood. Upon the invasion of US led forces to Iraq in 2003, the world turned its attention toward Middle East especially north of Iraq, Kurdistan. This region has been controlled by Kurds since withdrawal of Saddam's forces in 1991. Now after fall of Saddam Hussein's regime, there is great opportunity to achieve their goal. Kurdish Parties have established a regional government, the Kurdistan Regional Government (KRG). The world has recognized it as a de facto state. To be a new nation-state in international community and recognized as a de jure state under international law, it requires various qualifications, some of which have already been satisfied by the KRG.

Key words: International Human Rights • De facto • Kurdistan Regional Government • Self-determination • Statehood

INTRODUCTION

Throughout the centuries Kurds have struggled to control their own land. After centuries of cyclical oppression and autonomy, the Kurds of northern Iraq established a de facto state within a federal Iraqi state. Given the realities of the recent geopolitical situation as a direct result of the invasion of US-led coalition forces to Iraq and also Turkey's attempt for EU accession, the world's attention has turned towards the Kurds in Iraq. Much has now been written on the subject in academic organizations and journals. This is a great change, as the situation of the Kurds has historically been under-investigated by most of the international community (Yildiz 2007) [1]. So it paves the way to understand the Kurds and their role in achieving stable peace in the Middle East. Not much has been written on the Kurds due to many reasons, in particular the lack of available information concerning this people.

As the largest stateless nation in the world, the southern part of Kurdistan has a strong inclination to be an independent state in the region. Although Ismail Agha Simko's rebellion was not a nationalist movement, it was

the first serious attempt to establish an independent nation-state in the east part of Kurdistan in the early 1920s (Yildiz 2004)[2], but the first and only (to date) independent Kurdish state was the Kurdish republic, Mahabad (1945 to 1946). The current paper provides a brief history of "Kurdistan" and "Kurds". The study aims to seek the KRG's potential and what is required for it to become a new state in the world that has so far been overlooked. It also investigates the situation of the Kurds as a whole and offers a description on how the situation has changed and the nature of these changes in the KRG as an emerging nation-state.

Where Is the Kurdistan?: The term "Kurdistan" was first used in the twelfth century by Turkish Seljuk prince Saandjar when he established a province whose name coincides with the current Iranian province of Kurdistan (Yildiz 2004). "Kurdistan" means "the land of Kurds". According to Yildiz (Yildiz 2004)[1], Kurdistan "has appeared on some maps since the sixteenth century" but the history of Kurdistan has been dominated by the activities and motives of various groups and states over the centuries, during which time it has not had a fixed



Fig. 1: Kurdish Settlement in the Middle East (Britannica 2012)⁶

territory (Yildiz 2004). The Sykes-Picot Agreement 1916 between Britain, France and Russia divided Kurdistan according to Western interests (Yildiz 2005) [3]. The Kurds live in the landlocked mountains and high plateaus of the Zagros, Taurus and Pontiac. Merhdad Izady says that:

- ‘In contiguous Kurdistan, as well as in the many far-flung Kurdish settlements, mountains are the single most important natural phenomenon and they have shaped the Kurdish history, people, tradition and culture’ (Izady 1999, 13)[4].

Kurdistan’s land is divided between four sovereign states. It borders Turkey to the north, Armenia to the northeast, Iraq to the south and Iran to the east (Figure 1)¹ (O’Shea 2004) [5]. Although Kurdistan has appeared on some maps since the sixteenth century, it is clear that it should be more than a geographical term as it also refers to a human culture (McDowall, 1990) [6]² Most writers on Kurds have taken an anthropological approach and describe Kurdistan just as being the land or region inhabited by the Kurds (Stansfield 2003)[7].

The Kurds: It should be borne in mind that the history of Kurdistan and the history of the Kurds are not necessarily the same thing (O’Shea 2004) [5]. In the seventh century C.E. the Arabs who Islamicized this part of world named its people “Kurds” (Gunter 2009) [8]. Also some minorities

live in Kurdistan including Christian groups such as the Armenians, Assyrians, Turkomans, Turks, Arabs and Iranians (Gunter 2009) [8]. The Kurds are an ancient Indo-European people, ethnically distinct from their Arab, Turkic and Iranian neighbours (Anderson and Stansfield 2004) [10] who came to the region about 4,000 years ago (Anderson and Stansfield 2004). They speak their own language (Kurdish, with several dialects) and despite the diversity of dialects they have a common and unique cultural tradition which is different from that of surrounding neighbours (Izady 1992). As the largest stateless people in the world (Yildiz2007) [1] they are currently the third largest ethnic group in the Middle East (Yildiz 2005). They are descended from the Medes (a people mentioned in the Old Testament of the Bible) (Yildiz 2005) [3].

In addition, due to some political and also historical events, there are a lot of immigrants Kurds living in many parts of world, especially in Lebanon (O’Shea 2004), Europe (Hassanpour 1996) [11], the former Soviet Union (Kreyenbroek and Sperl 1992) and the United States (Kreyenbroek and Sperl 1992).³Some statistics shows that almost one million also inhabit the northeast province of Khorasan, Iran (Gunter 2009). Although there are no official population figures for Kurds, it has been accepted that they are the largest nation without a state in the world. Estimated figures indicate that the highest numbers of Kurds are to be found in Turkey (O’Shea 2004),⁴ but it is in Iraq where they constitute the largest proportion of

the overall population (Yildiz 2004). Their population is between 24 and 30 million (Yildiz 2007) distributed through Turkey (14 million), Iraq (5 million), Iran (6.5 million), Syria (1.1 million), the Former Soviet Union (1 million) and at least 1 million living overseas in Europe, North America and Australia (Anderson and Stansfield 2004). A large number of them live in the three biggest cities of Turkey: Istanbul, Ankara and Izmir (Gunter 2009). Recent evidences show that their population has reached 35 million people (Anfal Case 2007)⁵.

It is clear that Southern Kurdistan in Iraq has a very special status since the creation of a de facto state in Iraqi federation.

Southern Kurdistan and Kurdistan Regional Government: The establishment of the KRG cannot be separated from the status of the relationship between the two main parties of Southern Kurdistan, the Kurdistan Democratic Party (KDP) and Patriotic Union of Kurdistan (PUK).

The Kurds in Iraq, rose up for the first time under Sheikh Mahmud in 1922 and 1932 but the Royal Air Force (RAF) defeated them and Sheikh Mahmud was exiled to southern Iraq. In the early 1940s, Mola Mostafa Barzani set a local rebellion in the Barzan region. He was captured and exiled to Suleimaniyah but escaped to Iran in 1943 (Yildiz 2004). The next Kurdish uprising (Rapareen), led by Mola Mostafa Barzani began in March 1961 against the Iraqi government but General Abd al-Karim Qassem's forces soon retook the areas (Stansfield 2003). The Kurdistan Democratic Party (KDP), formed in 1945 (Yildiz 2004), joined Barzani and at that time formed a special force known as peshmarga (literally meaning those who face death). Barzani then became president of this party in 1964. They continued to fight against central government. On 8 February 1963, the coup against Qassem was instigated by a group of "Free Officers" who were members of the Ba'ath Party. At this stage, some assurances were given to the KDP regarding its autonomy (Stansfield 2003) but they did not take Kurdish autonomy in any form.

Barzani had demanded a Kurdistan Regional Government (KRG) which was supposed to have authority over domestic affairs. But the Ba'athist regime became an "antagonist" to Kurds. Negotiations had no outcomes as the Kurds insisted on Kirkuk and Mosul to be in the Kurdish autonomous region. The Ba'ath regime began an 'Arabisation' policy which lasted until the fall of its sovereignty in 2003. President Abdul Salam Aref finally announced military operations against the Kurds on 10

June 1963. On 10 February 1964, a ceasefire was announced by hostile parties and they reached to an agreement without mentioning the self-administration of the Kurdish region (Stansfield 2003). The highest ranked members of the KDP opposed Barzani's action. But they and also some high commanders of peshmarga, were expelled by Barzani (Stansfield 2003). Some say that these events resulted in the establishment of a new party called Patriotic Union of Kurdistan (PUK) (Stansfield 2003). Barzani demanded autonomy again to Aref. But its outcome was an offensive attack against the Kurds in March 1965. On February of 1966, a ceasefire agreement was announced by Barzani and the Iraqi government.

The weakness of government led to a second coup d'état of the Ba'ath party on 17 July 1968 (Stansfield 2003). On December 1969, negotiations between Barzani and the Iraqi government began and the then vice president of Iraq, Saddam Hussein, travelled to Kurdistan to meet with Barzani, which led to the March Agreement (Stansfield 2003). President al-Bakr appointed five Kurds in his cabinet, including the Vice-President and Barzani-KDP members were appointed as governors of Suleimaniyah, Erbil and Dohuk. Kurdish language started to be used by schools, journals and public bodies in Kurdistan. There was an amnesty for all Kurds who fought against the Iraqi government (Yildiz 2004).

The peace did not last long. The GOI⁷ wanted to change the demographic status of Kurdish area through Arabisation policies, especially in Kirkuk, which was an oil-rich city in Kurdistan. In September 1971, the GOI attempted to assassinate Barzani (Stansfield 2003). On 11 March 1974, Saddam Hussein announced his Autonomy Law in Kurdistan (Act No. 33 of 1974 which took away the governors' power to ministries in the central government and the President would have the ultimate authority over autonomous regions. Barzani and KDP deny accepting it) (Yildiz 2004). War broke out by April 1974 and by June, the Iraqi army had taken Amadia, Aqra, Raniya, Rowanduz and Qala Diza (Stansfield 2003).

On 6 March 1975, Saddam Hussein and the Shah of Iran formally settled all border disputes at the meeting of the Organization of Petroleum Exporting Countries (OPEC) in Algiers. In doing so, the Shah abandoned his support for Barzani in return for gaining sovereignty over half of the disputed region (Yildiz 2004). Barzani decided to end his revolution on 23 March 1975. Some, including Jalal Talabani, did not agree with this decision because he believed that Barzani could defeat the Iraqi army (Stansfield 2003). Iraqi forces killed thousands Kurds, peshmarga and also civilians, as well as destroying

roughly 1,500 villages. Thousands of Kurds sought refuge in Iran or surrendered to the Iraqi army (Yildiz 2004). The Anfal⁸ campaigns had been designed by Saddam to eliminate the Kurds and break resistance among the Kurdish population. Mass executions occurred. The Arabisation process was enforced, especially in Kirkuk and Arabs settled in destroyed villages. KDP's leadership was passed to Barzani's son, Masoud.

Now, it was time for leftist groups, coordinated by Jalal Talabani in Damascus, to become the principal organizations acting on behalf of the Kurds. On 1 June 1975, they formed the PUK (Stansfield 2003), aiming to organize the revolutionary forces of the Kurdish people (Patriotic Union of Kurdistan 1977). After moving to Iran in 1975, the KDP returned to Kurdistan on 26 May 1976 (Stansfield 2003). The KDP and PUK had a power struggle between 1976 and 1980, killing a lot of Kurds ending with the Hakkari massacre, in which three skilled commanders of PUK (Ali Askari, Dr Khalid Sa'id and Sheikh Yazdi) along with approximately 700 peshmerga were killed (Stansfield 2003).

On 22 September 1980, Saddam Hussein launched a full-scale offensive against Iran. Again, Kurds had been victims of this war. It is estimated that perhaps as many as 100,000 Kurds were killed in 1988. Many men and teenagers, seized by the military, simply disappeared without a trace. The most important event was the unjustified use of chemical weapons at Halabja, a town close to the Iran's border where some 5,000 Kurds were killed in 16 March 1988.

In 1988, the main Kurdish parties established the first National Front of Kurdistan (Yildiz 2004) which was the origin of Kurdistan Regional Government (KRG). The invasion of Kuwait by the forces of the GOI on 2 August 1990 served as a reunification of the Kurdish national movement in Iraq. Academics have paid more attention to Southern Kurdistan after the events of 1990. After the Second Gulf War, a Kurdish area in northern Iraq was established under the control of two Kurdish parties (PUK and KDP) (Stansfield 2003), which was an indication of establishing a de facto state (Stansfield 2003). After the defeat of Saddam Hussein in Kuwait in late February, an uprising (Rapareen) occurred on 4 March 1990, which started in Raniyah and Kurdish forces succeeded to gain control of many Kurdish cities in the north including Kirkuk on 20 March 1991 (Yildiz 2004). But it was short-lived because after the invasion of Kuwait and the defeat of Saddam's forces, Kurdish forces were forced out from north of Iraq by the Republican Guard retaking Kirkuk on 28 March,

Suleimaniyah by 3 April 1991. Finally, Dohuk, Zakho and Erbil were taken violently and brutality with an unprecedented death-rate of almost 20,000 Kurds and 100,000 missing (Yildiz 2004). Almost 2.5 million had to hug their old and faithful friends, the mountains bordering Iran and Turkey. Having better conditions in Iran, they moved there. It should be noted that the Kurdish uprising coincided with the Shiites in the south of Iraq but this was soon suppressed by a counteroffensive from the Republican Guard quickly recapturing Basra, Najaf and Karbala with unprecedented savagery.

The UN Security Council passed Resolution 688 on 5 April 1990 in which, for the first time, Kurds were called by their name and their suppression by the Iraqi government was condemned (Yildiz 2004) [1]. It was a milestone in the history of the Kurds. It demanded that Iraq end the suppression of its citizens, particularly in the south of Kurdistan. But it was not effective even though humanitarian aid by international humanitarian organisations to refugees was eased by a Memorandum of Understanding signed on 18 April 1991 between the UN and the GOI (Yildiz 2004). In 1991, the US and British government established No Fly Zones over a large part of northern and southern Iraq. Negotiations of Kurdish groups with the GIO failed in the summer of 1991.

On 20 October, Saddam's forces withdrew from the north (Erbil, Dohuk and Suleimaniyah) and his government cut off the salaries of Kurdish workers and imposed an embargo on Kurdish movements (Yildiz 2004).

Kurdish parties withdrew from negotiations and held elections (National Assembly and presidential) on 19 May 1992, under the observation of human rights organizations, in which all Kurdish parties participated. Kurdistan was divided equally between the KDP and PUK (Stansfield 2003). It was one of the most democratic elections in the Middle East in which unprecedented numbers of people came out to vote (Stansfield 2003). It demonstrated the Kurds' understanding of democratic principles and their opposition to Saddam's regime. Christians received 5 seats in the new assembly (Yildiz 2004). It was a great triumph for Kurdish democracy. Masoud Barzani and Jalal Talabani became political leaders, monitoring the activities of this de facto state, the Kurdistan Regional Government (KRG). On July 1992 and under Law No. 3 of 1992, its first cabinet was formed and Southern Kurdistan was divided into governorates (Stansfield 2003). Judicial power and a Supreme Court in KRG were established under Law No. 44 of the 28 December 1992, the Judicial Authority Law (Stansfield 2003).



Fig. 2: Kurdistan Regional Government Boundary

After a while, embargoes by the United Nations and the Iraqi government caused political problems and their relationship became strained from September 1993. This resulted in armed conflict in May 1994 once again (Yildiz 2004). Meetings between leaders of the PUK and the KDP in June resulted in the signing of the Paris Agreement in July with the presence of France, UK and US representatives (Stansfield 2003). But it was broken by the KDP and fighting began again, as thousands of people were displaced. At that time, Suleimaniyah and Darbandikhan were under control of PUK and Erbil and Dohuk, KDP. This tension remained throughout 1995. The sanctions against Iraq, imposed by the United Nations, affected Southern Kurdistan resulting in serious problems for the Iraqi nation as a whole. The SC Res 98⁹, passed on 14 April 1995 under Chapter VII of the UN Charter and its subsequent renewals, improved conditions in Kurdistan. It was supposed to be a temporary measure to provide for the humanitarian needs of the Iraqi people, until the fulfilment by Iraq of the relevant Security Council resolutions, including notably resolution 687 of 3 April 1991¹⁰. This resolution noted the serious humanitarian situation in Iraq, allowing the oil sold by Iraq to finance humanitarian aid to the Iraqis. This became known as the Oil-for-Food Programme. In this programme, thirteen percent of revenue was given to the northern Kurdish-controlled region and was performed by UN agencies with the assistance of the local authorities in Kurdistan. By 30 August, a ceasefire agreement was close with Robert Deutsch, a US State Department representative in London. But by this time, the invasion of GOI and KDP forces in Erbil was underway by 2am GMT (5am in

Kurdistan) (Stansfield 2003). The PDK retook Erbil and also Suleimaniya. The PUK retook Suleimaniyah through a counter-attack. Throughout 1996 and 1997, Western powers, including the US, were attempting to hold the ceasefire between the two parties. The PUK and KDP held the sixth round of talks in London in October 1997 but the KDP refused to share revenue and join a coalition government with the PUK.

As a result of the 1996 round of fighting, the KDP took control of Erbil and Dohuk and Suleimaniyah and parts of Erbil and Kirkuk remained under the control of the PUK (Stansfield 2003). Many people were displaced internally and very strict checkpoints were set up. In practice, southern Kurdistan was divided into two parts.

The KDP and PUK started peace process talks in the winter of 1997. This time they wanted to end hostility. The US government invited Barzani and Talabani to Washington DC for talks which resulted in the Washington Agreement of 17 September 1998 (Stansfield 2003). The agreement resulted in closer cooperation, the sharing of revenue and the formation of an administration in Erbil as well as elections in which many parties participated to unify the Kurdistan National Assembly (KNA) and the Kurdistan Regional Government (KRG) (Stansfield 2003). Now, the power is balanced between two parties and a 50:50 system has been established in which KRG is ruling over the region (Figure 2). Southern Kurdistan enjoyed a period of peace, political stability, economic growth and international recognition throughout 1997 to 2002. Agencies of governments treat KRG as a de facto 'state' (Yildiz 2004) but no country recognizes it as a state.

Following the events of 9/11 and calling Iraq, Iran and North Korea part of an 'axis of evil', US and coalition forces attacked Iraq on 19 March 2003, Operation Iraqi Freedom to disarm Iraq of weapons of mass destruction, to end Saddam Hussein's support for terrorism and to free the Iraqi people".¹⁰ Kurds had an important role in this war and it strengthened the relationship between the PDK and the PUK. During the early days of this war, peshmerga entered into the cities of Kirkuk and Mosul. The political parties of Kurdistan signed the historic Unification Agreement on 21 January 2006 (Kurdistan Regional Government Unification Agreement 2006).

Compared to the suicide bomb attacks and other explosions in Baghdad and Sunni areas in the south of Iraq, Kurdistan remained relatively calm and peaceful¹¹. This relative stability has allowed the Kurds to have the highest living standards, highest level of foreign investment ever and the highest level of security which has allowed them to engage in foreign relations with other countries. This has come at a considerable price. The total cost to the United States of the Iraq war is over \$3 trillion (Stiglitz and Bilmes 2010)[13] and over 6,805 service members have died (Faces of the Fallen 2014)¹².

Iraq's Constitution¹² was approved by more than 78 percent of the 9.8 million voters in the October 15 referendum¹³, which states that "The system of government is a democratic, federal, representative, parliamentary republic" (Con of Iraq, Art 1). Iraq remained a party to all the major human rights treaties.

Arabic and Kurdish were chosen as the official languages (Con of Iraq, Art 4) and the Turkomen and Assyrian languages will also be official in the provinces where they are spoken (Con of Iraq, Art 4(4)). Iraq was divided into 18 local provinces or "regions" (Con of Iraq, Art. 113), among them three are Kurdish (Erbil, Kirkuk and Suleimaniya). The new Iraqi constitution recognizes Iraqi Kurdistan as a federal entity of Iraq with "the structure of the regional government, its authorities and the mechanisms of exercising these authorities, provided that it does not contradict with this Constitution" (Con of Iraq, Art 116). These regions shall have the right "to amend the application of the national legislation within that region" (Con of Iraq, Art 117(2)) which is not specifically under national government. They can have offices in the embassies and diplomatic missions (Con of Iraq, Art 117(4)). The constitution not only kept substantial Kurdish autonomy but also included the Kurds insistence on "federalism" –de facto or formal creation of "regions", each with its own regional government. Kurdistan Regional Government, the

Kurdistan Region Presidency and the Kurdistan Parliament are the Kurdistan region's main institutions¹⁴. The Regional Government can have the right to establish internal security forces for the region including police, security force (Con of Iraq, Art 117(5)) and will have an "equitable share of the national revenues sufficient to discharge its responsibilities and duties" (Con of Iraq, Art 117(3)).

For the first time in the history of Iraq, Jalal Talabani (head of PUK) was elected interim president of Iraq by the National Assembly In 2005. On April 22, he was re-elected to a four-year term under new Constitution (Con of Iraq, Art 67). Masoud Barzani, on June 12, 2005, was named "President of Kurdistan" by the Kurdish regional assembly and was re-elected by the people of the Kurdistan Region on July of 2009¹⁵. Its main institutions are the Kurdistan Regional Government, the Kurdistan Region Presidency and the Kurdistan Parliament. The Kurdish coalition government is composed of 22 ministries and 4 departments¹⁶ and is based in Erbil, the capital of the Kurdistan Region. The Kurdistan draft constitution was approved by the KRG on June 24, 2009 and also Kurdistan Parliament passed it on June 26, 2009, but it has to be voted on in a referendum and thereby enter into force. The provisions of the Kurdish constitution cannot directly counter those of the Iraqi constitution (Con of Iraq, Art 13(2)). Southern Kurdistan being a federal region within Iraq, but at the same time reads like the constitution of an independent state. The KRG struggles to exist in a de jure sense. Iraqi Kurds have not yet achieved their ultimate dream, an independent sovereign state. In this situation, the right and the future of self-determination and autonomy in Iraqi Kurdistan remain unresolved.

Self-Determination and Autonomy and Prospects for Statehood: Like the United States of America, where each state has its own constitution under the federal constitution, Kurdistan has its own constitution. But The Kurdish regional constitution must exist within the framework of the Iraqi federal constitution. How far can the Kurds go along the road of autonomy?

After U.S. forces withdrawal from Iraq in 2010, The KRG is violating the agreement with the central government to draft official rules for decision-making and wealth-sharing between regions before signing deals with foreign companies. The KRG has signed oil exploration deals without Baghdad's approval (Oppel 2007). Article 141, though, in the Iraqi constitution confirms the previously passed legislation of Kurdistan since 1992:

- ‘Legislation enacted in the region of Kurdistan since 1992 shall remain in force and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution’. (Con of Iraq, Art 141).

International law has never seen this status; being within the framework of Iraqi Constitution but at the same time using its power beyond the central government signing deals without government’s consent. In the preamble to the Kurdistan constitution, some words were used either suggesting that Kurdistan demands to be an independent state or seeking equality for all, using terms such as “our people” and “nation” (Preamble of Constitution of the Kurdistan Region)¹⁷. Article 1 of the Kurdistan constitution reflects upon the independence of the Kurdish region stating that “...It is a democratic republic with a parliamentary political system that is based on political pluralism, the principle of separation of powers and the peaceful transfer of power through direct, general and periodic elections that use a secret ballot” (Con of the KRG Art 1). The Kurdistan region enters into agreements with foreign entities on non-Article 110 subjects and signs deals with foreign entities on Article 110 subjects if the federal government consents. KRG received three C-130 cargo planes from Bulgaria without permission from central government (Londoño 2008). Article 9(B) of the Iraqi Constitution prohibits militia beyond the Iraq armed forces (Con of Iraq Art 9(B)) but Article 12 of Kurdistan Constitution recognizes the peshmarga forces (Con of the KRG Art 12). Again, this violation can be seen in Article 65(13) of Kurdistan constitution on sending troops outside of the region. The border line with Iran is guarded with peshmarga of PUK and the Turkish border with KDP forces. Such tensions are new to the Middle East. The Kurdistan Constitution Article 17 states that land and public property in the Region belong to Kurdish people not the central government. Article 19(10) of Kurdish region, on freedom of expression, does not accord with the federal constitution because its limitations do not appear in Article 38 of the federal constitution. The Kurdistan region shall have the power of granting asylum according to its constitution (Con of the KRG Art 19(19)), but this is among the powers of the federal government (Con of Iraq Art 107). How will this relationship remain? In such

conditions, how will the Kurdish constitution legitimize the government in Erbil, while at the same time not contradict the current Iraqi Constitution?

In the Iraqi federal constitution, Article 140, points to areas formerly lying within Kurdistan, including Kirkuk (Con of Iraq Art 140), but it has not occurred yet. Also there are some conflicts between the two constitutions. Beside Article 110 of the Iraqi federal constitution that grants primary authority to the federal government, Article 4(1) of Kurdistan Constitution gives Kurdish law more power provided that “the constitution and laws of the Kurdistan Region are more sovereign and supreme than those passed by the Iraqi government” (Con of the KRG Art 4(1)). Interestingly, the Kurdish constitution in Article 6 recognizes Islam as the religion of the majority of Kurdish people and Islamic Shari’a as a source of legislation (Con of the KRG Art 6), whereas the Iraqi federal constitution places Islam in Article 2 as the official religion of Iraq and a source of legislation (Con of Iraq Art 2). In practice, it seems that it would not be used as a source of legislation in Kurdistan because, for example, women’s rights have been guaranteed such as equality with men, removing all forms of gender discrimination and providing other civil and political rights covered by international treaties (Con of the KRG Art 20). Both constitutions respect other religions (Christians, Yazedis and Mandi Sabeans). This situation raises questions on the status of the KRG in international law. In Article 8 of Kurdistan Constitution, the right of the Kurdish people to self-determination is invoked and reserves the right to leave the federation if the central government departs from the federal model. It seems that the KRG itself seeks self-determination and autonomy.

Self-Determination: The right to self-determination is one of the complicated issues in international law. It developed from two different sources, US and Europe which concerned with the rights of man freedom and democracy. The US fashion is more individualistic but the European one has a more cohesive form.

The right to self-determination is one of the most controversial norms of international law. Although it may have the problem of instability but it is the only hope to oppressed nations. According to Martti Koskenniemi, there are two forms of self-determination which finally lapsing into each other: ‘good’ form which appeals to democratic instincts and a less benign form which appeals to our nationalistic, isolationist instincts (Koskenniemi 1994) [14]. Self-determination can no longer be interpreted as a right of colonies to independence (Koskenniemi 1994)

and it has been turned out to be a right of peoples to take part in decisions affecting their lives. It has to be taken seriously.

Self-determination has caused considerable change in the geopolitics of the world. Most of new member states of United Nations have exercised their right to self-determination and consequently statehood, since the Second World War. This principle was not mentioned in the Covenant of the League of Nations (Crawford 2006) [15]. The right to self-determination was legalized in the post-1945 world after the creation of the UN, in general and after the 1960s in particular. Several factors were effective in this issue among which are the UN Charter and several UN Resolutions as well as the development of human rights law. Article 1 (2) of the UN Charter declares that one of the purposes of the UN is “To develop friendly relations among nations based on the respect for the principle of equal rights and self-determination of peoples”[16-40].

Human rights law and treaties support the principle of self-determination as an inherent and legal right because the present human rights law gives protection to the fundamental social, economic and political rights of individuals and minority and non-autonomous peoples.

Article 1 of the International Covenants on Human Rights 1966 states that:

- ‘All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’ (ICCPR 1966).

The General Assembly of the United Nations has tried to describe the self-determination principle. In the first step, resolution 545 (VI) (GA Res. 545 (VI) 1952) was passed to include the statement “All peoples shall have the right of self-determination” in the International Covenants on Human Rights. Resolution 637A (VII) in 1952 recommended that “the state member of the United Nations shall uphold the principle of self-determination of all peoples and nations” (GA Res. 637A (VII) 1952) [41-60].

The Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States 1970 (Resolution 2625(XXV)) stated that every state has “the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples”. It demonstrates that this right is not limited to colonial situations. Peoples

in non-colonial situations are entitled as of right to secession from the existing independent state, if they encountered with serious human rights violations including oppression, discrimination, marginalisation in the state to which they belong. This right is repeated in Paragraph 2 of General Assembly Resolution 1514 of 14 December 1960, which emphasizes an immediate and unconditional end to colonialism in all its forms. It also recalled the important role of the United Nations in “assisting the movement for independence in Trust and Non-Self-Governing Territories”. In 1960 it adopted Resolution 1514(XV), which determined that a Non-Self-Governing Territory is a territory which is ‘geographically separate’ and ‘ethnically distinct’ from the country administering it. But the Colonial Declaration 1960 suggested that self-determination is not limited to colonial territories (Declaration on the Granting of Independence to Colonial Countries and Peoples). The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural rights (ICESCR) and also the Vienna Convention and Programme of Action reassert that “All peoples have the right of self-determination”. Therefore, most of the member-states of the UN have accepted the right of self-determination as a natural and legal right “applicable to all peoples”.

After Indonesia’s invasion of East Timor in 1975, a UN-supervised referendum was held in 1999 and East Timor was internationally recognized as a sovereign state in 2002 (UN Transitional Administration in East Timor 1999). ICJ has also ruled in favour of people demanding their rights of self-determination especially in the Case Concerning East Timor (Portugal v. Australia) and Palestinian Wall Advisory Opinion and regarded it as a right *erga omnes* ICJ ad op, 2004¹⁸.

A growing number of communities within existing states are attempting to reach the goal of establishing a state. To legitimize their claim they refer to the right of self-determination of peoples. This is an old phenomenon. The right of self-determination was seen as a concept which could justify the separation of a part of the territory of an existing state for the purpose of establishing a new state. This is the source of the majority of conflicts within the international community. Questions arise from this: what is self-determination? When does an entity qualify as a state under international law?

Self-determination is the legal right of “distinct” groups of people to choose freely to which state they wish to belong and to pursue their economic, social and

cultural development (Encyclopedia of Britannica)¹⁹. The idea was first articulated by Woodrow Wilson, President of United States (1913 to 1921), on 11 February 1918.

The criterion of “distinct” has two elements: objective and subjective. Objective elements consist of “common racial background, ethnicity, language, religion, history and cultural heritage” and subjective element means that the group perceives itself as a distinct “people” (Hadji 2009).

This concept is coupled with the claims of non-state entities to self-determination as a sovereign state. The right of self-determination is now generally accepted as a recognized international legal principle. The UN Charter places it among one of its basic purposes in Article 1(2) ‘to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples’. Also, Article 55 based peaceful and friendly relations among nations on the “respect for the principle of equal rights and self-determination of peoples” (UN Charter Art 55).

A special factor that strengthens the right to self-determination is de facto independence. When a group such as the Kurds has a valid territory and has achieved de facto statehood, the self-determination is quite compelling.

In the case of Quebec, the Supreme Court of Canada held: ‘international law expects that the right to self-determination will be exercised by peoples within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those states’ (Bayefsky 2000) and also specified that ‘no necessary incompatibility between the maintenance of the territorial integrity of existing states, including Canada and the right of a ‘people’ to achieve a full measure of self-determination’ (Bayefsky 2000). It is clear that courts do not equate self-determination with secession. Instead, it is viewed as a new possible “right” separated from self-determination. The Supreme Court of Canada in the case of Reference Re Secession of Quebec decided that the people of Quebec have no right to unilateral secession from Canada:

‘[A] right to secession only arises under the principle of self-determination of people at international law where ‘a people’ is governed as part of a colonial empire; where ‘a people’ is subject to alien subjugation, domination or exploitation; and possibly where ‘a people’ is denied any meaningful exercise of its right to self-determination within the state of which it forms a part. In other circumstances, peoples are expected to achieve self-

determination within ... the framework of their existing state. A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states.’ (Reference re Secession of Quebec 1998)²⁰

But the Badinter Commission which assisted the EU in the case of dissolution of Yugoslavia held that self-determination serves as ‘safeguard human rights’ (Badinter Commission No. 2). By virtue of that right, every individual may choose to belong to whatever ethnic, religious or language community he or she wishes. This commission also stated that ‘international law as it currently stands does not spell out all the implications of the right to self-determination’ (Badinter Commission No. 2)²¹

There are two types of self-determination: Internal self-determination and External self-determination. In the International Conference of Experts on the ‘Implementation of Right to Self-Determination as a contribution to conflict prevention, M. C van Walt van Praag and O. Seroo provided that [61-69].

‘By Internal self-determination is meant participatory democracy; ... the right of a particular group within the State to participate in decision making at the State level. Internal self-determination can also mean that right to exercise cultural, linguistic, religious or (territorial) political autonomy within the boundaries of the existing state. By external self-determination (described by some as ‘full self-determination’) is meant the right to decide on the political status of a people and its place on the International community in relation to other states including the right to separate from the existing states of which the group concerned is a part and to set up a new independent state’ (Walt Praag and O. Seroo 2011).

So internal self-determination has something to do with federalism and local government and external self-determination means separation or secession. The “people” is entitled to both types. If the state does not afford internal self-determination, the people can claim right to external self-determination.

There are some differences, here, between “people” and “minorities” which were expressed in Arbitration Commission of the European Conference on Yugoslavia Opinion No. 2 (1992), in the case of Serbia population of Bosnia-Herzegovina provides:

- ‘People is to be understood in the sense of all the people of a given territory. Of course, all members of distinct minority groups are part of the people of the territory. In that sense they too as individuals are holders of the right of self-determination. But minorities as such do not have a right of self-determination. That means in effect that they have no right to secession, to independence or to join with comparable groups in other States’ (Harris 1998, 120).

The right to self-determination is recognised in international law as the UNESCO International Meeting of Experts in 1989 declared:

- ‘Found that the right to self-determination is conferred on the peoples by international law itself and not by states’ (Walt Praag and O. Seroo 2011).

Non- colonial situations which led to secession include: the separation of East Pakistan from West Pakistan in 1971 to form Bangladesh; the dissolution of the former Union Socialist Soviet Republic- in 1991; the dissolution of the former Socialist Federal Republic of Yugoslavia in 1991; the dissolution of Czechoslovakia in 1993; the separation of Eritrea from Ethiopia in 1993; the secession of South Sudan from the Republic of Sudan in 2011.

The Kurdish Self-Determination: In recent years, many movements have demanded autonomy including 140 groups (Moris 1997). In the Treaty of Sèvres Article 62 (signed between allied powers and Turkey in 1920), the Kurds’ right to self-determination and consequently statehood was recognized and called for “a scheme of local autonomy for the predominantly Kurdish areas” (Yildiz 2004). But it was not ratified because Turkey did not accept it and was replaced by the Treaty of Lausanne (1923) which made no mention of Kurdish statehood (Gunter 2008).

People of Southern Kurdistan have common language, religion, ethnicity and culture so they satisfy the objective elements of “distinct” criterion of self-determination. Kurds do not want to be part of Iraq though they have been part of Iraq for many years, but perceive themselves as the Kurd ethnic wholly. They, therefore, satisfy the subjective element too. Kurds in Iraq have a common flag and it flies throughout Kurdish region but, more interestingly, the Iraqi flag is rarely displayed. During this period they freely express their culture and identity. They also have a national

anthem. The Kurds have the valid territorial claim for thousands of years which is necessary to self-determination right. Since the failure of Treaty of Lausanne to recognize an independent Kurdish state, the Kurds in Iraq always fight to obtain an autonomous land. Therefore, they have a legitimate claim to the territory.

It is entirely possible for a unilateral declaration of independence not to be violated international law without “constituting the exercise of a right conferred by it (ICJ Ad Op 2010). The main implication of the right to self-determination is the legal entitlement to statehood and the recognition by third states. So, the critical issue is the support of other states rather than the legality of the declaration of independence to make the claim practically viable. In the case of Kosovo, the ICJ did not regard the support of states, to the unilateral declaration of independence, interfere in the domestic affairs of another state and even does not consider it the infringement of the obligation to respect the territorial integrity of states. In the Quebec case, the Supreme Court of Canada provides that:

‘although there is no legal right, under the Constitution or at international law, to unilateral secession [...] this does not rule out the possibility of an unconstitutional declaration of secession leading to a de facto secession’ (Reference re Secession of Quebec 1998).

It seems that the Supreme Court wants to indicate that this act should be political and if the international community recognized such secession, it would be successful. Although the international community is very cautious on these occasions but ...The international system neither authorises nor condemns such attempts, but rather stands neutral. Secession, as such, therefore, is not contrary to international law’ (Shaw 1996).

Declaration of independence along with other facts, such as a defined territory and permanent population, may result in the creation of a new state, immediately or over time. Recognition is an essential criterion of statehood. When a group seeks recognition as a new state, a legal question arises: whether it meets the international legal criteria of statehood or not.

Concerning the declaration of independence, the International Court of Justice has acknowledged that ‘...general international law contains no applicable prohibition of declarations of independence. Accordingly, it concludes that the declaration of independence of 17 February 2008 did not violate general international law’ (ICJ Ad Op 2010). In other words, international law is neutral with the declaration of independence made by Kosovo and ICJ did not decided on the effectiveness of

the declared independence. The court believes that addressing these questions is not necessary and provides that 'The General Assembly has requested the Court's opinion only on whether or not the declaration of independence is in accordance with international law. Debates regarding the extent of the right of self-determination and the existence of any right of "remedial secession", however, concern the right to separate from a State' (ICJ Ad Op 2010).

This shows that international law is not straight in how to treat the independence declaration of non-state groups. International law, also, cannot oppose it based on the territorial integrity of the state without this affecting the right to self-determination (Moore 2003).

It is clear that the principle of territorial integrity of States is not an obstacle to the peoples who are entitled to the right to self-determination in international law though indirectly it could have a negative impact on recognition by other states. There should be a balance point between these two principles as ICJ confirms that '[d]uring the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation' (ICJ Ad Op 2010). Therefore, declarations of independence cannot be contrary to international law (Bayefsky 2000).

If the State fails to provide people sufficient guarantees of protection for their development as a group, if the negotiations were reached to deadlock, as is the case of KRG with central government, it would be reasonable to consider secession as a last resort to guarantee their rights which may lead to external self-determination and it may be exercised through secession. In modern international law, this must be exercised through a democratic process and also especially through the non-use of force (Peters 2011).

The Canadian Supreme Court does not deny the right to internal self-determination as says '[w]hen a people is blocked from the meaningful exercise of its right of self-determination internally, it is entitled, as a last resort, to exercise it by secession' (Reference re Secession of Quebec 1998). In other words, blocking the exercise of the right of self-determination internally is a pre-conditional act to secession.

The ICJ in the Kosovo Advisory Opinion emphasises on different views regarding the right of

Secession but does not deny the existence of this right (Weller 2011).

As Tim Garton Ash believes 'Kosovo is unique and there will be more Kosovos' (Garton 2008 *The Guardian*, quoted in Ker-Lindsay 2011, 3). The principle of self-determination should be analysed in the specific cases. Since 1945 the right to self-determination had been restricted to the colonial states and 22 new States have been recognised until 1989 (Bayefsky 2000). For the first time, the right of self-determination outside the context of decolonisation was accepted in the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ Ad Op 2004). In fact, the Court recognized it a right erga omnes.

It seems that in order to study the current method of exercising of the right to self-determination, each specific case should be taken into account separately and this may be done beyond more or less restrictive doctrines. It does not have a predictable form.

The Kurdish Statehood: The Montevideo Convention of 1933, on the Rights and Duties of States, defined the qualification of a "state" under international law. This Convention, Article 1, requires a state to possess these requirements: '(1) a permanent population; (2) a defined territory; (3) government; and (4) capacity to enter into relations with the other states' (Convention on Rights and Duties of States Art 1, 1933). The Kurds in Iraq qualifies for a "state" according to all four requirements of the Montevideo Convention.

"A permanent population" is necessary for statehood. The Kurdistan region in Iraq is a permanent population of about 5.2 million people (KRG 2013). Recently they have announced its population has reached to over 8 million after recapturing Kurdish cities in clashing with Islamic state group. There is no rule on nationality and minimum limit of population (Crawford 2006). Kurdistan's population is more than enough people to satisfy the first qualification of an entity as a state since United Nations has recognized countries with populations of less than 500,000 like Malta 409,000, Iceland with 323,000, the Maldives with 309,000 andorra with 86,000 and Palau with 20,000 people (UN Demographic and Social Statistics)²².

The Kurdistan region has been recognized as a territory (Con of Iraq Art. 4, 113, 137). Therefore it has met the second element of the Montevideo Convention. There is no rule claiming the minimum area or contiguity of the territory of a state (Crawford 2006).

An "effective government" in internal and external affairs on a certain territory is considered to be main element to statehood. The government must claim

authority over its territory. Kurdistan region satisfies this element because it has a government (KRG). This authority must exercise governmental functions. Iraq's Constitution has recognized the Kurdish region and Baghdad has no control on it (Con of Iraq Art. 4, 113, 137). KRG controls the oil and water resources, determines the tax rates and is responsible for security forces of peshmarga region. It is a democratic republic which has a parliamentary system (Con of the KRG Art. 1) that is like government in the United Kingdom. The Kurdistan National Assembly is the Kurdistan Region's democratically elected legislature and its members are elected for a term of four years by secret ballot in a general election (Con of the KRG Art. 40, 42). General election has been hold six times since 1992 (KRG Parliament)²³.

States already have the capacity to enter into relations with the other states because it is a consequence of statehood "not a criterion for it" (Gunter 2008). The KRG is able to meet this requirement. It has established a Department of Foreign Relations in September 2006 and has appointed ministerial rank for the Department (KRG Department of Foreign Relation)²⁴, who conducts foreign policy independent of central government. The KRG receives representatives of foreign governments.

The U.S. Congress' members (KRG 2008)²⁵ and also the U.S. Secretary of State and the U.K. Foreign Secretary and UK Defence Secretary have visited Kurdistan and hold press conference with Masoud Barzani (KRG 2007)²⁶. Interestingly, the Iraqi flag is absent from press conferences. Instead, there is the Kurdish flag. This has a clear message: Kurdistan region is something more than a province of Iraq. Conducting foreign policy is a reserve for sovereign states not a province of a country. KRG also hosts many international offices (KRG Current International Offices)²⁷.

CONCLUSION

The KRG currently has a de facto status but it can convert this into to a de jure state. Kurds in Iraq had the opportunity of having a state at the end of World War I taken from them with the demise of the Treaty of Sèvres. Having suffered many persecutions, massacres, genocide and Anfal over the years arising from seeking destiny in their own state, Kurds in Iraq have a great opportunity to establish their own state within the territory of the KRG. As the legal documents such as the UN Charter, the ICCPR and ICSECR have mentioned to All people have the rights of self-determination...', Kurds in Iraq do have

the legal and inherent right to self-determination since as a "distinct" people they have a common linguistic, historical and cultural background. They can secede, become independent from Iraq, achieve their political, economic and cultural development and determine their political future. The KRG, also, has potentiality of statehood as it satisfies four requirements (a permanent population, a defined territory, government and capacity to enter into relations with the other states) of the Montevideo Convention of 1933.

We did reach to this point that there are no explicit rules prohibiting declarations of independence and also there are not any international treaties dealing with or clarifying how to use it legally. Actually, International law remains neutral once a non-state entity declares independence especially in Kosovo case. It cannot be considered legal or illegal because it has not regulated by international law. The international law may deal with it if it is done by illegal use of force or breaching peremptory norms. In the light of the current state practice of the international law, the legitimacy of independence – those do not breach international rules- depends on its special circumstances and also democratic way of declaring it by the people living in that entity.

The states practice shows that international law deal with declarations of independence indirectly, i.e. the recognition by third states. As other cases, the KRG will be encountered with this issue. It is not clear and cannot be predicted how its neighbours, Turkey, Iran and Syria, will react to KRG's declaration of independence. Will it be recognized by them? Or will KRG wait for their status? How other UN states react to this situation? These are critical questions that will be posed as KRG declares its independence from central government. In a big demonstration, last year its people asked KRD to declare the Kurdish state. Currently, KRG has tough debate with central government on Oil contract and its distributing process. The KRG has to consider all issues dealing with independence declaration.

REFERENCES

1. Yildiz, K. and T.B. Taysi, 2007. *The Kurds in Iran: The Past, Present and Future* London: Pluto Press.
2. Yildiz, K., 2004. *The Kurds in Iraq: The Past, Present and Future*, London: Pluto Press.
2. Yildiz, K., 2005. *The Kurds in Syria: The Forgotten People*, London: Pluto Press.
3. Izady, M., 1992. *The Kurds: A Concise Handbook*' Washington D.C.: Crane Russak.

4. O'Shea, M.T., 2004. Trapped Between the Map and Reality: Geography and Perceptions of Kurdistan, New York and London: Taylor and Francis or Routledge.
5. McDowall, D., 2000. The Land of the Kurds' The Encyclopedia of Kurdistan, [Online]available: www.kurdistanica.com/english/geography/geography-frame.html.
6. Stansfield, G.R.V., 2003. Iraqi Kurdistan: Political development and emergent democracy, New York and London: Taylor and Francis or Routledge, pp: 27.
7. Gunter, M., 2009. The A to Z of the Kurds' Lanham, Toronto, Plymouth, UK: The Scarecrow Press, Inc.,
8. Gunter, M., 2008. The Kurds Ascending' New York: Palgrave MacMillan, pp: 12.
10. Stansfield, G. and L. Anderson, 2004. the Future of Iraq: Dictatorship, Democracy, or Division? pp: 158.
11. Hassanpour, A., 1996. The Non-Education of Kurds: A Kurdish perspective, international review of education, Springer, 42(4): 367-379.
12. Kreyenbroek, Ph G. and S. Sperl, 1992. The Kurds: A Contemporary Overview' New York and London: Taylor and Francis or Routledge.
13. Stieglitz, J.E. and L.J. Bilmes, 2010. The true cost of the Iraq war: \$3 trillion and beyond' Washington post [Online]available: www.washingtonpost.com/wpdyn/content/article/2010/09/03/AR2010090302200.html. [2010, September 3].
14. Koskeniemi, M., 1994. National Self-Determination Today: Problems of Legal Theory and Practice' at pp: 241-249.
15. Crawford, J., 2006. The Creation of States in International Law', Oxford University Press, 2nd edition, at 109.
16. Iraqi constitution 2005, [Online]available: www.washingtonpost.com/wpdyn/content/article/2005/10/12/AR2005101201450.html.
17. Kurdistan Regional Government Unification Agreement, [Online]available: www.krg.org/articles/detail.asp?lngnr=12andsmap=04030000andnr=107andanr=8891.
18. Patriotic Union of Kurdistan, 1977. Revolution in Kurdistan: The Essential Documents of the Patriotic Union of Kurdistan, New York: PUK Publications, 1.
19. Kurdistan Regional Government Unification Agreement, www.krg.org/articles/detail.asp?lngnr=12andsmap=04030000andnr=107andanr=8891.
20. Special Verdict, Case No 1/ CSecond/2006, Al Anfal, Iraq High Tribunal, Second Criminal Court, at 38, 4 September 2007, [Online]available: www.law.case.edu/grotian-momentblog/Anfal/opinion.asp.
21. Supreme Court of Canada Reference re Secession of Quebec, 2 SCR. paragraph 217, 1998.
22. UN Charter Art. 55, 26 June 1945.
23. GA Res. 545 (VI), 5 February 1952, [Online]available: www.un.org/documents/ga/res/6/ares6.htm.
24. GA Res. 637A (VII), 16 December 1952, [Online]available: www.un.org/depts/dhl/resguide/r7.htm.
25. SC Res 986, 14 April 1995. [Online]available: www.un.org/Depts/oip/background/index.html.
26. Declaration on the Granting of Independence to Colonial Countries and Peoples, [Online]available: www.un.org/en/decolonization/declaration.shtml.
27. International Covenant on Civil and Political Rights, Dec 16, 1966, [Online]available: www.treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf.
28. Convention on Rights and Duties of States article 1, Dec. 26, 1933 [Online] available: www.untreaty.un.org/ilc/texts/instruments/english/commentaries/2_1_1949.pdf.
29. UN Transitional Administration in East Timor, 30 August 1999, [Online]available: www.un.org/en/peacekeeping/missions/past/etimor/etimor.htm.
30. International Court of Justice (ICJ), Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion), General List No. 141, 22 July 2010.
31. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for advisory opinion, at para 88. Erga Omnes. ICJ, 9 JULY 2004.
32. International Court of Justice (ICJ), Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion), General List No. 141, 22 July 2010.
33. Badinter Commission, Opinion No. 2, 1991.
34. Anderson L and G. Stansfield, 2004. the Future of Iraq: Dictatorship, Democracy, or Division? New York: PALGRAVE MACMILLAN.
35. Bayefsky, A., 2000. Self-determination in International Law: QUEBEC AND LESSONS LEARNED, pp: 455- 495

36. Bayefsky, A.F., 2000. The reflections of James Crawford, State Practice and International Law in Relation to Unilateral Secession.
37. Bois Th (trans), 1966. The Kurds' Beirut: Khayat book and Publishing Company S.A.L.
38. Case, B. and J. Siebens, 2012. Kurdistan in Iraq: History and Future Prospects, Think International and Human Security', [Online]available: www.thinkihs.org/wp-content/uploads/2012/01/Case-Siebens-Kurdistan-2012.pdf.
39. Hadji, Ph S.,009. The case for Kurdish statehood in Iraq, Case Western Reserve Journal of International Law, 41(2/3): 513.
40. Harris, D.J., 1998. Cases and Materials on International Law, 5th Ed. Sweet and Maxwell, pp: 120- 121
41. Jongerden, J., 2007. the Settlement Issue in Turkey and the Kurds; An Analysis of Spatial Policies, Modernity and War, Leiden, The Netherlands: Koninklijke Brill NV.
42. Ker-Lindsay, J., 2011. Not such a 'sui generis' case after all: assessing the ICJ opinion on Kosovo 39 Nationalities Papers 1 at 3.
43. Madih, A., 2007. Iran and the Caucasus, The Netherlands: Koninklijke Brill NV, 11(1): 11-31.
44. Moris, H., 1997. Self-Determination: An Affirmative Right or Mere Rhetoric?' 4ILSA J. INT'L and COMP. L, 201.
45. Moore, M., 2003. National Self-Determination and Secession' Oxford: Oxford University Press, pp: 134-157.
46. Peshtiwan, A., 2012. Building an Independent State in Kurdistan', [Online]available: www.e-ir.info/2012/07/19/building-an-independent-state-in-Kurdistan/.
47. Peters Anne, 2011. Does Kosovo lie in the lotus-land of freedom'Leiden Journal of International Law, 24: 99.
48. Rafaat, A., 2007. An independent Kurdish state: achievable or merely a Kurdish dream?'The Journal of Social, Political and Economic Studies, 32(3).
49. Shaw, M., 1996. Re: Order in Council P.C. 30 September, 1996-1497.
50. Official website of KRG [Online] available: www.krg.org [2014, July 8].
51. Kurdistan Regional Government, [Online] available: www.dfr.krg.org/p/p.aspx?p=88andl=12ands=030400andr=403. [2014, July 2].
52. Kurdistan Regional Government, The Kurdistan Parliament, [Online] available: <http://www.krg.org/p/p.aspx?l=12ands=030000andr=319andp=229>.
53. Kurdistan Regional Government, The Department of Foreign Relation, [Online] available: www.krg.org/a/d.aspx?r=267andl=12ands=04080000anda=19906.ands=010000. [2014, July 2].
54. Kurdistan Regional Government, Gohmert sees progress first hand in Kurdistan Region, (11 January, 2008) [Online]available: www.krg.org/a/d.aspx?r=73andl=12ands=02010200anda=22273ands=010000. [2013, September 10].
55. Kurdistan Region Presidency, [Online] available: [ww.dfr.krg.org/p/p.aspx?p=88andl=12ands=030400andr=403](http://www.dfr.krg.org/p/p.aspx?p=88andl=12ands=030400andr=403). [2014, May 10].
56. Structure of the KRG, eighth cabinet, [Online] available: www.krg.org[2014, May 10].
57. Kurdistan Regional Government, U.K. Foreign Secretary and President Barzani Discuss Closer Ties (18 December, 2007) [Online] available: www.krg.org/articles/detail.asp?lngnr=12andsmap=02010100andrnr=223andanr=22021, U.S. Dep't of State, Remarks with MassoudBarzani, President of the Kurdish Regional Government After Their Meeting (6 October, 2006) [Online]available: www.state.gov/secretary/rm/2006/73702.htm, UK Defence Secretary on first visit praises Kurdistan's peace and development (1 November, 2007) [Online]available: www.krg.org/a/d.aspx?s=010000andl=12anda=21114. [2013, May 20].
58. Department of Foreign Relations, Kurdistan Regional Government, Current International Offices in the Kurdistan Region [Online] available: dfr.krg.org/p/p.aspx?p=37andl=12ands=020100andr=363. [2014, May 18].
59. Iraqi constitution passes, officials say, 25 October, 2005, [Online] available: www.cnn.com/2005/WORLD/meast/10/25/iraq.constitution/. [2014, January 15].
60. Van Praag, M.C.W. and O. Seroo, 2011. The Memorandum on Genuine Autonomy from the perspectives of international law and practice, Brussels, 29 November [Online] available: www.unescocat.org/pubang.html [2014, February 18].
61. Definition of self-determination: [Online]available: www.britannica.com/EBchecked/topic/533380/self-determination.

62. Kurdish settlement. [Map]. In Encyclopedia Britannica. [Online]available: www.britannica.com/EBchecked/media/6304/Areas-of-Kurdish-settlement-in-Southwest-Asia [2013, January 28].
63. Demographic and Social Statistics[Online]available: unstats.un.org/unsd/demographic/ [2014, January 15]
64. References describing the Anfal campaign: Human Rights Watch, Human Rights in Iraq, New Haven, CT: Yale University Press, 1990; Genocide in Iraq: The Anfal Campaign Against the Kurds, New York: Human Rights Watch, 1993; Middle East Watch Report, Genocide in Iraq, 'First Anfal: The Siege of Sergalou and Bergalou, February 23–March 19 1988', available at www.hrw.org/reports/1993/iraqanfal/ANFAL3.htm. [2013, September 12].
65. Faces of the Fallen, [Online] available: www.apps.washingtonpost.com/national/fallen/. [2014, March 12].
66. Opiel, R. Jr, 2007. The New York Times, [Online] available: www.nytimes.com/2007/10/04/world/middleeast/04kurds.html?ref=huntoilcompany, 2011. [2011, December 4]
67. Londoñ, E., 2008. Kurds in N. Iraq receive arms from Bulgaria, washing to post, [Online], available: www.washingtonpost.com/wp-dyn/content/article/2008/11/22/AR2008112202297.html. [2013, November 23].
68. Report to Congress in March 2008, the U.S. Department of Defense noted that the Kurdish region remains, the least violent region of Iraq, U.S. Dept of Defense, Measuring Stability and Security in Iraq, Report to Congress 29 (7 March, 2008).
69. Weller, M., 2011. Modesty can be a virtue: Judicial Economy in the ICJ Kosovo Opinion, Leiden Journal of International Law, 24: 137.